IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

KEELY ROBERTS, et al.,	:	
	:	Case No. 2022LA00000487
Plaintiffs,	:	Cons. w/ 2022LA00000491
	:	2022LA00000532
v.	:	2022LA00000490
	:	2022LA00000492
SMITH & WESSON BRANDS, INC., *et al,*	:	2022LA00000489
	:	2022LA00000488
Defendants.	:	2022LA00000493
	:	2022LA00000495
	:	2022LA00000497
	:	2022LA00000494
	:	2022LA00000496
	:	2024LA00000201
	:	2024LA00000206
	:	2024LA00000203
	:	2024LA00000475
	:	2024LA00000476
	:	2024LA00000477
	:	2024LA00000474
	:	2024LA00000478
	:	2024LA00000481
	:	2024LA00000466
	:	2024LA00000479
	:	2024LA00000480
	:	2024LA00000471

RED DOT ARMS, INC.'S
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
CASES 2022LA00000487 (ROBERTS CASE), 2022LA00000488 (SUNDHEIM CASE), 2022LA00000489 (STRAUS CASE), 2022LA00000490 (SEDANO CASE), 2022LA00000491 (BENNETT CASE), 2022LA00000492 (RODRIGUEZ CASE), 2022LA00000493 (TENORIO CASE), 2022LA00000494 (VERGARA CASE), 2022LA00000495 (TOLEDO CASE), AND 2022LA00000496 (ZEIFERT CASE)

Red Dot Arms, Inc. ("Red Dot") moves to dismiss Plaintiffs' Complaints in Cases. No. 2022LA00000487, 2022LA00000488, 2022LA00000489, 2022LA00000490, 2022LA00000491, 2022LA00000492, 2022LA00000493, 2022LA00000494, 2022LA00000495, 2022LA0000496[1]

[1] These complaints were filed by plaintiffs represented by Everytown Law and, pursuant to the Court's order dated August 13, 2024, this motion addresses all cases brought by these similarly represented parties.

pursuant to Illinois Code of Civil Procedure Sections 5/2-615 and 5/2-619. In support of its motion, Red Dot states as follows:

INTRODUCTION

Red Dot is a federal firearms licensee ("FFL") holding a Type 07 federal firearms license to manufacture and sell firearms at retail. Red Dot operates within one of the most regulated industries in America and one of the most regulated states in America as it pertains to the sale of firearms. This case arises out of the intentional, criminal conduct of a non-party who, on July 4, 2022, deliberately shot and injured Plaintiffs and others in a horrific act of evil and violence at an Independence Day parade in Highland Park, Illinois. Now, Plaintiffs seek to hold Red Dot responsible for the harm caused by the intentional, criminal misuse by a third party of its legally sold product. Specifically, Plaintiffs seek relief from Red Dot on common law theories of negligence, aiding and abetting under both survival and wrongful death, intentional infliction of emotional distress, and negligent infliction of emotional distress.[2]

Plaintiffs' claims against Red Dot fail for two reasons. First, Congress has specifically precluded claims such as these through the passage of the Protection of Lawful Commerce in Arms Act ("PLCAA), 15 U.S.C. § 7901 *et seq*., wherein liability for criminal acts is required to rest where it belongs: on criminals. Second, Plaintiffs have failed to sufficiently plead facts that, even apart from the PLCAA, would entitle them to relief on any of their claims against the Red Dot. For these reasons, Plaintiffs' claims against Red Dot should be dismissed.

[2] Claim numbering and exact requests for relief differ from Plaintiff to Plaintiff. Thus, this is a general statement of the claims against Red Dot from this Plaintiff Group.

STATEMENT OF FACTS[3]

Red Dot is a federally licensed firearms seller engaged in lawful interstate commerce in firearms.[4] The firearm at issue in this case made its way in lawful commerce to Red Dot in the State of Illinois.[5] Specifically, Robert Crimo, III ("Crimo") purchased a Smith & Wesson M&P 15, AR-15 style firearm online through Budsgunshop.com which was then shipped to Red Dot in Illinois for transfer to Crimo.[6] At the time that the firearm was transferred by Red Dot, Crimo was of legal age to acquire the firearm and possessed a Firearms Owner Identification Card issued by the Illinois State Police.[78] The transfer of the rifle from Red Dot to Crimo took place in 2020 at Red Dot's retail location in Lake Villa, Illinois.[9] At the time that Crimo acquired the firearm in 2020, he was a resident of Highwood, Illinois.[10]

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3 Such "facts" are, of course, taken from the complaint for present purposes, and they are contested by the Red Dot for all other purposes.

4 22LA487, Amended Complaint ¶ 27; 22LA488, Amended Complaint ¶ 24; 22LA489, Amended Complaint ¶ 24; 22LA490, Amended Complaint ¶ 25; 22LA491, Amended Complaint ¶ 31; 22LA492, Amended Complaint ¶ 27; 22LA493, Amended Complaint ¶ 27; 22LA494, Amended Complaint ¶ 27; 22LA495, Amended Complaint ¶ 28; and 22LA496, Amended Complaint ¶ 27.

5 22LA487, Amended Complaint ¶ 29; 22LA488, Amended Complaint ¶ 26; 22LA489, Amended Complaint ¶ 26; 22LA490, Amended Complaint ¶ 27; 22LA491, Amended Complaint ¶ 33; 22LA492, Amended Complaint ¶ 29; 22LA493, Amended Complaint ¶ 29; 22LA494, Amended Complaint ¶ 29; 22LA495, Amended Complaint ¶ 30; and 22LA496, Amended Complaint ¶ 29.

6 *Id.*

7 22LA487, Amended Complaint ¶¶ 15-16; 22LA488, Amended Complaint ¶¶ 12-13; 22LA489, Amended Complaint ¶¶ 12-13; 22LA490, Amended Complaint ¶¶ 13-14; 22LA491, Amended Complaint ¶¶ 13-14; 22LA492, Amended Complaint ¶¶ 13-14; 22LA493, Amended Complaint ¶¶ 13-14; 22LA494, Amended Complaint ¶¶ 13-14; 22LA495, Amended Complaint ¶¶ 12-13; and 22LA496, Amended Complaint ¶¶ 13-14.

8 "To legally possess firearms or ammunition, Illinois residents must have a Firearm Owners Identification (FOID) card, which is issued by the Illinois State Police to any qualified applicant." *See, https://isp.illinois.gov/Foid/Foid.*

9 22LA487, Amended Complaint ¶ 27; 22LA488, Amended Complaint ¶ 24; 22LA489, Amended Complaint ¶ 24; 22LA490, Amended Complaint ¶ 25; 22LA491, Amended Complaint ¶ 31; 22LA492, Amended Complaint ¶ 27; 22LA493, Amended Complaint ¶ 27; 22LA494, Amended Complaint ¶ 27; 22LA495, Amended Complaint ¶ 28; and 22LA496, Amended Complaint ¶ 27.

10 22LA487, Amended Complaint ¶ 28; 22LA488, Amended Complaint ¶ 25; 22LA489, Amended Complaint ¶ 25; 22LA490, Amended Complaint ¶ 26; 22LA491, Amended Complaint ¶ 32; 22LA492, Amended Complaint ¶ 28; 22LA493, Amended Complaint ¶ 28; 22LA494, Amended Complaint ¶ 28; 22LA495, Amended Complaint ¶ 29; and 22LA496, Amended Complaint ¶ 28. While it is outside of the four corners of the complaint, both the Illinois State Police FOID card and driver's license presented by Crimo at the time he received the transfer of the firearm at issue in this case on February 10, 2020 identified Crimo's address as 115 Pleasant Avenue, Highwood, Illinois.

On July 4, 2022, over two years after having legally acquired the firearm, Crimo used it to intentionally and criminally shoot and injure Plaintiffs and others at the Independence Day parade in Highland Park, Illinois.[11] Plaintiffs' Amended Complaints are devoid of any allegations concerning Crimo's use or storage of the firearm between the time that he left Red Dot's federally-licensed retail premises in Lake Villa, Illinois in early 2020 and when he took it to Highland Park, Illinois and committed criminal acts of violence with it on July 4, 2022.

ARGUMENT[12]

I. PLAINTIFFS' CLAIMS AGAINST RED DOT SHOULD BE DISMISSED UNDER ILLINOIS CODE OF CIVIL PROCEDURE SECTION 5/2-619.

The purpose of a Section 2-619 motion is to dispose of easily proved issues of law and fact at the outset of litigation. *O'Casek v. Children's Home and Aid Soc. of Ill.,* 229 Ill. 2d 421, 437, (2008). A section 2-619 motion to dismiss asserts affirmative defenses or other matters that defeats the plaintiff's claims. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Absent an issue of fact, dismissal is proper as a matter of law. *Id.* Plaintiffs' Complaints should be dismissed under Section 2-619 because Plaintiffs' claims against Red Dot are barred by the PLCAA.

A. Plaintiffs' Claims Are Barred Under The PLCAA.

Plaintiffs' claims against Red Dot should be dismissed because the PLCAA was enacted to prohibit civil lawsuits against a retailer of a firearm for damages caused by its intentional, criminal misuse by a third party. The PLCAA prohibits the prosecution of a "qualified civil liability action" in any state or federal court, and any "action that is pending on the date of enactment of

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[11] 22LA487, Amended Complaint ¶¶ 1-5; 22LA488, Amended Complaint ¶¶ 1-2; 22LA489, Amended Complaint ¶¶ 1-2; 22LA490, Amended Complaint ¶¶ 1-3; 22LA491, Amended Complaint ¶¶ 1-3; 22LA492, Amended Complaint ¶¶ 1-3; 22LA493, Amended Complaint ¶¶ 1-3; 22LA494, Amended Complaint ¶¶ 1-3; 22LA495, Amended Complaint ¶¶ 1-2; and 22LA496, Amended Complaint ¶¶ 1-3.

[12] Red Dot incorporates herein by references all legal and factual arguments raised in motions to dismiss of the other federal firearms licensee defendants.

this Act shall be immediately dismissed by the court in which the action was brought or is currently pending." 15 U.S.C. §§ 7902(a) & (b). One of the stated purposes of the PLCAA is to "prohibit causes of action against … dealers … for the harm solely caused by the criminal or unlawful misuse of firearm[s] . . . by others when the product functioned as designed and intended." *Id.* at § 7901(b)(1).

In enacting the PLCAA, Congress discussed suits such as this one and concluded that lawful dealers 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 these.

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, the only way to avoid dismissal is for the claims to fall within an exception to the PLCAA. Since Plaintiffs' claims do not, they must fail.

B. This 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). Plaintiffs are each 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 each a "qualified product" 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). Red Dot is a federally licensed "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).

C. None of the PLCAA exceptions apply to Plaintiffs' claims.

1. The "Predicate Exception" Does Not Apply.

While the PLCAA precludes cases such as Plaintiffs' claims here, it does create an exception for "knowingly violat[ing] a 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).[13] 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).

Where a plaintiff fails to adequately and plausibly allege that a knowing violation of a predicate statute proximately caused their harm, those claims should be dismissed. *Prescott*, 341 F. Supp. 3d 1190-1193; *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1224 (D. Colo. 2015). Here, Plaintiffs have not alleged facts to support any finding that Red Dot violated any federal or state statute applicable to the sale of firearms, let alone that any such violation was the proximate cause of the complained-of injuries.

a. Plaintiffs do not allege facts to find that Red Dot violated Highwood, Illinois Code 6-7-2 or Highland Park Ordinance 136.005.

Both Highwood, Illinois and Highland Park, Illinois have ordinances with virtually identical language regulating conduct relative to certain firearms inside their respective borders. Specifically, both municipalities enacted ordinances with the following language:

> No person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity magazine …

See, Highland Park 136.005 and Highwood, Illinois Code 6-7-2. At all times material hereto, there was no "assault weapon" ban in the State of Illinois, and, as long as the individual was otherwise

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[13] The predicate exception permits a cause of action in the case of a violation of certain firearms law committed with actual knowledge of the FFL. That is, an FFL cannot negligently step into the predicate exception.

qualified, firearms such as the firearm at issue in this case were legal to own or possess anywhere where they were not expressly prohibited. *Kalodimos v. Vill. Of Morton Grove,* 103 Ill. 2d 483, 504 (1984) (handgun ban applied only in municipality limits).

Here, Plaintiffs do not allege that Red Dot manufactured, sold, offered or displayed for sale, gave, lent, transferred ownership of, acquired, or possessed any item at all in Highwood, Illinois or Highland Park, Illinois. Thus, Plaintiffs have not pled facts to support a finding that Red Dot violated either of these municipalities' ordinances. Moreover, while Crimo ultimately violated Highland Park Code 136.005 on July 4, 2022 by taking the firearm into Highland Park, Illinois over two years after acquiring it from Red Dot and entirely independent of Red Dot, there is nothing in the complaint alleging that Crimo had any connection at all to Highland Park, Illinois at the time of the 2020 transfer, let alone that Red Dot had knowledge of any such connection.

Ultimately, neither municipality's ordinances regulate ownership, possession, or acquisition of products outside of their borders. A resident of these municipalities is not prohibited from owning, receiving, acquiring, or possessing restricted firearms elsewhere. To the extent that there is an alleged violation of these ordinances,[14] Crimo violated one or both of the ordinances by taking the firearm into the prohibited locations, not acquiring or possessing the firearm legally outside of the prohibited locations. As it stands, nothing in Plaintiffs' Complaints support a finding that Red Dot violated either of these local ordinances.

b. Red Dot's did not violate the GCA by offering a "machinegun" for sale.

Although expressly admitting that the rifle at issue in this case was a semi-automatic firearm (Compl. ¶¶ 24, 26, 27), in a thinly-veiled attempt to create confusion in hopes of

[14] Notably, Plaintiffs do not appear to allege that Crimo ever even possessed the firearm in Highwood, Illinois.

fabricating a violation of the law on Red Dot's part, Plaintiffs allege that the common AR-15 style rifle was a "machinegun" subject to additional regulations under 18 U.S.C. § 922(b)(4). Whether a firearm is a "machinegun" is a matter of law. Specifically, the law defines "machinegun" as a firearm "which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." 26 C.F.R. § 5845(b). Conversely, a "semiautomatic rifle" is defined as a firearm "which requires a separate pull of the trigger to fire each cartridge." 18 U.S.C. § 921(a)(28).

What Plaintiffs are attempting to do here has been rejected by every court to have considered the issue. *See Staples v. United States*, 511 U.S. 600, 612 n. 6 (1994) (holding that a semiautomatic AR-type rifle is not a "machinegun" given that "virtually any semiautomatic weapon may be converted, either by internal modification or, in some cases, simply by wear and tear into a machinegun."); *Cargill v. Garland*, 57 F. 4th 447, 452 (5th Cir. 2023) (explaining what a machinegun is and "what a machinegun is not" and finding that "[s]emi-automatic rifles like the AR-15 are not machineguns" under 18 U.S.C. § 922(b)(4)), *aff'd*, *Garland v. Cargill* - U.S. - , 2024 WL 2981505 *6 (June 14, 2014) ("No one disputes that a semi-automatic rifle without a bump stock is not a machinegun because it fires only one shot per 'function of the trigger'"); *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc*., 91 F. 4th 511, 532-33 (1st Cir. 2024) (rejecting argument that a readily convertible semi-automatic firearm is the same as an automatic firearm); *United States v. Nieves-Castano*, 480 F.3d 597, 602 (1st Cir. 2007) ("While an automatic weapon meets the definition of a machine gun, a semi-automatic weapon does not.").

Plaintiffs' legally baseless allegations on this point should be given precisely the weight it deserves.

2. The Negligence *Per Se* Exception Does Not Apply.

The negligence *per se* exception to the PLCAA does not apply here. Particularly, Plaintiffs have not set forth a claim of negligence *per se*. However, to the extent that Plaintiffs attempted or intended to do so, it merits brief discussion. As set forth above, Plaintiffs have not alleged facts showing that Red Dot violated any law. Nonetheless, as it pertains to either ordinance, Plaintiffs cannot meet the requisite showing that: "(1) the plaintiff is a member of the class of persons protected by the statute, (2) the plaintiff's injury is the type the statute intended to protect against, and (3) the defendant's violation of the statute proximately caused the injury." *Price v. Hickory Point Bank & Trust*, 362 Ill. App. 3d 1211, 1216-17 (2006).

Here, even assuming that Red Dot somehow violated the Highwood, Illinois ordinance by selling a legal firearm to a resident of Highwood in Lake Villa, Illinois, that Highwood ordinance cannot be said that it is specifically intended to protect anyone from harm outside of Highwood. The harm that Crimo caused with his violent, criminal actions took place in Highland Park. Accordingly, a claim of negligence *per se* fails on all three prongs of the test.

D. <u>There Is No Exception For Ordinary Negligence Under The PLCAA.</u>

Plaintiffs' Complaint claims that Red Dot was somehow negligent in its transfer of the rifle and negligently inflicted emotional distress, but these claims also cannot serve as an exception to PLCAA immunity. Congress intentionally did not provide an exception for an ordinary negligence action. "Congress clearly intended to preempt common law tort claims" including "classic negligence ... theories of liability." *Ileto*, 565 F.3d at 1135 n.6. "Congress consciously considered how to treat tort claims" and it "chose generally to preempt all common law claims" except for negligent entrustment and negligence *per se* claims. *Id.*; *accord Delana v. CED Sales, Inc.*, 486 S.W. 3d 316, 321-22 (Mo. 2016) (holding that PLCAA preempts general negligence actions seeking damages resulting from the criminal use of a firearm); *In re Estate of Kim ex rel Alexander*

v. Coxe, 295 P. 3d 380, 386 (Alaska 2013) ("The statutory exceptions do not include general negligence, and reading a general negligence exception into the statute would make the negligence per se and negligent entrustment exceptions a surplusage."); *Jeffries v. District of Columbia*, 916 F. Supp. 2d 42, 46 (D.D.C. 2013) (holding that PLCAA "unequivocally" barred plaintiff's negligence claim against the manufacturer of the firearm).

II. PLAINTIFFS' CLAIMS AGAINST RED DOT SHOULD BE DISMISSED UNDER ILLINOIS CODE OF CIVIL PROCEDURE SECTION 5/2-619.

In ruling on a Section 2-615 motion to dismiss, the Court is to accept as true all well-pleaded facts and any reasonable inferences drawn from those facts. *M.U. v. Team Ill. Hockey Club, Inc*., 2022 IL App (2nd) 210568, ¶ 16. The Court may not accept as true conclusions of law or fact unsupported by specific allegations of fact. *Id*. Fact pleading is required in Illinois, and it "imposes a heavier burden on the plaintiff, so that a complaint that would survive a motion to dismiss in a notice-pleading jurisdiction might not do so in a fact-pleading jurisdiction." *City of Chi. v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 368 (2004). Plaintiffs' Complaints should be dismissed under Section 2-615 because it fails to sufficiently allege that (1) Red Dot owed Plaintiffs a duty under Illinois law to protect him from Crimo's criminal acts, and (2) Red Dot's sale of the firearm proximately caused the shooting.

A. Red Dot Did Not Owe Plaintiffs A Duty To Protect Them From Criminal Acts.

Federal firearms licensees "owe no duty . . . to prevent their firearms from 'ending up in the hands of persons who use and possess them illegally.'" *Beretta*, 213 Ill. 2d at 393-94; *Riordan v. Int'l Armament Corp.*,132 Ill. App. 3d 642, 647 (1st Dist. 1985). Even if that were not the case, third-party criminal conduct like that alleged here cannot provide a "duty" because there was no "special relationship" between the parties. *See Iseberg v. Gross*, 227 Ill. 2d 78, 87-88 (2007); *Marshall v. Burger King Corp*., 222 Ill. 2d 422, 438 (2006); *Young*, 213 Ill. 2d at 452. The question

of "whether the parties stood in such a relationship to one another that the law will impose an obligation of reasonable conduct for the other's benefit is an issue of law for the court." *Linton v. Smith & Wesson*, 127 Ill. App. 3d 676, 678 (1st Dist. 1984) (holding that Smith & Wesson did not owe a duty to use "reasonable means to prevent the sale its handguns to persons who are likely to cause harm to the public."). But no such "special relationship" is alleged to exist here.

Only four recognized "special relationships" may trigger an analysis of whether there is an affirmative duty to protect another against the risk of physical harm: "common carrier-passenger, innkeeper-guest, business invitor-invitee, and voluntary custodian-protectee." *Iseberg*, 227 Ill. 2d at 87-88. Here, Plaintiffs have not alleged the existence of a "special relationship" between themselves and Red Dot, or between Red Dot and Crimo. Plaintiffs' attempt to impose a duty on Red Dot to protect him from Crimo's deliberate criminal acts—under any statutory or common law theory—fails for that reason alone.

B. Red Dot Did Not Proximately Cause Plaintiffs' Harm.

Proximate cause may be decided as a matter of law where the facts alleged do not sufficiently demonstrate both cause in fact and legal cause. *Harrison v. Hardin County Comm. Unit School Dist. No. 1*, 197 Ill. 2d 466, 476 (2001). Legal cause is established only if the defendant's conduct is "so closely tied to plaintiff's injury that he should be held legally responsible for it." *Simmons v. Garces*, 198 Ill.2d 541, 558 (2012). A determination of "legal cause is a policy decision that limits how far a defendant's legal responsibility should be extended for conduct that, in fact, caused the harm." *Id*. (citing *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 455, 605 N.E.2d 493, 502 (1992)). "As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. Some boundary must be set to liability for the consequences of

any act, upon the basis of some social idea of justice or policy." *City of Chicago v. Beretta U.S.A. Corp*, 821 N.E.2d 1099, 1127 (Ill. 2004) (citing W. Keeton, Prosser & Keeton on Torts § 41, at 264 (5th ed. 1984)).

"[In] cases in which injury is caused by the intervening acts of third parties," a "condition-versus-cause analysis applies." *Young v. Bryco Arms*, 213 Ill. 2d at 449. That is, "if the defendant's conduct merely furnishes a condition by which injury is made possible, and a third person, acting independently, subsequently causes injury, the defendant's creation of the condition is not a proximate cause of the injury. *Id*. (citing *First Springfield Bank & Trust v. Galman*, 720 N.E.2d 1068, 1071 (1999) (judgment on jury verdict reversed because illegally parked tanker truck was not as a matter of law the legal cause of pedestrian's injury)); see also, *Merlo v. Public Service Co. of Northern Illinois*, 45 N.E.2d 665 (Ill. 1942) (a business practices that merely creates a condition that makes harm possible is not the legal cause of the harm).

Based on the facts as alleged in Plaintiffs' Complaints, Crimo's conduct was the sole cause in fact and legal cause of the harm complained of, and the claims against Red Dot should be dismissed.

C. Plaintiffs Have Not Stated A Claim For "Aiding and Abetting."

Plaintiffs have not stated a claim against Red Dot for aiding and abetting. Notwithstanding the protections of the PLCAA which does allow an exception for aiding and abetting or any other such tort, Plaintiffs have not pled facts sufficient to state such a claim. A claim for aiding and abetting in the commission of a tort requires the plaintiff to prove the following elements: "(1) the party whom the defendant aids must perform a wrongful act which causes an injury; (2) the defendant must be regularly aware of his role as part of the overall or tortious activity at the time he provides the assistance; and (3) the defendant must knowingly and substantially assist the

principal violation." *Thornwood, Inc. v. Jenner & Block*, 344 Ill. App. 3d 15, 27-28 (2003) (quoting *Wolf v. Liberis*, 153 Ill. App. 3d 488, 496 (1987)). Restatement (Second) of Torts controls recovery under the theory of concert of action in Illinois. *Thornwood, supra*, citing, *Wolf,* 153 Ill. App. 3d at 496. It provides that, for harm resulting to a third person from the tortious conduct of another, one subject to liability only if he:

> (a) does a tortious act in concert with the other or pursuant to a common design with him, or
>
> (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or
>
> (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

Thornwood, supra, quoting Restatement (Second) of Torts § 876 (1979); *see also*, *Sklan v. Smolla*, 95 Ill. App. 3d 658, 665 (1981) (common plan or design to commit tort necessary for liability for aiding and abetting the tort … "where a person is not aware of the intent on the part of another to commit a battery, it is pure speculation to conclude that the act of providing transportation from the scene was pursuant to a plan or design or an act intended to aid or abet the commission of the offense.")

Here, of course, the harm complained of resulted from Crimo's intentional, criminal act of violence on July 4, 2022, over two years after he acquired the firearm at issue. Nothing alleged in Plaintiffs' Complaints supports a finding that Red Dot "aided and abetted" Crimo in any way at all, let alone in a manner to share liability for the tort harm that Crimo's actions caused.

CONCLUSION

For the above stated reasons, Red Dot respectfully requests that Plaintiffs' claims against it in their Complaints be dismissed.

Dated: September 16, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, an attorney not licensed in Illinois, on oath, state that I served a copy of the above-mentioned document via email to counsel of record on or before 5:00 p.m. on September 16, 2024.

/s/ Timothy R. Rudd
_____
Timothy R. Rudd (PHV to be submitted)

[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.