

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 REPLY IN SUPPORT OF ITS MOTION TO DISMISS THE CITY’S
FIRST AMENDED COMPLAINT UNDER 735 ILCS 5/2-619.1

INTRODUCTION

The City’s opposition confirms the fundamental problem with the First Amended Complaint: the City seeks to impose sweeping civil liability on a licensed firearms retailer for harms allegedly caused by independent third-party criminals, while attempting to plead around the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901–7903 (“PLCAA”), through generalized allegations of “red flags,” “patterns,” and “information and belief.” That is precisely the type of derivative firearms litigation Congress barred. With the City conceding that this case against Westforth is a “qualified civil liability action” under PLCAA, chat concession should end the case unless the City plausibly pleads a statutory exception. As set forth in Westforth’s initial brief and below, it has not done so.

Regarding the PLCAA's negligent entrustment exception, *Wiley v. Fleet Farm LLC*, 799 F. Supp. 3d 860 (D. Minn. 2025) makes clear that Congress, in creating a narrow exception to PLCAA immunity, rejected the very reading of "use" that the City relies upon here, and any purported negligent entrustment to an individual cannot serve as the grounds for removing Westforth from the PLCAA's immunity protections unless the specific person to whom the firearm was entrusted actually and directly used the firearm to cause the complained-of harm. The City has not alleged facts to meet that requirement.

Regarding the PLCAA's predicate exception, it requires more than allegations that a dealer sold lawful products later misused by criminals. It requires facts showing that Westforth itself knowingly violated a qualifying statute applicable to the sale or marketing of firearms, and that the violation proximately caused the City's alleged injuries. Because Illinois is a fact-pleading jurisdiction, the City cannot satisfy that burden by reciting suspicious circumstances and inviting the Court to infer the missing elements. The City's opposition blurs those requirements by treating allegedly suspicious circumstances, third-party misconduct, and statistical associations as substitutes for actual pleaded facts establishing Westforth's knowing statutory violation and legal causation.

Finally, the City's opposition rehabilitate its Illinois-law claims. The public nuisance theory remains materially indistinguishable from the firearms-liability theories rejected by the Illinois Supreme Court in *City of Chicago v. Beretta USA Corp.*, 213 Ill. 2d 351 (2004) and *Young v. Bryco Arms*, 213 Ill. 2d 433 (2004). The City's municipal cost recovery theory seeks generalized public expenditures that Illinois law does not permit absent a properly pleaded, direct statutory basis. And the negligence-based counts fail because the alleged causal chain depends on remote, intervening criminal acts by numerous third parties.

Accordingly, Westforth's motion to dismiss should be granted.

ARGUMENT

I. THE PLCAA BARS THE CITY'S CLAIMS.

A. The City's Concession That This Is A Qualified Civil Liability Action Places The Burden On The City To Plead A Statutory Exception.

The City does not dispute that this lawsuit is a “qualified civil liability action” under PLCAA. That concession is dispositive unless the First Amended Complaint plausibly pleads an exception. *See* 15 U.S.C. § 7903(5)(A). The City therefore cannot avoid dismissal by restating its allegations at a high level or by invoking the seriousness of gun violence in Chicago. PLCAA reflects Congress’s judgment that firearms manufacturers and sellers may not be subjected to civil liability for harm resulting from the criminal or unlawful misuse of firearms by third parties unless a statutory exception is satisfied.

The City relies principally on the predicate exception, 15 U.S.C. § 7903(5)(A)(iii). But that exception is narrow. It requires a knowing violation of a statute applicable to the sale or marketing of firearms, and it requires that the violation be a proximate cause of the plaintiff’s injuries. The City’s opposition collapses those elements., treating alleged “red flags” as knowledge, downstream criminal misuse as causation, and public costs as recoverable injuries. None of that satisfies PLCAA.

B. Smith & Wesson/Mexicanos Does Not Rescue The City's Pleading.

The City invokes *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025), as though that decision lowered PLCAA’s threshold. It did not. The decision confirms that a plaintiff invoking the predicate exception must plead more than downstream criminal misuse and more than a defendant’s participation in the ordinary stream of commerce. The plaintiff must plausibly allege conduct by the defendant that amounts to a knowing violation of a qualifying statute and must connect that violation to the claimed injury through proximate cause.

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The City's allegations fail that test. The City does not plead transaction-specific facts establishing that Westforth knowingly participated in unlawful straw purchases, knowingly falsified or aided falsification of required forms, or knowingly supplied firearms to persons Westforth knew would misuse them. Instead, the City relies on volume, repetition, alleged red flags, and later crime-gun recoveries. Those allegations do not transform third-party crimes into Westforth's knowing statutory violations, and they do not establish PLCAA proximate cause.

C. The First District's Personal-Jurisdiction Opinion Does Not Decide PLCAA Immunity Or The Sufficiency Of The Merits Pleadings.

The City's opposition leans heavily on statements from the First District's personal-jurisdiction decision. That reliance is misplaced. The question before the appellate court was whether Illinois courts could exercise personal jurisdiction over Westforth, not whether the First Amended Complaint – which was not even the operative pleading at that point – states viable claims under Illinois law and within the exceptions of the PLCAA. Jurisdictional contacts are not merits liability.

D. The City Still Does Not Plead Facts Showing Westforth Knowingly Violated A Qualifying Predicate Statute.

The predicate exception requires a knowing statutory violation by the defendant. The City's opposition says the complaint is "brimming" with examples, but examples of multiple purchases, cash purchases, repeat customers, or later recovery of firearms do not by themselves plead that Westforth knowingly violated the law in any particular transaction. That distinction matters. Illinois is a fact-pleading jurisdiction, and a complaint must allege facts rather than conclusions or stacked inferences, especially when those allegations are what the plaintiff relies on to overcome statutory immunity. *See, e.g., Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212 and *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148. A retailer does not knowingly violate the law merely because a sale later becomes associated with criminal misuse, because a purchaser bought more than

one firearm, or because law enforcement later investigated a purchaser. The City's theory depends on inference stacking: red flags supposedly establish straw purchasing; straw purchasing supposedly establishes Westforth's knowledge; Westforth's knowledge supposedly establishes statutory violations; and those supposed violations supposedly caused broad municipal costs. Illinois fact pleading and PLCAA both require more.

The City's opposition responds as though this case were governed by federal notice pleading. It is not. Illinois is a fact-pleading jurisdiction. On a motion to dismiss, courts accept well-pleaded facts as true, but they do not accept unsupported conclusions of law or fact. *See, e.g., Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212. The City argues that its allegations on information and belief are permissible because some facts are outside its possession. But the problem is not the phrase "information and belief" in isolation. The problem is that the City uses it to bridge essential elements—knowledge, statutory violation, and causation—without pleading the factual basis necessary to make those elements plausible. Under Illinois law, information-and-belief allegations may be tolerated where facts are genuinely inaccessible, but they are not "equivalent to an allegation of relevant fact" and do not relieve a pleader of the obligation to allege the factual basis for the claim. *See, Golly v. Eastman (In re Estate of Dimatteo)*, 2013 IL App (1st) 122948.

That defect is especially serious here because many of the facts the City claims to plead inferentially are more available to the City and law enforcement than to Westforth—crime-gun links, the timing of recoveries, and the details of Chicago incidents. Regarding the sales specifically cited, the City has already deposed Earl Westforth and two former employees for hours each regarding those sales and there is no conceivable additional discovery to be done to fill in any gaps that "information and belief" may be able to temporarily fill. Yet instead of using that testimony to attempt to plead those facts directly and tying them to concrete statutory violations, the City asks the

Court to infer scienter and causation from patterns, volume, cash purchases, and hindsight recoveries. Those allegations may support rhetoric, but they do not plead the transaction-specific knowledge required to satisfy PLCAA, negligent entrustment, or common-law causation.

E. The City's Use Of Federal And Local Statutes Does Not Satisfy PLCAA Where The Alleged Violations Are Not Adequately Pleaded And Do Not Proximately Cause The Claimed Injuries.

The City invokes multiple statutes and ordinances, including provisions concerning straw purchases and prohibited firearm sales. But identifying statutes is not enough. Rather, the City must plead a knowing violation of an applicable statute and proximate cause. The opposition largely assumes those elements. For alleged straw-purchase transactions, the City does not plead transaction-specific facts showing what Westforth knew, when it knew it, or how any specific statutory violation caused the particular costs the City seeks to recover. For alleged sales of firearms prohibited under Chicago law, the City's causation theory is even thinner: the opposition asserts that such sales "endanger" public safety, but a generalized risk of harm is not proximate cause of the City's claimed damages. Even more, and especially for the sales to specific Illinois residents that have been added to the present complaint, the City's own traces of firearms recovered in Chicago would tell if any of these firearms have actually been recovered in Chicago and contributed to any purported nuisance but their complaint does not allege a single such recovery. As it pertains to the non-Indiana sales, there can be no cause of action if there is no alleged harm.

The City's theory would convert nearly any alleged regulatory violation into a PLCAA predicate and then into municipal recovery for broad public-safety costs. That would swallow PLCAA's rule. Congress required proximate cause precisely to prevent liability from turning on attenuated chains of third-party conduct.

F. The City's Reliance On *Wiley V. Fleet Farm* Confirms That PLCAA's Negligent-Entrustment Exception Does Not Apply Here.

The City's attempted distinction of *Wiley v. Fleet Farm LLC*, 799 F. Supp. 3d 860 (D. Minn. 2025) fails because it conflates two different parts of that decision. Wiley allowed certain claims to proceed under PLCAA's predicate exception, but it separately held that PLCAA's negligent-entrustment exception did **not** apply where the retailer sold firearms to an alleged straw purchaser who later transferred a firearm to someone else who committed the shooting. That is the structure alleged here too.

The City says *Wiley* resembles this case because the seller there allegedly had direct dealings with a specific straw purchaser and faced multiple red flags. But that comparison helps Westforth, not the City. In *Wiley*, Fleet Farm allegedly sold 24 firearms to Jerome Horton over five months; the alleged warning signs included repeated multiple-firearm transactions, numerous same-caliber 9mm purchases, staggered purchases across store locations, and Horton's taking photographs or videos of the guns while purchasing them. Even with those allegations, the court held that PLCAA's negligent-entrustment exception did not apply because Horton—the person to whom Fleet Farm supplied the firearms—did not himself commit the shooting.

The City's allegations against Westforth are similar in kind, not materially stronger in any way that matters under § 7903(5)(B). The City alleges repeated purchases, duplicate guns, bulk buying, cash transactions, later trace recoveries, and even an employee concern about one transaction. But those allegations still describe the same straw-purchase/transfer model that *Wiley* held falls outside the PLCAA's negligent-entrustment exception. The City does not allege that the person to whom Westforth supplied the firearms was the same person who directly used those firearms in the shootings or violent crimes for which the City seeks relief.

That is the dispositive point. The PLCAA defines negligent entrustment by reference to “the person to whom the product is supplied” and whether that person is likely to, and does, use the firearm in a manner involving unreasonable risk of physical injury. 15 U.S.C. § 7903(5)(B). *Wiley* rejected the argument that a later transfer by an alleged straw purchaser to someone else constitutes the supplied person’s qualifying “use.” The City’s reliance on a pre-PLCAA case of *Smith v. United States*, 508 U.S. 223 (1993) to try to understand the meaning of the PLCAA does not change that analysis. Westforth does not argue that “use” always means “discharge”; the point is that § 7903(5)(B) focuses on the conduct of the person to whom the seller supplied the firearm, not on later misuse by another person further down the chain.

Nor does the City’s reliance on *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825 (D. Minn. 2023) save its negligent-entrustment count. That case merely recognized that a claim mislabeled as “negligent entrustment” might still survive if the plaintiff adequately pleaded the predicate exception. It does not expand PLCAA’s separate negligent-entrustment definition. So if the City wants to compare this case to *Wiley*, the comparison confirms Westforth’s point: even accepting detailed straw-purchase allegations, PLCAA’s negligent-entrustment exception does not reach a later transfer-and-shooting scenario.

II. THE CITY CANNOT RELY ON INVALID OR INADEQUATELY DEFENDED PREDICATE ENACTMENTS.

A. The Constitutionality Of The Purported Predicate Statutes Is Prerequisite To Their Use To Deprive Westforth Of PLCAA Immunity.

The City’s opposition also fails to answer Westforth’s argument that unconstitutional or otherwise invalid enactments cannot supply the predicate “illegality” necessary to defeat PLCAA immunity. A predicate statute must be valid and enforceable, and an unconstitutional enactment cannot impose duties, create liability, or supply the violation necessary to avoid federal immunity.

The City responds largely by asserting that firearms businesses have no freestanding Second Amendment right to sell firearms free of regulation. That misses Westforth's argument. Westforth does not contend that all firearms sales regulation is unconstitutional. The point is narrower and dispositive: the specific enactments the City invokes as PLCAA predicates must themselves survive constitutional scrutiny before they can strip Westforth of federal statutory immunity.

The City's contention that the relevant constitutional questions are settled is incorrect. Just days after the Seventh Circuit decided *Barnett v. Raoul*, 24-3060, 24-3061, 24-3062 (7th Cir. Jul. 9, 2026), the Third Circuit held in *Ass'n of N.J. Rifle & Pistol Clubs v. Attorney Gen.*, 24-2415, 24-2450, 24-2506 (3d Cir. Jul. 17, 2026) that New Jersey's ban on Colt AR-15s violated the Second Amendment, modified the district court's order so that the State's assault-firearm provisions were deemed unconstitutional as to the full class of semi-automatic rifles, and further held that the State's large-capacity-magazine provisions also violated the Second Amendment. That directly undercuts the City's suggestion that restrictions on semi-automatic rifles like Chicago's are categorically constitutional. They are not.

At minimum, this recent circuit conflict confirms that the constitutional validity of modern weapons bans is very much in active dispute. That matters here. The City seeks to use Chicago's assault-weapons restrictions as an affirmative PLCAA predicate while treating their constitutionality as beyond serious question. It is not. A recent federal court of appeals has held otherwise with respect to materially similar restrictions, and this Court need not accept the City's assertion that recent Second Amendment doctrine decisively resolves the issue in its favor.

The City's remaining authorities do not cure that problem. Its citations to retailer-regulation cases such as *Teixeira v. Cnty. of Alameda*, 873 F.3d 670 (9th Cir. 2017) and to cases stating there is no freestanding right to operate a firearms business do not answer the question whether bans on arms

in common use may constitutionally serve as PLCAA predicates. And as to the low-melting-point statute, the City relies principally on *Granata v. Campbell*, 798 F. Supp. 3d 46 (D. Mass. 2025), a nonbinding district court decision from another circuit that is already on appeal. That is not the sort of settled, controlling authority that can dispose of Westforth's constitutional objection at the pleading stage.

Noticeably lacking is any effort to analyze under the test set forth the any regulation of firearms on the basis of the type of metal used to make them. The Supreme Court has established a two-step framework for analyzing Second Amendment challenges to firearm regulations. *See, N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). At the first step, courts look to the Amendment's plain text. If the text covers an individual's conduct, the Amendment presumptively protects that conduct. *Id.* At the second step, the government must show that the challenged regulation is "'relevantly similar' to laws that our tradition is understood to permit." *See, United States v. Rahimi*, 602 U.S. 680, 692 (2024); quoting *Bruen*, 597 U.S. at 29. If the government can make such a showing, the regulation stands; if not, it fails. *Bruen*, 597 U.S. at 24. That is the test for the predicate statutes put forth by the City and is prerequisite for any predicate exception analysis.

B. The Constitutionality Of The Purported Predicate Statutes Is Prerequisite To Their Use To Deprive Westforth Of PLCAA Immunity.

The City's Rule 19 forfeiture argument also does not resolve the merits. Westforth's challenge to the City's municipal ordinance does not depend on notice to the Illinois Attorney General, because the City itself is before the Court defending its own enactment. To the extent the Court concludes that Rule 19 notice is required with respect to Westforth's challenge to 720 ILCS 5/24-3(A)(h), the appropriate course is to permit notice and any necessary participation by the Attorney General—not to treat the constitutional issue as waived and thereby convert a curable

procedural matter into a merits determination. At minimum, the City is wrong to suggest that the absence of notice answers whether the asserted predicate statute is constitutionally valid. Nonetheless, notice is being served contemporaneously herewith. As this matter has now been pending for five years, a slight delay in the Court issuing a ruling on this motion so that the Illinois Attorney General can weigh in if it cares to is in no way prejudicial. Moreover, discovery is not stayed, and Westforth has no objection to holding off on any oral argument so that the State of Illinois may weigh in and participate.

The City also argues that constitutional analysis is premature. But where the City's claims depend on the validity of a predicate statute to avoid federal immunity, the Court may and should consider whether the asserted predicate can lawfully perform that role. If the predicate is invalid, the PLCAA exception fails as a matter of law. And even if the Court does not finally resolve every constitutional question now, the City has not shown that its proposed predicates are so clearly valid that Westforth's challenge may be brushed aside as a nonissue. To the extent the Court believes further factual development is required for any truly as-applied challenge, that is a reason to reserve or narrow that issue—not to accept the City's predicate-statute theory as established.

To the extent that the City's PLCAA theory depends on those predicate enactments, its failure to establish that they are valid and enforceable remains fatal.

III. THE FIRST AMENDED COMPLAINT FAILS TO STATE A PUBLIC NUISANCE CLAIM.

A. *Beretta And Young* Foreclose The City's Firearms Public Nuisance Theory.

The City attempts to distinguish *Beretta* and *Young*, but those decisions remain controlling. In both cases, the Illinois Supreme Court rejected expansive public nuisance theories seeking to impose liability on firearms industry defendants for downstream criminal misuse of guns. The City's

current theory follows the same basic path: lawful firearms sales allegedly contributed to an illegal secondary market, which allegedly contributed to crime, which allegedly imposed broad public costs. Changing the defendant from manufacturers and distributors to one retailer does not change the legal defect. The City still seeks to treat criminal misuse by third parties as a public nuisance attributable to a remote seller. Illinois public nuisance law does not extend that far.

B. The City Has Not Pleaded Interference With A Cognizable Public Right Caused By Westforth.

The City identifies broad interests in public health, safety, and peace. But public nuisance requires more than identifying public interests affected by crime. The plaintiff must plead a substantial and unreasonable interference with a public right attributable to the defendant's conduct. The City's complaint attributes the alleged interference to criminals who possessed, transferred, discharged, or misused firearms in Chicago—not to Westforth's operation of a retail store in Indiana. The City's reliance on allegations that some firearms were recovered in public places does not solve the problem. A later recovery in a street, park, or vehicle does not transform a remote retail sale into Westforth's interference with a public right. Otherwise, every criminal misuse of a product in a public place could be recast as a public nuisance against a seller somewhere in the chain of commerce.

C. The Firearm Industry Responsibility Act Does Not Retroactively Create The Pleaded Common-Law Nuisance Claim.

The City invokes the 2023 Firearm Industry Responsibility Act as supposed legislative recognition of a public right. That statute does not save the First Amended Complaint. The City has pleaded common-law public nuisance and municipal recovery theories based on alleged conduct spanning years. A later statutory enactment cannot retroactively supply missing elements of a common-law nuisance claim or override the limits imposed by *Beretta* and *Young*. If the General

Assembly creates a specific statutory cause of action, that cause of action must be pleaded and applied according to its own terms. It does not authorize courts to expand common-law nuisance doctrine beyond the boundaries set by the Illinois Supreme Court.

IV. THE MUNICIPAL COST RECOVERY CLAIM SEEKS NONRECOVERABLE GENERALIZED PUBLIC EXPENDITURES.

The City's municipal cost recovery theory fares no better. The opposition says the free public services doctrine does not apply because the City has an ordinance. But the existence of an ordinance does not authorize open-ended recovery for generalized policing, emergency response, prosecution, victim services, violence-prevention programming, or other ordinary governmental expenditures allegedly associated with crime. The City must plead costs reasonably related to Westforth's own violation of law. It has not done so. Instead, it seeks broad categories of public expenditures tied to gun violence generally and to independent criminal conduct by third parties. That is precisely the type of derivative municipal recoupment theory Illinois courts have refused to recognize absent clear legislative authorization and direct causation.

The City's attempt to relabel these expenditures as "abatement" costs does not change their character. The alleged costs are not costs incurred to abate a nuisance created and controlled by Westforth. They are public programs and services the City provides in response to crime and public safety concerns. The municipal cost recovery count should be dismissed.

V. THE NEGLIGENCE AND NEGLIGENT ENTRUSTMENT CLAIMS FAIL FOR LACK OF DUTY AND PROXIMATE CAUSE

A. The City's Negligence Theory Depends On A Duty Illinois Law Does Not Recognize.

The City's negligence count attempts to impose a broad duty on an out-of-state firearms retailer to protect the City from later criminal misuse by third parties. Illinois law does not recognize

such an expansive duty. The alleged injuries are remote from the retail sales, depend on intentional criminal acts by others, and implicate broad policy questions about firearms regulation and public safety that courts have declined to convert into common-law tort duties. The City argues foreseeability. But foreseeability alone does not create a duty. Courts also consider the likelihood of injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, and public policy. Imposing tort liability on a retailer for broad municipal harms caused by independent criminals would create boundless exposure and conflict with PLCAA's statutory limitations.

B. The Causation Allegations Are Too Remote As A Matter Of Law.

The City's opposition confirms the remoteness problem. The City alleges that Westforth sold firearms; some purchasers allegedly acted unlawfully; other persons allegedly acquired or misused firearms; some firearms were later recovered in Chicago; and the City incurred broad public costs. That chain is too attenuated to satisfy legal cause. Illinois proximate cause requires both cause in fact and legal cause. *See, First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252 (1999). Legal cause turns on whether the injury is of a type that a reasonable person would see as a likely result of the defendant's conduct, not merely a conceivable or statistically associated outcome. The City's alleged harms depend on intervening criminal choices by multiple actors. Those intervening acts break the causal chain.

The City's position would make proximate cause essentially limitless. If the later criminal misuse of a firearm anywhere in Chicago can support recovery of generalized municipal costs from a remote seller, then PLCAA's proximate-cause requirement and Illinois causation law have no meaningful role.

C. Negligent Entrustment Is Not Pleaded Under Illinois Law Or PLCAA.

The negligent entrustment claim fails independently. The City does not allege facts showing that Westforth entrusted a firearm to a particular person whom Westforth knew or should have known was likely to use that firearm in a manner involving unreasonable risk of physical injury. The City instead relies on alleged suspicious circumstances and later downstream misuse. That is not negligent entrustment. The City's theory would transform any allegedly suspicious sale into negligent entrustment if the firearm later passed through criminal hands. That is inconsistent with both Illinois law and PLCAA's narrower statutory definition.

CONCLUSION

For the foregoing reasons, and for the reasons stated in Westforth's opening motion, Defendant Westforth Sports, Inc. respectfully requests that the Court dismiss Plaintiff City of Chicago'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
July 24, 2026

Respectfully submitted,

By: /s/ Timothy R. Rudd

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CERTIFICATE OF SERVICE

I, an attorney licensed in Illinois, on oath, state that I served a copy of the above-mentioned document via email to counsel of record on July 23, 2026.

/s/

[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.