

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

CITY OF CHICAGO, an Illinois municipal
corporation,

Plaintiff,

v.

WESTFORTH SPORTS, INC.,

Defendant.

Case No. **2021 CH 01987**

Hon. Myron F. Mackoff

OPINION AND ORDER

This matter comes before the Court for ruling on Westforth’s Motion to Dismiss the City’s First Amended Complaint Under 735 ILCS 5/2-619.1 (the “Motion”). The Motion has been fully briefed, the Court has reviewed all submitted materials, and oral arguments have been heard. For the reasons stated below, the Motion is DENIED.

BACKGROUND¹

Defendant Westforth Sports, Inc. (“Defendant”) is a federally licensed retail firearms dealer located in Gary, Indiana. Defendant’s store is located ten miles from the Illinois-Indiana border where it sold handguns and long guns to residents of Indiana and other states. In 2023, Defendant’s owner—Earl Westforth—retired and thereafter ceased retail operations. However, as of January 2026, Defendant still maintains its Federal Firearms License (“FFL”) as a retail dealer.

For years, Defendant was ranked as the largest out-of-state supplier of firearms recovered at crimes scenes in the City of Chicago. Between 2009 and 2016, the Chicago Police Department (“CPD”) traced over 850 crime guns to Defendant. Plaintiff alleges that this prevalence is not a matter of coincidence or bad luck, but the foreseeable result of Defendant’s decision to profit from unlawful gun sales. Specifically, Defendant sold at least 347 firearms illegally to 60 different straw purchasers. Defendant also profited by selling 47 assault rifles and a handful of zinc-alloy handguns to Chicago residents who cannot legally acquire or possess them in the City.

Further, Plaintiff contends that Defendant’s unlawful sales are enabled by its pattern of willful inaction. Plaintiff claims Defendant repeatedly sold firearms to individuals that it knew were engaged in straw purchasing and illegal firearms trafficking. Defendant’s employees overlooked clear warning signs of straw purchases including: multiple purchases of duplicate firearms, buying sprees over a concentrated period of time, large-volume purchases, cash payments, suspicious errors on purchasing forms, and staggered visits designed to avoid detection. Additionally, Defendant repeatedly disregarded explicit warnings from its federal regulator, the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). ATF issued forty-eight citations, held four warning conferences, and sent five formal warnings letters to Defendant—all addressing its federal violations and its obligations to identify and prevent straw purchases. On two occasions, ATF personnel reviewing Defendant’s business practices recommended license revocation for willful violations, but ultimately chose to hold a warning conference instead.

Plaintiff initiated this lawsuit to address the harms caused by Defendant’s unlawful sales. After Plaintiff filed its original complaint, Defendant argued lack of personal jurisdiction, and the

¹ All well-pled allegations in the operative complaint are presumed true for purposes of deciding motions to dismiss. *In re Chicago Flood Litig.*, 176 Ill. 2d 179, 184 (1997).

trial court dismissed the action. Plaintiff then conducted discovery into Defendant's Illinois contacts and appealed. The First District reversed the trial court's dismissal and remanded. On January 13, 2026, Plaintiff filed its First Amended Complaint (the "Complaint"), asserting four claims against Defendant: public nuisance (Count I), recovery of municipal costs (Count II), negligence (Count III), and negligent entrustment (Count IV). Defendant moves to dismiss Plaintiff's Complaint pursuant to 735 ILCS 5/2-619.1.

LEGAL STANDARD

A motion to dismiss "admits all well-pled allegations in the complaint and reasonable inferences to be drawn from the facts." *In re Chicago Flood Litig.*, 176 Ill. 2d 179, 184 (1997). "A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). While "[a] section 2-619 motion to dismiss admits the sufficiency of the complaint, but asserts an affirmative matter that defeats the claim." *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. The "affirmative matter" must be apparent on the face of the pleadings or be supported by affidavits or other evidentiary materials. *Doe v. Univ. of Chi. Med. Ctr.*, 2015 IL App (1st) 133735, ¶ 37. A party may bring a combined motion to dismiss under both sections pursuant to 735 ILCS 5/2-619.1.

When ruling on motions to dismiss under either section 2-615 or 2-619, the Court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Chicago Flood Litig.*, 176 Ill. 2d at 189. "[A] cause of action should not be dismissed under either section unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Siena at Old Orchard Condo. Ass'n v. Siena at Old Orchard, LLC*, 2017 IL App (1st) 151846, ¶ 46 (internal citations omitted).

I. The Protection of Lawful Commerce in Arms Act ("PLCAA")

The PLCAA, enacted in 2005, bars certain lawsuits against firearms manufacturers and sellers. 15 U.S.C. § 7901 *et seq.* Under the PLCAA, courts must "immediately dismiss" any case meeting the definition of a "qualified civil liability action." 15 U.S.C. § 7902(b). A "qualified civil liability action" includes, among other things, civil actions "brought by any person against a manufacturer or seller of a qualified product ... for damages, punitive damages, injunctive or declaratory relief, abatement ... or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party ..." *Id.* §7903(5)(A).² However, the PLCAA provides six exceptions to immunity for qualified civil liability actions. *Id.* § 7903(5)(A)(i)–(vi).

The analysis for determining the applicability of the PLCAA is two-fold. First, the Court must determine whether the instant action is a "qualified civil liability action"—a point Plaintiff concedes. Pl.'s Resp. to Mot. at 7. Second, the Court must determine whether any of the PLCAA's exceptions apply. As discussed below, Defendant contends that the only potentially applicable exceptions are the "predicate exception" and "negligent entrustment exception," neither of which applies. Plaintiff responds that the predicate exception applies to all of its claims, and that its negligent entrustment claim independently falls under the negligent entrustment exception.

² A "qualified product" includes firearms, ammunition, or their components that have been shipped or transported in interstate or foreign commerce. 15 U.S.C. §7903(4).

A. The Predicate Exception

The PLCAA provides an exception to its general prohibition on “qualified civil liability actions” where “a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.” *Id.* §7903(5)(A)(iii). This involves three elements: a lawsuit can proceed notwithstanding the PLCAA if the firearms industry defendant (1) violated a state or federal statute applicable to the sale or marketing of firearms, ammunition, or their components; (2) that violation was knowing; and (3) it was a proximate cause of the plaintiff’s injury. *Id.* Because the provision rests on a defendant’s violation of an underlying or “predicate statute,” it is known as the “predicate exception.” This exception “opens a path to making a gun manufacturer [or seller] civilly liable for the way a third party has used the weapon it made.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025).

1. “Applicable To”

Not every statute qualifies as a predicate statute sufficient to overcome the PLCAA. To trigger the predicate exception, the statute must be “applicable to the sale or marketing” of firearms, ammunition, or their components. 15 U.S.C. §§ 7903(4)–(5)(A)(iii). Plaintiff alleges, *inter alia*, that Defendant violated federal and state laws, regulations, and local ordinances by facilitating straw purchases and selling assault weapons to Chicago residents. In particular, each count focuses on Defendant’s own violations of the federal Gun Control Act of 1968 through unlicensed firearm dealing and exportation, straw sales, firearm trafficking, and false entries on ATF Form 4473. Compl. ¶¶ 115, 117, 123, 130, 132, 136 (citing 18 U.S.C §§ 922(a)(1), 922(a)(2), 922(b)(2)–(3), 922(m), 922(t)(1), 923(a), 924(a)(1), and 924(a)(3)).

Defendant does not dispute that the Gun Control Act is an applicable predicate statute, and the Court finds no basis to conclude otherwise. *See Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 151 (App. Div. 2012) (finding that an action alleging violations of the Gun Control Act falls within the PLCAA’s predicate exception). Rather, Defendant argues that Plaintiff’s alleged violations of 720 ILCS 5/24-3(A)(h) and Chicago Municipal Code § 8-20-075 cannot serve as predicate statutes because those provisions are unconstitutional. Defendant, however, overlooks that the predicate exception requires a violation of a “State or Federal” statute. *See* 15 U.S.C. §§ 7903(5)(A)(iii) (emphasis added). The disjunctive “or” denotes alternatives, such that satisfying either category is sufficient. *See Stroh v. Blackhawk Holding Corp.*, 48 Ill. 2d 471, 477-78 (1971). As such, the Court need not—and does not—reach the constitutionality of either 720 ILCS 5/24-3(A)(h) or Chicago Municipal Code § 8-20-075. Accordingly, Plaintiff’s alleged federal violations underlying each count, standing alone, satisfy the predicate statute requirement.

2. Knowing Violation

A plaintiff must also demonstrate that the firearms industry defendant “knowingly violated” the underlying predicate statute. Generally, it is not necessary to show that the defendant knew that the law proscribed its conduct, only that it knew the factual circumstances giving rise to the violation. *See Bryan v. United States*, 524 U.S. 184, 192-93 (1998) (explaining that “the knowledge requisite to a knowing violation of a statute is factual knowledge as distinguished from knowledge of the law,” and holding that “unless the text of the statute dictates a different result, the term ‘knowingly’ merely requires proof of knowledge of the facts that constitute the offense”) (citation omitted). As one federal district court explained it, “the phrase ‘knowingly violates’

requires knowledge of facts and attendant circumstances that comprise a violation of the statute, *not* specific knowledge that one's conduct is illegal." *New York v. Arm or Ally, LLC*, 718 F. Supp. 3d 310, 330 (S.D.N.Y. 2024).

Here, Plaintiff claims Defendant was on notice of straw purchases and illegal transactions through numerous "red flags." These alleged warning signs included bulk sales over a short period, large cash transactions, staggered visits designed to avoid detection, and suspicious errors on purchasing forms. Compl. ¶ 64. Defendant argues that Plaintiff relies on "inference stacking" which is insufficient to establish actual knowledge on Defendant's part. But this argument ignores that actual knowledge can be, and is often, proven by inference through circumstantial evidence. *People v. Hinton*, 402 Ill. App. 3d 181, 185 (3rd Dist. 2010). As such, the alleged "red flags" offer plausible circumstantial evidence, at least at the pleading stage, that Defendant knowingly violated a predicate statute.³

Beyond these signs, Plaintiff also alleges that Defendant has received numerous citations and explicit warnings from ATF. According to Plaintiff, Defendant has received at least forty-eight separate citations, with many single citations concerning multiple instances of improper or illegal conduct. Compl. ¶¶ 7, 50. This includes citations for failing to conduct background checks, transferring firearms to straw purchasers, failing to report sales of multiple handguns, and failing to ensure that a customer was the actual buyer/transferee rather than a straw purchaser. *Id.* ¶¶ 7, 50-51. Defendant has attended at least four warning conferences with ATF and received at least five formal warning letters, all concerning its federal violations and its obligations to identify and prevent straw purchases. *Id.* ¶¶ 52, . Notably, on at least two occasions, ATF regulators examining Defendant's business practices recommended license revocation based on findings of willful violations of the Gun Control Act. *Id.* ¶ 50. Accordingly, Plaintiff sufficiently alleges Defendant's knowing violation of a predicate statute.

3. Proximate Cause

The final element of the predicate exception is proximate causation. The exception applies only where "the violation [of the predicate statute] was a *proximate cause* of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added).

In Illinois, "proximate cause" encompasses two distinct requirements: cause in fact and legal cause. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 396 (2004). "The first requirement, cause in fact, is present 'when there is a reasonable certainty that a defendant's acts caused the [plaintiff's] injury or damage.'" *Young v. Bryco Arms*, 213 Ill. 2d 433, 446 (2004) (citing *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 455 (1992)). Cause in fact asks whether the injury would have occurred absent the defendant's conduct. *Id.* Where multiple factors combine to cause the injury, a defendant's conduct is cause in fact if it is a "material element and substantial factor" in bringing about the injury. *Id.* The second requirement, legal cause, exists only if the defendant's conduct is "so closely tied to the plaintiff's injury that he should be held legally responsible for it." *Id.* (citations omitted). Legal cause is a question of foreseeability or remoteness. *Beretta*, 213 Ill. 2d at 396. Although proximate cause is a question of fact, a court may

³ Although the First District addressed personal jurisdiction, its analysis expressly noted that Defendant "cannot credibly claim ignorance when the record is replete with evidence that Westforth knew it was operating as a pipeline for illegal weapons into Chicago. In other words, Westforth's conduct was not one of passive indifference ... [it] made a deliberate choice to facilitate and profit from illegal firearm sales destined for Chicago's streets." *City of Chicago v. Westforth Sports, Inc.*, 2025 IL App (1st) 231908, ¶ 54.

decide the issue as a matter of law when the facts alleged fail to sufficiently demonstrate both cause in fact and legal cause. *Id.* at 396-97.

As for cause in fact, Defendant argues that Plaintiff's allegations are "too insubstantial" and "amount to only a tiny fraction of Chicago's alleged gun-violence problem." Def.'s Mot. at 22-23. This argument improperly conflates causation with scope. Cause in fact asks whether Defendant's conduct was a material element and substantial factor in causing Plaintiff's injury—not what percentage of Chicago's gun violence Defendant's actions contributed to. In any event, this characterization conflicts with Plaintiff's well-pleaded allegations. Specifically, the Complaint identifies Defendant's unlawful straw sales as a key factor contributing to Plaintiff's injuries. Between 2009 and 2013, Chicago police recovered and traced 515 crime guns sold by Defendant, making it the largest out-of-state supplier of crime guns. Compl. ¶ 33. From 2013 through 2016, Chicago police recovered and traced an additional 341 crime guns from Defendant. *Id.* The Complaint further identifies the specific firearms, the straw purchasers who acquired them, and the circumstances of their recovery in connection with crimes such as homicide, assault, domestic violence, illegal machine-gun possession, and unlawful possession by minors and felons. *Id.* ¶¶ 4, 116. A reasonable jury could determine that Defendant's unlawful gun sales were a material element and substantial factor in causing Plaintiff's injuries. *See Young*, 213 Ill. 2d at 447 ("Because the existence of cause in fact is a question of fact for the jury ... a reasonable jury could find that the manufacture of a certain [firearm] by Smith & Wesson, its subsequent sale ... along with at least three different transfers of ownership ... were causes in fact of the shooting"). Thus, Plaintiff adequately pleads cause in fact.

Turning to legal cause, Defendant argues that the causal chain is broken by multiple intervening acts—specifically third party criminal acts that Defendant did not control. Defendant relies on the general rule that where a third party's criminal act causes the plaintiff's injury, the criminal act is a superseding cause that breaks the causal chain. *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 224 (1988). However, Defendant ignores the "exception where the defendant's acts or omissions create a condition conducive to a foreseeable intervening criminal act." *Id.* Where a criminal act is reasonably foreseeable, then the act does not break the causal chain. *Id.*; *see also Roberts v. Smith & Wesson Brands, Inc.*, 2025 Ill. Cir. LEXIS 7, *20.

Here, Plaintiff plausibly alleges that Defendant knew or should have known that it was selling firearms to straw purchasers. As discussed above, Plaintiff alleges that Defendant ignored numerous red flags indicative of straw purchasing, along with explicit ATF warnings and citations of Defendant's own federal violations involving straw transactions. Plaintiff further alleges that Defendant received notice that its firearms had been recovered as crime guns through trace requests and direct contacts from the Chicago Police Department and other Illinois law enforcement agencies investigating gun crimes. Given these allegations, Defendant could reasonably foresee that firearms it sold through straw transactions would end up in another's hands—indeed, that is the very definition of a straw purchaser. *Wiley v. Fleet Farm LLC*, 799 F. Supp. 3d 860, 898 (D. Minn. 2025). And because firearms acquired through straw purchases often end up in violent crime, Defendant could likewise reasonably foresee that firearms sold through such transactions would contribute to gun violence in Chicago. *See id.* Thus, the intervening criminal acts were foreseeable consequences of Defendant's alleged conduct and do not break the causal chain. Plaintiff sufficiently alleges legal cause and thus, proximate causation.

Accepting Plaintiff's well-pleaded facts as true, and construing those facts and all reasonable inferences thereof in Plaintiff's favor, the Court finds Plaintiff satisfies each element

of the predicate exception.⁴ Given each claim falls under the predicate exception, the Court need not analyze the PLCAA's other exceptions such as negligent entrustment. Accordingly, the PLCAA does not bar Plaintiff's claims.

II. Defendant's Remaining 2-615 Arguments

A. Information and Belief

"[A]n allegation made on information and belief is not equivalent to an allegation of relevant fact." *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 40 (citing *Whitley v. Frazier*, 21 Ill. 2d 292, 294 (1961)). At the pleading stage, a plaintiff will not have the benefit of discovery tools to confirm certain facts supporting a cause of action. *Id.* So a plaintiff may be forced to present allegations which are based on information and belief, particularly when the necessary facts are within the defendant's sole knowledge. *Golly v. Eastman (In re Estate of DiMatteo)*, 2013 IL App (1st) 122948, ¶ 83. In such circumstances, "a complaint which is as complete as the nature of the case allows is sufficient." *Id.* However, a plaintiff must sufficiently plead the factual basis informing its belief to survive dismissal. *3 R Health Care Prods. v. Cardinal Health 110, LLC*, 2026 IL App (1st) 241911, ¶ 75.

Defendant contends that Plaintiff's allegations repeatedly use "information and belief" to bridge essential elements in its theories without pleading the factual basis necessary to make those elements plausible. Plaintiff responds that only a handful of allegations pled on "information and belief," and those allegations all concern facts that are outside its direct knowledge, but are based on circumstances detailed in the surrounding allegations. The Court agrees with Plaintiff.

An examination of Plaintiff's allegations made on "information and belief" show that they directed towards matters outside of its direct knowledge, but nonetheless rest on the factual circumstances alleged throughout the Complaint. The Court therefore cannot evaluate those allegations in isolation. Instead, the Complaint must be considered as a whole, including the substantive factual allegations surrounding the information and belief allegations. *See Mitchell v. Mitchell*, 10 Ill. App. 2d 437, 441 (1st Dist. 1956) ("We must examine the complaint and petition as a whole" and consider "all the proper and necessary allegations"). Even if the Court were to disregard these allegations, the remaining allegations do not warrant dismissal pursuant to section 2-615.

B. Public Nuisance (Count I)

A public nuisance is "an unreasonable interference with a right common to the public." *Beretta*, 213 Ill. 2d at 366. To state a cause of action for public nuisance, a plaintiff must allege facts in support of: (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. *Id.* at 369. When a plaintiff's theory is public nuisance, the pleading requirements are not strenuous because the concept of public nuisance eludes precise definition and the existence of a nuisance is fact dependent. *Id.* at 364.

Defendant's Motion offers only a cursory assertion that Plaintiff failed to satisfy the elements to state a claim for public nuisance. Def.'s Mot. at 20. Such undeveloped, perfunctory, or skeletal arguments are waived. *See Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296,

⁴ Plaintiff's direct violation theory is sufficient to proceed under the predicate exception; the Court need not reach Plaintiff's aiding and abetting theories.

298 (2nd Dist. 2010). Rather, as addressed below, Defendant primarily argues that Plaintiff has failed to plead a valid public right. To the extent Defendant's proximate cause arguments reach Plaintiff's public nuisance claim, the above establishes that Plaintiff has sufficiently alleged proximate cause at this stage. *See supra* section I.A.3.

1. *Public Right*

A public right is "a right common to the general public," like "the rights of public health, public safety, public peace, public comfort, and public convenience." *Beretta*, 213 Ill. 2d at 370-71. The Complaint alleges interference with public rights such as: life, health, welfare, peace, safety, well-being, convenience, use and enjoyment of property, peaceful use of public areas (e.g., streets, sidewalks, parks), commerce, travel, school attendance, and the quality of daily life, without fear of being shot. Compl. ¶¶ 8, 119.

To support its contention that Plaintiff fails to allege a public right, Defendant relies on the Illinois Supreme Court's decisions in *City of Chicago v. Beretta U.S.A Corp* and *Young v. Bryco Arms*. In those cases, the Supreme Court rejected attempts to hold gun manufacturers and dealers liable for public harms caused by third party criminal misuse. *Beretta*, 213 Ill. 2d at 414; *Young*, 213 Ill. 2d at 456. The Court expressed reservations regarding the existence of a public right to use a public space without undue risk of injury but ultimately, did not resolve the issue of whether a public right was adequately pleaded in either case. In Defendant's view, these cases reject Plaintiff's generalized claim that Chicago resident should not be exposed to criminal misuse of firearms by third parties.

Plaintiff, however, distinguishes *Beretta* and *Young* on the ground that neither case involved allegations that the defendants themselves engaged in illegal conduct, such as violations of state or federal statutes or municipal ordinances. Here, by contrast, Plaintiff's theory does not rest solely on third-party criminal misuse; it targets Defendant's own alleged legal and regulatory violations. Plaintiff contends that these allegations support recognition of a public right in this context. *Beretta*, 213 Ill. 2d 372 (citing *City of Chicago v. Cecola*, 75 Ill. 2d 427 (1979) (where a brothel's "conduct itself was illegal" and could be enjoined for infringing on rights to public health and safety)).

Additionally, Plaintiff maintains that *Beretta* and *Young* were decided before the Illinois General Assembly gave their input. As Plaintiff notes, the Illinois legislature has since passed the Firearm Industry Responsibility Act ("FIRA") which declared it unlawful for gun dealers to "endanger[] the safety or health of the public" by unlawful conduct, or by failing to implement reasonable controls to prevent the sale of firearms to straw purchasers. *See* 815 ILCS 505/2DDDD(b)(1)(A). Plaintiff argues this reflects the legislature's intent to recognize a public right to safety and health when retail gun dealers violate the law or act unreasonably by diverting guns into the criminal market. *See* 815 ILCS 505/2DDDD(b)(1). Defendant argues that a later statutory enactment cannot retroactively supply missing elements of a common-law nuisance claim or override the limits imposed by *Beretta* and *Young*. However, Defendant misconstrues Plaintiff's position and in any event, has not provided any authority supporting this claim. *Nancy's Home of Stuffed Pizza, Inc. v. Cirrincione*, 144 Ill. App. 3d 934, 939 (1st Dist. 1986) ("Failure to cite authority has been held to constitute waiver").

The Court agrees with Plaintiff. Although the Illinois Supreme Court in *Beretta* and *Young* cautioned against recognizing a broad and generalized public right, neither decision forecloses a public right where, as alleged here, the allegations target Defendant's own unlawful conduct. Plaintiff alleges that the Defendant intentionally created and maintained an illegal secondary firearms market in Chicago. Defendant's unlawful sales and failure to comply with firearm-

transaction laws, contribute to the proliferation of firearms into the criminal market and unreasonably interfere with public safety, health, peace, comfort, and convenience. These allegations do not resemble a broad and generalized right to be free from third-party criminal misuse of firearms, as Defendant contends. Additionally, FIRA supports finding a valid public right in the present action. FIRA expressly identifies conduct by firearm industry members that “endangers the safety or health of the public” by unlawful conduct, or failing to implement reasonably controls to prevent the sale of firearms to straw purchasers. 815 ILCS 505/2DDDD(b)(1).

Taking all well-pleaded facts as true, and construing those facts and all reasonable inferences thereof in Plaintiff’s favor, the Court finds that Plaintiff adequately alleged a public right. Thus, the Court denies Defendant’s Motion with respect to Count I.

C. Municipal Cost Recovery Ordinance (Count II)

Count II asserts a claim under Section 1-20-020 of the Municipal Code of Chicago (“MCC”). Section 1-20-020 of the MCC states “[a]ny person who causes the City or its agents to incur costs in order to provide services reasonably related to such person’s violation of any federal, state or local law . . . shall be liable to the City for those costs.” MCC § 1-20-020. “Costs” is broadly defined to include: “all costs of the city incurred in relation to the provision of services by the city or its agents, regardless of whether the city would have otherwise incurred those costs, including but not limited to wages and benefits of personnel involved in providing such services, reasonable costs of equipment used . . . , costs of materials expended . . . or any other costs allocable to the provision of services.” MCC § 1-20-010.

Plaintiff seeks to recover costs incurred to investigate and prosecute gun crimes, provide emergency services to shooting victims, and fund gun-violence prevention programs arising from firearms trafficked from Defendant. Compl. ¶ 125. Defendant argues that Plaintiff seeks generalized public expenditures associated with gun violence and independent criminal conduct by third parties, which is barred by the municipal cost recovery rule. Defendant contends that MCC § 1-20-020 permits recovery, at most, of discrete costs reasonably related to Defendant’s own direct and proven violations, rather than ordinary municipal costs Plaintiff incurs to police, prosecute, treat, and prevent crime.

The municipal cost recovery rule, also known as the “free public services doctrine,” is a common-law doctrine providing that “public expenditures made in the performance of governmental functions are not recoverable in tort.” *Beretta*, 213 Ill. at 424. This doctrine, however, does not apply where “recovery . . . [is] authorized by statute or regulation” or “where the acts of a private party create a public nuisance which the government seeks to abate.” *Id.* at 426 (quoting *Flagstaff v. Atchison, T. & S. F. R. Co.*, 719 F.2d 322, 324 (9th Cir. 1983)).

Here, the municipal recovery rule does not bar Count II because MCC § 1-20-020 expressly authorizes recovery of costs incurred to provide services “reasonably related” to a person’s violation of federal, state, or local law. Count II therefore falls within the statutory-authorization exception to the common-law doctrine. *Cf. Beretta*, 213 Ill. 2d at 429 (where the Court applied the municipal cost-recovery rule because, under the facts pleaded, the City had not identified a statute authorizing recovery). Plaintiff has also adequately alleged that its claimed costs satisfy the ordinance’s “reasonably related” requirement. As discussed above in section I.A.3, Plaintiff has sufficiently alleged that Defendant’s federal law violations proximately caused its harms. As such, Plaintiff’s costs are reasonably related to Defendant’s violations because Plaintiff incurred those costs to provide services and address the harms caused by Defendant’s unlawful sales.

Thus, taking all well-pleaded allegations and all reasonable inferences in Plaintiff's favor, Plaintiff has sufficiently alleged a claim under MCC § 1-20-020. The Court denies Defendant's Motion with respect to Count II.

D. Negligence (Count III) and Negligent Entrustment (Count IV)

Other than its PLCAA arguments, as described above, Defendant's Motion does not otherwise challenge Plaintiff's claims of negligence and negligent entrustment. It is not until the reply brief that Defendant provides two conclusory paragraphs—with a single citation—to argue that the negligence and negligent entrustment claims fail for lack of duty and proximate cause. Def.'s Reply Br. at 13-14. "[Parties] are required not only to present argument on this contention, but also to support that argument with citation of authority. Failure to cite authority has been held to constitute waiver ..." *Nancy's Home of Stuffed Pizza*, 144 Ill. App. 3d at 939; see *United States v. Holm*, 326 F.3d 872, 877 (7th Cir. 2003) ("It is not the obligation of this court to research and construct the legal arguments open to parties, especially when they are represented by counsel.").

In addition to being underdeveloped, Defendant should have made these arguments in its Motion. A reply brief is not the proper vehicle for raising a new argument or legal theory. See e.g., *McGinley Partners, Ltd. liability Co. v. Royalty Props., LLC*, 2018 IL App (1st) 172976, ¶ 26 ("It is well settled that a party may not raise an issue for the first time in its reply brief."); Ill. S. Ct. R. 341(h)(7) ("Points not argued are forfeited and shall not be raised in the reply brief"); *Cornucopia Institute v. United States Dep't of Agriculture*, 560 F.3d 673, 678 (7th Cir. 2009) (waiting until the reply brief is "too little, too late"). Accordingly, Defendant's has forfeited these arguments.

CONCLUSION

For the reasons set forth above, the Defendant's Motion is DENIED.

IT IS HEREBY ORDERED:

1. Defendant's Motion to Dismiss the First Amended Complaint is DENIED.
2. Within twenty-eight (28) days of this Order, Defendant shall file an answer to the First Amended Complaint.
3. This case is set for status on pleadings on **November 20, 2026 at 9:30 a.m.** before Judge Mackoff via Zoom (Meeting ID: 953 7174 9534 Password: 253498 Dial In: (312) 626-6799).

Judge Myron F. Mackoff
(312) 603-3733
ccc.chancerycalendar14@cookcountyil.gov
Zoom Meeting ID: 953 7174 9534
Zoom Password: 253498
Zoom Dial-In: (312) 626-6799

ENTERED:

Judge Myron F. Mackoff
DATE: September 29, 2026

Judge Myron F. Mackoff

SEP 29 2026

Circuit Court-2182