

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

CITY OF KANSAS CITY, MISSOURI,	)	
	)	Case No. 2016-CV00829
Plaintiff,	)	
	)	
v.	)	
	)	
JIMENEZ ARMS, INC., a Nevada Corporation;	)	
SUZETTE NELSON, an individual,	)	
f/d/b/a CONCEAL & CARRY;	)	
MIKE AND SUE ENTERPRISES, INC.,	)	
A Missouri Company, f/d/b/a	)	
CONCEAL & CARRY;	)	
CR SALES FIREARMS LLC,	)	
A Missouri Company;	)	
HERB WILLIAM BUTZBACH III,	)	
d/b/a/ MISSION READY GUNWORKS;	)	
JAMES SAMUELS, an individual; and	)	
IESHA BOLES, an individual,	)	
	)	
Defendants.	)	

**SUGGESTIONS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant, CR Sales Firearms, LLC, (“CR Sales”), by and through counsel, and in accordance with Rule 74.04(c)(1), submits the following as its Suggestions in Support of the Motion for Summary Judgment.

**I. NATURE OF THE MATTER**

The City of Kansas City, (the “City”), has brought this action against a number of gun manufacturers, retailers, and other individuals, because its own employee—James Samuels—the former captain of the Kansas City Fire Department was trafficking firearms in violation of federal law. In a January 7, 2020, press conference the City boasted that it was the “first city to file a

lawsuit against the gun industry in more than 10 years.”<sup>1</sup> During that press conference, the Mayor of Kansas City, Quinton Lucas, described this lawsuit as “creative,” “transformative,” and recognized it as a “novel remedy.”<sup>2</sup> One may propose the following questions: why is the City the first city to file this type of lawsuit, and why is the City describing this lawsuit as “creative, transformative, and novel?” The answer is simple: both Congress and the Missouri General Assembly have codified legislation that prevents this lawsuit from proceeding.

Congress has codified the Protection of Lawful Commerce in Arms Act which statutorily prohibits certain lawsuits from proceeding against firearm manufacturers and retailers. At the state level, the Missouri General Assembly codified Section 21.750, RSMo., which unambiguously prevents governmental entities from bringing lawsuits against firearm manufacturers and retailers for issues “resulting from or relating to the lawful design, manufacture, marketing, distribution, or sale of firearms or ammunition to the public.” Instead of recognizing these statutory barriers that prevent it from bringing this lawsuit, the City, unexplainably, provides no justification for its attempt to bypass these statutory prohibitions. The City does not attempt to address gun violence issues occurring within the City of Kansas City through traditional notions of governance. Rather, it resorts to addressing these issues by legislating through litigation. *See infra* Section III, D, 1.

There is no question that gun violence poses a significant issue for governmental entities such as the City. There is also no question that the City has justifiable governmental interests in addressing gun violence within the City. Notwithstanding the policy justifications and the relevant considerations that should be debated by parliamentarians and elected officials, this Court is

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<sup>1</sup> Press Release, Kansas City Sues Gun Manufacturer, Gun Dealers and Alleged Traffickers for Contributing to Local Gun Violence (Jan. 7, 2020) (SUMF ¶ 5); Quinton Lucas (@QuintonLucasKC), Twitter (Jan. 7, 2020, 12:00 PM) <https://twitter.com/quintonlucaskc/status/1214607815131705350>.

<sup>2</sup> Quinton Lucas, Mayor, City of Kansas City, Jan. 7, 2020, Press Conference Remarks (Jan. 7, 2020), [https://www.youtube.com/watch?v=yrdGkWci3Dk&t=12s&ab\\_channel=KansasCity%2CMo.CityCommunications](https://www.youtube.com/watch?v=yrdGkWci3Dk&t=12s&ab_channel=KansasCity%2CMo.CityCommunications)

statutorily prevented from considering these policies and rationales. The General Assembly promulgated section 21.750, RSMo., which expressly prevents the City from bringing and maintaining this lawsuit. By virtue of this statutory prohibition, this Court must dismiss this lawsuit and adhere to its role as outlined in Article V of the Missouri Constitution. Notwithstanding the state and federal statutory prohibitions, when the City's case is examined under the slightest scrutiny, every aspect of its case fails as a matter of law. For the following reasons, the City's lawsuit fails as a matter of law:

<b>Cause of Action</b>	<b>Primary Reason for Dismissal</b>	<b>Alternative Reason for Dismissal</b>	<b>Alternative Reason for Dismissal</b>	<b>Alternative Reason for Dismissal</b>
<b>Public Nuisance</b>	Statutory prohibition in accordance with section 21.750, RSMo.	Preempted by the PLCAA because the City cannot establish a knowing violation of a predicate statute.		
<b>Negligent Entrustment</b>	Statutory prohibition in accordance with section 21.750, RSMo.		Fails because no prospective buyer was incompetent nor did CR Sales know of the incompetence.	
<b>Negligence</b>	Statutory prohibition in accordance with section 21.750, RSMo.	Preempted by the PLCAA because the City cannot establish a knowing violation of a predicate statute.		
<b>Negligence Per Se</b>	Statutory prohibition in accordance with section 21.750, RSMo.			Fails as a matter of law because negligence per se cannot be established with federal statutes.
<b>Civil Conspiracy</b>	Statutory prohibition in accordance with section 21.750, RSMo.	Preempted by the PLCAA because the City cannot establish a knowing violation of a predicate statute.		

## II. STANDARD OF REVIEW

Summary judgment is proper when “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 74.04(c)(6). “Summary judgment is appropriate where the moving party has demonstrated, on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law.” *Finnegan v. Old Republic Title Co. of St. Louis, Inc.*, 246 S.W.3d 928, 930 (Mo. banc 2008). “The facts contained in affidavits or otherwise in support of a party’s motion are accepted as true unless contradicted by the non-moving party’s response to the summary judgment motion.” *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 452–53 (Mo. banc 2011). The non-moving party cannot oppose a motion for summary judgment “by merely relying on the allegations in the pleadings or denial of facts alleged, but must produce affirmative evidence demonstrating that a material fact is genuinely disputed.” *Wilson v. Union Pac. R.R. Co.*, 509 S.W.3d 862, 870 (Mo. App. E.D. 2017) (citing *Nangle v. Brockman*, 487 S.W.3d 29, 34 (Mo. App. E.D. 2016)).

“As the defending party, defendant may establish a right to summary judgment by showing one of the following: (1) facts that negate any one of the elements of plaintiff’s cause of action; (2) that plaintiffs, after an adequate period of discovery, have not been able to produce, and will not be able to produce, evidence sufficient to allow the trier of fact to find the existence of any one of the elements of their cause of action; or (3) that there is no genuine dispute as to the existence of each of the facts necessary to support the movant’s properly-pleaded affirmative defense.” *G.E.T. ex rel. T.T. v. Barron*, 4 S.W.3d 622, 624 (Mo. App. E.D. 1999).

### III. ARGUMENT

#### A. The City is statutorily prohibited from bringing this lawsuit under Missouri law.

The City's lawsuit is statutorily prohibited from proceeding to a jury. The Missouri state law equivalent of the Protection of Lawful Commerce in Arms Act prohibits this cause of action from proceeding. Section 21.750, RSMo. unambiguously provides:

No county, city, town, village or any other political subdivision nor the state shall bring suit or have any right to recover against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, distribution, or sale of firearms or ammunition to the public.

Section 21.750.5, RSMo.

The implications of this statute are clear: the City's lawsuit must be dismissed. The City's present lawsuit is, in all practical ways, identical to a lawsuit filed by the City of St. Louis. In *City of St. Louis v. Cernicek*, St. Louis filed lawsuits against manufacturers, promoters, marketers, distributors, and sellers of firearms. 145 S.W.3d 37, 38 (Mo. App. E.D. 2004). St. Louis alleged that "widespread availability and misuse of guns by juveniles, felons, and other unauthorized users is an immense national problem, constituting an ongoing public nuisance and causing the City direct harm." *Id.* More specifically—and almost identical the City's claims in the present lawsuit—St. Louis argued the gun manufacturers and sellers "knew or should have known that their products were being diverted into illegal markets" through a number of ways including "straw purchases." *See id.* ("The methods through which the City alleges guns were being diverted into illegal markets are . . . 'straw purchases.'"). The district court dismissed St. Louis' lawsuit for failure to state a claim, which the Missouri Court of Appeals swiftly upheld. *Id.* at 41, 43. The Court of Appeals—relying on section 21.750, RSMo.—straightforwardly upheld the dismissal of the lawsuit. *See id.*

at 43. (“Therefore, we find the City’s claims are prohibited by subsections 4 and 5 of section 21.750.”).

There is no material difference between the St. Louis lawsuit and the City’s present lawsuit. The City’s present lawsuit is precisely a lawsuit against firearms manufacturers and retailers relating to the sale and transfers of firearms to the public. Indeed, the face of the City’s Petition provides indications fatal to its case, stating “[t]his case involves an unlawful scheme to traffic pistols into the Kansas City, Missouri area . . . , often through straw purchases.” Pet. ¶ 1. The City, presumably concerned about downstream third-party criminal acts—which it has self-characterized as an “ongoing gun violence crisis in the City” *see* Pet. ¶ 2—has presented unfounded allegations against CR Sales in which it seeks to recover compensatory damages, attorneys’ fees, and injunctive relief. Just like St. Louis, the City, here, does not attempt to rely on tradition notions of governance to address what it conceives to be an issue within the City of Kansas City, but rather, attempts to legislate through litigation by filing lawsuits against the firearms industry.

Notwithstanding, the Missouri General Assembly has prohibited the City’s current lawsuit by promulgating section 21.750, RSMo. This statute unambiguously prohibits the City from “bring[ing] suit or hav[ing] any right to recover against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement or injunctive relief resulting from or relating to the . . . sale of firearms or ammunition to the public.” Section 21.750.5, RSMo. Just as the City of St. Louis was barred from bringing an identical lawsuit with identical claims against the firearms industry, the City of Kansas City is likewise prohibited. According, on this basis alone, the City’s lawsuit must be dismissed.

Moreover, states with near identical statutes as section 21.750, RSMo., have held their respected state statute bars these exact causes of actions. Under Nevada state law, “[n]o person has a cause of action against the manufacturer or distributor of any firearm or ammunition capable of causing serious injury, damage or death, was discharged and proximately caused serious injury, damage or death.” NEV. REV. STAT. § 41.131.1. In response to the October 1, 2017, mass shooting in Las Vegas, the parents of a victim brought a lawsuit in federal district court alleging wrongful death, negligence per se, and negligent entrustment against the firearm manufacturers and dealers that made and sold the AR-15 rifles used in the shooting. *See Parsons v. Colt’s Mfg. Co., LLC*, No. 2:19-cv-01189-APG-EJY, 2020 WL 1821306 at \*1 (D. Nev. April 10, 2020). The federal district court dismissed the negligent entrustment and negligence per se causes of action because they were precluded by the PLCAA. *See id.* at \*3–4. The court, however, also addressed whether NEV. REV. STAT. § 41.131.1 barred the plaintiff’s lawsuit. *Id.* at \*7. The court stated “this case presents important public policy concerns for the state of Nevada that should be addressed by the Nevada court.” *Id.* Accordingly, the court certified whether the Nevada state statute prohibited the plaintiff’s wrongful death cause of action to the Nevada Supreme Court. *Id.*

The Nevada Supreme Court provided a clear and straightforward holding: “We hold that . . . , as written, NRS 41.131 provides the gun manufacturers and distributors immunity from the claim asserted against them under Nevada law.” *Parsons v. Colts Mfg. Co. LLC*, 499 P.3d 602, 604 (Nev. 2021). The Nevada Supreme Court recognized the public policy debates regarding liability associated with the firearms industry, however, also stated “If civil liability is to be imposed against firearm manufacturers and distributors in the position of the gun companies in this case, *that decision is for the Legislature, not this court.*” *Id.* at 611 (emphasis added).

Accordingly, the court held that the Nevada Legislature unambiguously provided civil immunity under the state statute.

Another similar state statute is IND. CODE § 34-12-3-3 which provides “a person may not bring or maintain an action against a firearms or ammunition manufacturer, trade association, or seller for:” the lawful design, manufacture, marketing, or sale of a firearm or ammunition or “(2) recovery for damages resulting from the criminal or unlawful misuse of a firearm or ammunition for a firearm by a third party.” The Indiana Supreme Court—when addressing this statute—held that it functions as an immunity provision that “insulate[s] a firearms seller from liability. It forecloses aggrieved plaintiffs from bringing suit. The statute does not mince words.” *KS&E Sports v. Runnels*, 72 N.E.3d 892, 900 (Ind. 2017). Indeed, *Runnels* involved strikingly similar allegation because it involved downstream criminal acts with a firearm that was purchased through a “straw purchase.” *See id.* at 897. The Indiana Supreme Court held that the statute was unambiguous and that it provided civil immunity to the gun manufacturers and sellers. *Id.* at 907. The *Runnels* court applied the appropriate analysis: it neither undertook public policy considerations nor overstepped its role as the judiciary; rather it merely applied the unambiguous statute the in case before it. *See id.* (“The legislature’s policy choices, so long as they are constitutional, are beyond our purview. We neither applaud the wisdom of such choices nor condemn their folly. We simply assess their legality. Once we determine they pass muster, our task concludes.”).

The present case is no different. Section 21.750.5, RSMo., unambiguously states that the City—or any other state or local entity—shall not “bring suit or have any right to recover against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement or injunctive relief from or relating to the lawful design, manufacture, marketing, distribution, or sale



of firearms or ammunition to the public.” Here, the City is attempting to address an issue it perceives is irking the City of Kansas City. Instead of addressing this issue through traditional governance, regulatory challenges, or criminal prosecutions, the City attempts to legislate through litigation. Section 21.750.5, RSMo. unequivocally prevents this. Just like the City of St. Louis’s identical attempts to prevent straw purchases through litigation was prevented by section 21.750.5, RSMo., the City of Kansas City’s attempts are undoubtedly statutorily prohibited.

**B. The Protection of Lawful Commerce in Arms Act serves a statutory basis that confers qualified civil immunity upon CR Sales.**

Even if the Court does not dismiss the entirety of the City’s lawsuit because of the statutory prohibition of section 21.750.5, RSMo., the PLCAA preempts several of the City’s causes of actions. The City’s causes of action of civil conspiracy, negligence, and public nuisance must be dismissed by this Court because these actions are preempted by the Protection of Lawful Commerce in Arm Act (“PLCAA”). *See* Pub. L. No. 109–92, 119 Stat. 2095 (2005) (codified at 15 U.S.C. §§ 7901–7903). In 2005, Congress promulgated the PLCAA with a precise purpose: to “prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, . . . for the harm solely caused by the criminal or unlawful misuse of firearm products by others when the product functioned as designed and intended.” 15 U.S.C. § 7901(b)(1). Moreover, Congress made clear that an ancillary—but equally important—purpose of the statute was to prevent “[l]awsuits [that] have been commenced against manufacturers, distributors, dealers, and importers of firearms . . . , which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.” *Id.* § 7901(b)(3).

The PLCAA provides a statutory prohibition on the commencement or prosecution of qualified civil liability actions by unequivocally stating that “A qualified civil liability action may

not be brought in any Federal or State court.” *Id.* § 7902(a). Congress defined a “qualified civil liability action as follows:

The term “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, 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). If a “qualified civil liability action” is brought in either state or federal court, it “shall be immediately dismissed by the court in which the action as brought or is currently pending.” *Id.* § 7902(b).

The PLCAA, however, has several enumerated exceptions to the definition of “qualified civil liability action”; allowing suits to proceed that meet the following criteria:

\* \* \* \*

(iii) an action in which 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, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of Title 18.

\* \* \* \*

*See id.* § 7903(5)(A)(iii).

The above-exception, which has come to be known as the “predicate exception,”<sup>3</sup> allows a lawsuit to proceed in state or federal court if the criteria are met. A plaintiff seeking to bring such an action, must either establish the indispensable elements enumerated in the predicate exception, or establish another exception applies. *See Corporan v. Wal-Mart Stores E., LP*, No. 16-2305-JWL, 2016 WL 3881341, at \*2 (D. Kan. July 18, 2016) (“The PLCAA therefore requires dismissal of plaintiff’s complaint if none of the specified exceptions applies.”). Succinctly put, in order for the City’s civil conspiracy, negligence, and public nuisance causes of action to survive summary judgment, they must meet the criteria listed in the predicate exception.<sup>4</sup>

### **C. The City’s lawsuit is a “Qualified Civil Liability Action.”**

The City’s present lawsuit is straightforwardly a “qualified civil liability action.” The PLCAA defines “qualified civil liability action” as “a civil action . . . brought by an person against a manufacturer or seller of a qualified product . . . , for damages, punitive damages, injunctive or declaratory relief, . . . resulting from the criminal or unlawful misuse of a qualified product by the person or a third party[.]” 15 U.S.C. § 7903(5)(A). Because CR Sales was a seller of a qualified product and because this lawsuit is seeking damages and injunctive relief resulting from the criminal or unlawful misuse of a qualified product a person or third party, the City’s action is properly defined as a “qualified civil liability action.”

#### **1. Under the PLCAA, CR Sales is a “Seller” that sold a “Qualified Product.”**

CR Sales qualifies for the definition of a “seller” as defined under the PLCAA because it is engaged in the business of selling firearms. The PLCAA defines “seller”—among other things—

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<sup>3</sup> See generally *D.C. v. Beretta U.S.A. Corp.*, 940 A.2d 163, 168 (D.C. 2008) (“The parties here, and other courts construing this language, have referred to subsection (5)(A)(iii) as the “predicate exception” to the PLCAA because, to take effect, it requires that the manufacturer or seller have committed an underlying (or predicate statutory violation.”).

<sup>4</sup> Including the predicate exception, there is a total of six exceptions enumerated within the PLCAA. See 15 U.S.C. § 7903(5)(A)(i)–(vi). However, for purposes of this Motion, the only exception plausibly applicable to the civil conspiracy, negligence, and public nuisance causes of action within the City’s Petition is the predicate exception.

as “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[.]” *Id.* § 7903(6)(B). Under section 921(a)(11) of Title 18, the term “dealer” means “any person engaged in the business of selling firearms at wholesale or retail.” 18 U.S.C. § 921(a)(11). Because CR Sales sold firearms, it also meets the definition of a “qualified product” under the PLCAA. *See* 15 U.S.C. § 7903(4) (defining “qualified product” as “a firearm, . . . including any antique firearm . . . , or ammunition . . . , or a component or part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.”) CR Sales was a licensed dealer that was engaged in the business of selling firearms in the State of Missouri, accordingly, it is a “seller” under the PLCAA. The firearms and ammunition sold by CR Sales was shipped and transported in interstate commerce, accordingly, it was a retail seller of a “qualified product.

***2. The City’s lawsuit was brought as a result of the criminal or unlawful use of a qualified product.***

The City’s lawsuit is entirely presupposed on the allegations that the firearms that were sold by Samuels ultimately reached the hands of criminal and “turned up at crime scenes involving drugs, domestic violence, and murder.” *See, e.g.,* Pet. ¶ 1. The final element of a “qualified civil liability action” is that the lawsuit must be brought as a result of “the criminal or unlawful misuse of a qualified product by the person or a third party.” *See* 15 U.S.C. § 7903(5)(A). Since the purpose of the City’s lawsuit is to prevent the occurrences of “straw purchases” and to prohibit the firearms purchased through these purchases from reaching the hands of criminals within the City of Kansas City; it fully meets the final element of a “qualified civil liability action.”

**D. The PLCAA was enacted precisely to prevent lawsuit premised on common law causes of action, such as the City’s civil conspiracy, negligence, and public nuisance causes of action.**

By virtue of the City’s lawsuit qualifying as a “qualified civil liability action,” in order for this action to proceed, it must qualify under the predicate exception.<sup>5</sup> The City’s civil conspiracy, negligence, and public nuisance causes of action must be dismissed because the predicate exception cannot be established under either action. First off, to establish the predicate exception, the City must prove an essential element: that CR Sales “knowingly violated a State or Federal statute applicable to the sale or marketing of the product[.]” *Id.* § 7903(5)(A)(iii). The City’s inevitable inability to prove this element is fatal to its civil conspiracy, negligence, and public nuisance causes of action. The City cannot establish the “knowingly violated a State of Federal statute applicable to the sale or marketing of the product” prong, because Missouri courts have explained that “[t]he PLCAA expressly and unambiguously preempts state tort law, subject to the enumerated exceptions.” *Elkins v. Acad. I, LP*, 633 S.W.3d 529, 534 (Mo. App. S.D. 2021) (quoting *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 323 (Mo. banc 2016)).

As such, the City’s civil conspiracy, negligence and public nuisance causes of actions must be “immediately dismissed.” *See* 15 U.S.C. § 7902(b). These three causes of action are common law actions that have been subjected to judicial evolution. These common law actions that are subjected to “‘judicial evolution’ [are] precisely the target of the PLCAA[.]” *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1135 (9th Cir. 2009) (citing 15 U.S.C. § 7901(a)(7)). In promulgating the PLCAA, Congress made clear it was intensely concerned with common law actions against gun manufacturers and sellers; specifically finding that by allowing common law actions to proceed “by a maverick judicial officer or petit jury would expand civil liability in a manner never

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<sup>5</sup> *See supra* n.2.

contemplated by the framers of the Constitution,” and that “[s]uch an expansion of liability would constitute a deprivation of the right, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment.” 15 U.S.C. § 7901(a)(7). This Court should not permit these causes of action to proceed because the PLCAA precisely preempts these actions. *See, e.g., Ilteto*, 565 F.3d at 1136 (“[A]n examination of the text and purpose of the PLCAA shows that Congress intended to preempt general tort theories of liability”).

**1. Congress distinctly promulgated the PLCAA to prevent common law causes of actions.**

Common law actions—such as civil conspiracy, negligence, and public nuisance—that are under the guise of judicial modification are preempted by the PLCAA. The predicate exception to the PLCAA “has come to be known as the ‘predicate exception,’ because a plaintiff not only must present a cognizable claim, he or she also must allege a knowing violation of a ‘predicate statute.’” *Id.* at 1132. A “predicate statute” is a statute that is “applicable to the sale or marketing of [firearms or ammunition].” 12 U.S.C. § 7903(5)(A)(iii). By virtue of the PLCAA’s indispensable element of a knowing violation of a “predicate statute,” the exception cannot apply to common law causes of action of general applicability because these actions are not premised nor contingent on the violation of a statute applicable to the sale or marketing of firearms or ammunition. If this Court were to allow these common law actions to proceed under the predicate exception, it would effectively swallow the entirety of the statute. This is precisely why two federal circuit courts that have addressed this exact issue have held common law actions of general applicability—even codified statutes of general applicability—are preempted by the PLCAA. *See, e.g., Ilteto*, 565 F.3d at 1136 (“We find it more likely that Congress had in mind only these types of statutes—statutes that regulate manufacturing, importing, selling, marketing, and using firearms or that regulate the firearms industry—rather than general tort theories that happened to have been codified by a given

jurisdiction.”); *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 403–04 (2d Cir. 2008) (“In sum, we hold that the exception created by 15 U.S.C. § 7903(5)(A)(iii) does not encompass New York Penal Law § 240.45.”).<sup>6</sup>

Congress explained in the statute’s explicit findings and purpose, that “imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system.” 15 U.S.C. § 7901(a)(6). This is because the PLCAA was codified in an era in which lawsuits were being brought against gun manufacturers on the basis of abstract and creative legal causes of actions. “The PLCAA was considered and passed at a time when victims of shooting incidents, as well as municipalities with high incidences of firearms-related crimes, brought civil suits seeking damages and injunctive relief against out-of-state manufacturers and sellers of firearms as one tactic to inhibit the flow of firearms into illegal markets.” Vivian S. Chu, CONG. RSCH. SERV., R42871, THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT: AN OVERVIEW OF LIMITING TORT LIABILITY OF GUN MANUFACTURERS 1 (2012). Of the wave of lawsuits being filed against firearm manufacturers for downstream crimes, common law causes of action, such as negligence<sup>7</sup> and public nuisance<sup>8</sup> causes of action, were consistently utilized as bases for initiating these lawsuits.

Due to the increase in these lawsuits against manufacturers, the firearms industry was “in danger of being overwhelmed by the cost of defending itself against these suits.” H.R. REP. NO. 109–124, at 12 (2005). Specifically, legislative proponents testified that the PLCAA was “only

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<sup>6</sup> *Beretta U.S.A. Corp.*, is remarkably similar to the present lawsuit in that a governmental entity—the City of New York—brought causes of actions against firearms manufacturers. *See* 524 F.3d at 389. In that case, the City of New York alleged firearm manufacturers violated the state’s codified public nuisance criminal statute. *Id.* On appeal, the United States Court of Appeals for the Second Circuit held that PLCAA unambiguously preempts the City’s public nuisance cause of action. *Id.* at 404.

<sup>7</sup> *See, e.g., McCarthy v. Olin Corp.*, 119 F.3d 148 (2d Cir. 1997); *Shipman v. Jennings Firearms, Inc.*, 791 F.2d 1532 (11th Cir. 1986).

<sup>8</sup> *See, e.g., City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136 (Ohio 2002); *NAACP v. Acusport, Inc.*, 271 F. Supp. 2d 435 (E.D.N.Y. 2003); *Bubalo v. Navegar, Inc.*, No. 96 C 3664, 1998 WL 142359 (N.D. Ill. Mar. 20, 1998).

intended to protect law-abiding members of the firearms industry *from nuisance suits* that have no basis in current law, that are only intended to regulated the industry or harass the industry or put it out of business.” 151 CONG. REC. S9107 (statement of Sen. Baucus) (emphasis added). Additionally, proposed amendments that ultimately failed further bolster the fact that the PLCAA preempts common law actions. Senator Jack Reed proposed an amendment that would allow “an individual to sue for negligence when they have been harmed and when that negligence can be fairly attributed to a gun manufacturer.” 151 CONG. REC. S9374 (statement of Sen. Reed). The Reed Amendment, which attempted to ensure the survival of the traditional negligence cause of action against firearm manufacturers was quickly dismissed because it was “a complete substitute for the bill. In effect, it guts the bill. It does exactly the opposite of what the bill is intended to do.” 151 CONG. REC. S9374 (statement of Sen. Hutchison). Under House debate, the Van Hollen Amendment was proposed that similarly proposed “the more traditional common law standard of simple negligence.” H.R. REP. NO. 109–124, at 22 (2005). The Van Hollen Amendment was swiftly defeated by a vote of 8 to 19. *Id.* Thus, the “legislative history of the PLCAA strongly indicates that Congress intended to predicate exception to apply only to knowing violations of State and Federal statutes specifically applicable to the firearms industry” and not to traditional common law causes of action. *See Ileto v. Glock, Inc.*, 421 F. Supp. 2d 1274. 1292 (C.D. Cal. 2006).

This Court should recognize this unambiguous Congressional intent to preempt common law actions of general applicability. Because these common law actions are subject to judicial evolution and because there cannot be a showing of a knowing violation of a predicate statute, the City’s causes of action of civil conspiracy, negligence, and public nuisance cannot be permitted to proceed. Congress was precisely concerned with individuals and municipalities utilizing these



types of causes of action of general applicability to bankrupt the firearm industry. To prevent these rising lawsuits, the PLCAA was codified to prohibit them from commencing, while contemporaneously recognizing lawsuits may proceed *only if* it could meet an exception enumerated in 15 U.S.C. § 7903(5)(A). As it is clear from the legislative history, common law causes of actions were expressly rejected from being included as an exception—this lawsuit is no different.

**E. The City’s civil conspiracy, negligence, and public nuisance causes of action cannot qualify for the predicate exception.**

The City’s common law actions of civil conspiracy, negligence, and public nuisance cannot proceed under the predicate exception for two underlying reasons. First, several of the plead statutory violations that the City presumably claims to be “predicate statutes” cannot be a basis for the predicate exception because they are not statutes “applicable to the sale or marketing of” firearms. *See id.* § 7903(5)(A)(iii). Second, even if the remaining plead statutes can sufficiently qualify as predicate statutes, the City fatally cannot establish that CR Sales “knowingly violated” any predicate statute. Thus, because the City cannot establish either of these indispensable elements, the predicate exception cannot apply, and the PLCAA preempts these causes of action.

**1. *The text and structure of the PLCAA resoundingly indicates only certain statutes can qualify as a predicate statute.***

The City’s Petition alleges CR Sales violated numerous federal statutes and regulations, presumably as its basis for pleading a “knowing violation” of a statute “applicable to the sale or marketing of” firearms. *See id.* Notwithstanding, several of the plead statutes and regulations cannot serve as a “predicate statute” because they are entirely unrelated to the “sale or marketing”

of firearms.<sup>9</sup> On the basis of the predicate exception alone, in order for a cause of action to proceed under this exception, the defendant must have “knowingly violated a State or Federal statute applicable to the sale or marketing of” firearms. *Id.* Here, the City’s plead list of predicate statutes includes federal regulations and federal statutes of general applicability that are not related to “the sale or marketing of” firearms. These regulations and unrelated federal statutes cannot serve as a basis for establishing the predicate exception for several reasons: first, the predicate exception does not allow statutes of general applicability to serve as a predicate statute because these statutes are wholly unrelated to the “sale and marking of” firearms; and second, federal regulations also cannot serve as predicate *statutes* because it would go against the plain text and allowing such an encompassing rule would render the purpose of the PLCAA meaningless.

First, the following statutes—that were alleged in the City’s Petition—cannot serve as predicate statutes because these statutes are not applicable to the sale or marketing of firearms: 18 U.S.C. §§ 2, 4, 371. For example, section 2 is a federal penal statute that sets for the general pronouncement that one who commits an offense against the United States or assists in the commission of the offense can be punished as a principal. *See* 18 U.S.C. § 2. Further, section 4 provides that someone who conceals their knowledge of a commission of felony can be criminally punished. *See id.* § 4. Similarly, section 371 is a federal penal statute regarding the commission of a conspiracy against the United States. *See id.* § 371. Succinctly put, these three federal penal statutes are statutes of general applicability and are not “applicable to the sale or marketing” of firearms. Since they are not applicable to the sale or marketing of a firearm, they cannot be used as a “predicate statute” under the predicate exception.

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<sup>9</sup> Plaintiff plead the following statutes, presumably as predicate statutes: 18 U.S.C. §§ 2, 4, 371, 922(a)(1), 922(a)(2), 922(b)(3), 922(m), 922(t)(1), 923(a), 924(a)(1), and 924(a)(3). *See, e.g.,* Pl.’s Pet. ¶ 86. Plaintiff pleads the following federal regulations: 27 C.F.R. §§ 478.29, 478.99(a), 478.102, 478.123(b), 478.123(d), and 478.124(a). *Id.*

All textual indicators of the PLCCA undoubtedly show that these statutes of general applicability cannot serve as a predicate statute. The PLCAA pronounces a simple prohibition: “[a] qualified civil liability action . . . , shall be immediately dismissed by the court in which the action was brought.” *Id.* § 7902(b). Notwithstanding the general prohibition, Congress recognized several exceptions in which a lawsuit against a firearm manufacturer may proceed—including the predicate exception. *See id.* § 7903(5)(A)(iii). To qualify for the predicate exception, a plaintiff’s cause of action must be an action in which a firearms manufacturer or seller “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.* The PLCAA, immediately following this clause, provides two specific examples of statutes that are “applicable to the sale or marketing of” firearms. *See id.* The first example of a statute that is “applicable to the sale or marketing of” firearms is when a firearms manufacturer or seller knowingly made a false entry, or failed to keep “any record required to be kept under Federal or State law with respect to the qualified product,” or when the manufacturer or seller “conspired with any person in making any false or fictitious” statement regarding the sale of a firearm. *See id.* § 7903(5)(A)(iii)(I). The second given example is when a seller or manufacturer “aided, abetted, or conspired with any other person” to transfer a firearm to an individual who was prohibited under federal law. *See id.* § 7903(5)(A)(iii)(II).

The two explicitly provided examples contained within the text of the predicate exception is clear evidence of the causes of actions that were intended to be permitted under the exception. This Court should recognize this strong textual evidence and utilize the textual canon of interpretation of *noscitur a sociis*. Under this interpretative method, this Court should interpret the predicate exception similarly to the more specific examples that were provided. *See, e.g., Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 222 (2009). Here, Congress provided in the predicate

exception that a lawsuit against a firearms manufacturer or seller may proceed only if the cause of action is premised on the knowing violation of a statute applicable to the sale or marketing of a firearm. *See Ileto*, 565 F.3d at 1132. Immediately following, Congress provided the indicator “including—” and listed two specific examples of a “statute applicable to the sale or marketing” of firearms. The statutes plead in the City’s Petition, 18 U.S.C. §§ 2, 4, 371, are entirely unrelated to these examples. Instead of statutes “applicable to the sale or marketing” of firearms, they are merely federal penal statutes that are conditioned on general applicability—not related to the sale or marketing of firearms.

Moreover, if this Court were to allow this lawsuit to proceed conditioned on these statutes as the predicate statutes, it would make the rest of the statute and its exceptions mere surplusage. *See, e.g., Kungys v. U.S.*, 485 U.S. 759, 778 (1988) (“the cardinal rule of statutory interpretation [is] that no provision should be construed to be entirely redundant.”). Here, the PLCAA provides six exceptions under which a lawsuit may proceed against the firearms industry. If this Court were to allow the City to utilize the predicate exception by relying on *any* statute it so pleases—even statutes entirely unrelated to the sale or marketing of firearms—it would leave the general prohibition and the other five statutory exceptions without effect. Such a result cannot be acceptable by this Court because, as the Second Circuit explained, “[s]uch a result would allow the predicate exception to swallow the statute.” *City of New York*, 524 F.3d at 403. The only two federal circuit courts that have addressed this issue—the Second and Ninth Circuits—have each held statute of general applicability, that are wholly unrelated to the sale or marketing of firearms, cannot serve as predicate statutes. *See id.*; *Ileto*, 565 F.3d at 1136. This Court should not deviate.

Second, the following regulations cannot serve as predicate statutes: 27 C.F.R. §§ 478.29, 478.99(a), 478.102, 478.123(b), 478.123(d), and 478.124(a). Under the plain text of the predicate

exception, the defendant must have “knowingly violated a State or Federal *statute* applicable to the sale or marketing of” firearms. 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). Allowing a plaintiff to utilize federal regulations as a means of bypassing the requirement of establishing a violation of a “State or Federal statute” cannot be permissible. A plaintiff should not be able to divert its requirement of establishing a knowing violation of a statute by combing through the Code of Federal Regulations as a means of finding a replacement “predicate statute.” The PLCAA does not contemplate using federal regulations as “predicate statutes”; instead, the text plainly requires a plaintiff to establish a knowing violation of a “State or Federal statute.” The City, here, should not be allowed to bypass this requirement.

***2. Even if the plead statutes are sufficient to be deemed “predicate statutes,” the predicate exception cannot apply because the City has failed to show a “knowing violation” of a predicate statute.***

Even if the City has sufficiently plead a predicate statute, its common law actions of civil conspiracy, negligence, and public nuisance cannot proceed to a jury because the City is unable to establish that CR Sales “knowingly” violated any of the plead predicate statutes. The subjective requirement of a “knowing” violation requires an elevated showing of culpability. *See Ileto*, 565 F.3d at 1158 (Berzon, J., concurring and dissenting in part) (“[T]he phrase ‘knowingly violated’ . . . impos[es] a heightened pleading requirement for litigants who seek to come within the predicate exception.”). “Generally speaking, a ‘knowing’ violation of a given law requires ‘proof of [the defendant’s] knowledge of the facts that constitute the offense.’” *Id.* at 1155 (quoting *Bryan v. United States*, 524 U.S. 184, 193 (1998)). The Missouri General Assembly, in defining culpable states of mind for purposes of criminal violations, has provided a definition for what constitutes “knowingly.” *See Wright v. City of Salisbury, Mo.*, No. 2:07CV00056 AGF, 2010 WL 2947709, at \*5 n.3 (July 22, 2010). To be a “knowing” violation, the Missouri General Assembly has

provided that a person must be “aware of the nature of his or her conduct or that those circumstances exists” or “when he or she is aware that his or her conduct is practically certain to cause that result.” Section 562.016.3, RSMo.

Based on this heightened standard of subjective culpability required by the PLCAA, the City is incapable of proving that CR Sales “knowingly” violated any of the plead predicate statutes. The City has alleged CR Sales knowingly violated a total of 17 statutes and regulations. *See* Pet. ¶¶ 86, 113. As discussed, several of the plead statutes cannot be considered as “predicate” statutes for purposes of bypassing the PLCAA’s general prohibition. Notwithstanding, each of the 17 alleged statutes and regulations fail as a matter of law because CR Sales did not knowingly violate any of the plead statutes and regulations. Because the heightened culpability requirement cannot be established, the City’s negligence, public nuisance, and civil conspiracy causes of action must fail as a matter of law.

**i. The factual record unequivocally shows that CR Sales did not “knowingly” violate any of the City’s plead predicate statutes.**

The following uncontroverted facts undoubtedly shows that CR Sales did not knowingly violate any of the plead predicate statutes. Samuels testified that he would utilize online firearm markets (e.g., Gunbroker.com), to seek out the firearm he wanted to purchase and ultimately transfer to a prospective buyer. (Statement of Uncontroverted Material Facts (“SUMF”) ¶ 9.) Through the online website, once a firearm was selected, the website would provide a list of FFLs in the state that could be used to lawfully facilitate the private transfer. (SUMF ¶ 10.) Samuels would complete the transaction by paying for the firearm through a credit card that was set up through his own personal bank account. (SUMF ¶ 11.) Once the firearm was shipped to an FFL, Samuels would take a nominally increased payment from the prospective buyer before they both drove over to the FFL to finalize the private transfer. (SUMF ¶ 12.) Indeed, the notion that CR

Sales “knowingly” violated a statute or regulation is expressly contradicted by Samuel’s testimony. Samuels stated that he was not purposely utilizing CR Sales as an FFL to facilitate his illegal gun trafficking; rather he testified that:

Q. Okay I was interested to hear your testimony that the reason you went to the different FFLs was Gun Broker would identify the ones in the area?

A. Yes.

Q. You didn’t seek out any particular FFL because they were easy to deal with, right?

A. No.

Q. You didn’t seek out any particular FFL because they looked the other way and let you do illegal activity?

A. No.

Q. You were simply going from the list that they provided you?

A. Yes.

(SUMF ¶ 13.)

Furthermore, Samuels expressly stated that he did not believe he was engaged in any sort of conspiracy with CR Sales to illegally traffic guns. (SUMF ¶ 57.) Moreover, there is no evidentiary support that shows CR Sales was even aware of criminal conduct until November 2, 2016, when CR Sales reported Samuels to the ATF. Rice, the owner of CR Sales, testified that none of Samuel’s transfers were suspicious until November 2, 2016. Upon questioning by the City’s counsel, Rice testified the following regarding the June 1, 2015, transfer:

Q. Okay was there anything suspicious about this sale? Sorry, strike that. Was there anything suspicious about this transaction?

A. Not to my knowledge.

Q. And do you recall that you are testifying here as a corporate representative of CR Sales, correct?

A. Correct.

Q. Was it suspicious to anyone at the store?

A. Not to my knowledge.

(SUMF ¶ 17.)

On July 3, 2015, Samuels returned to CR Sales to purchase a Jimenez 380 firearm from CR Sales. (SUMF ¶ 18.) This transaction was not a private transfer of a firearm; rather Samuels was the sole purchaser. Upon questioning by the City's counsel, Rice stated:

Q. Did the fact that [Samuels] had just gotten rid of one Jimenez 380, and then a month later was buying a Jimenez 380 strike anyone at the store as suspicious?

MR. SCHULTZ: Object to the form.

A. Not to my knowledge.

Q. (BY MS. LEFKOWITZ) Did it strike you as suspicious?

A. Not to my knowledge.

(SUMF ¶ 20.) Indeed, the 4473 Form Samuels filed out during that transaction, indicates that Samuels did not possess characteristics that would prohibit him from purchasing the firearm.

(SUMF ¶ 19.)

On August 1, 2015, Samuels returned to CR Sales to finalize a private firearm transfer to Alinzo Paige. (SUMF ¶ 21.) Upon questioning, Rice—again—reiterated he had no suspicions of Samuels at this point:

Q. Did you have any suspicions about Mr. Samuels at this point?

A. I did not.

Q. Do you know if this firearm was used in any crimes?



A. I have no way of knowing if this firearm was used in any crime, while I am sitting right here.

(SUMF ¶ 23.) Moreover, the two CR Sales employees who assisted with this transaction, both testified that they have no recollection of Alinzo Paige. (SUMF ¶ 24.)

Although it is relatively unclear, it appears the next time Samuels returned to CR Sales was on either October 14 or 20, 2015.<sup>10</sup> On this occasion, Samuels utilized CR Sales to complete a private firearm transfer to his brother, Henry Samuels. (SUMF ¶ 25.) Regarding this transaction, Rice testified:

Q. So this is the fourth Jimenez Arms transaction that Mr. Samuels has done at your store; is that correct?

A. Yes.

Q. Did anything about that strike you as not normal?

A. No.

(SUMF ¶ 27.) Moreover, the CR Sales employee that assisted in finalizing this private transfer has no recollection of Henry Samuels. (SUMF ¶ 28.)

On October 30, 2015, Samuels returned to CR Sales to finalize a private firearm transfer to a prospective buyer, Jeron Lee Wilson. (SUMF ¶ 29.) Regarding this transaction Rice testified:

Q. And this is the fourth transaction in a row that Mr. Basso has been involved in?

A. Yes.

Q. Did Mr. Basso say anything to you about this transaction?

A. No, he did not.

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<sup>10</sup> There is ambiguity regarding which date Samuels actually returned to CR Sales to complete another private firearm transfer. There are transfer slips for both October 14 and October 20, however, both of these slips indicate that a firearm was transferred to Henry Samuels. Additionally, both transfer slips indicate the firearm transferred on both dates had the same serial number. Regardless of the date, the fourth transaction that occurred at CR Sales involved a private firearm transfer to Henry Samuels.

Q. Do you think he should have said something to you about this transaction?

A. Not necessarily.

Q. But the job of an FFL is to try to prevent criminals from getting guns; is that correct?

A. That is correct.

Q. Part of the role is to prevent gun crime; is that correct?

A. That is correct.

Q. So if you are dealing with a suspicious customer, you should be airing on the side of safety; is that correct?

A. I could agree with that.

Q. Can you tell me why an individual would have been involved in five Jimenez Arms transfers in your store in a short period of time?

MR. SCHULTZ: Objection to form. No foundation. Speculation.

A. I don't know why he would have dealt with that many Jimenez in that period.

Q. (BY MS. LEFKOWITZ) But one option is that he was dealing in Jimenez Arms guns; is that correct?

MR. SCHULTZ: Same objections.

A. I don't know what reason he was doing it.

(SUMF ¶ 31.) Furthermore, the CR Sales employee that oversaw this transfer, testified that he does not recall this transaction nor the prospective buyer, Jeron Wilson. (SUMF ¶ 32.)

On November 5, 2015, Samuels returned to CR Sales to complete a private firearm transfer to a prospective buyer, Jim Andrews.<sup>11</sup> (SUMF ¶ 33.) Regarding this transfer, Rice was asked

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<sup>11</sup> The firearm for this private transfer was initially transferred into CR Sale's inventory on October 31, 2015. However, the actual transfer to Jim Andrews did not occur until November 5, 2015.

whether he felt like CR Sales was facilitating and permitting Samuels to transact firearms without a license, Rice answer, “We didn’t have knowledge at that point that he was.” (SUMF ¶ 35.)

On November 6, 2015, Samuels returned to CR Sales to complete a private firearm transfer to a prospective buyer, Rose Marie Stanford. (SUMF ¶ 36.) Stanford was Samuel’s niece by marriage. (SUMF ¶ 36.) Upon questioning, Rice provided:

Q. Did any of this strike you as suspicious?

A. Not necessarily.

Q. Did it occur to you at that point that Mr. Samuels might have been trafficking in firearms?

A. No.

(SUMF ¶ 39.)

On November 14, 2015, Samuels returned to CR Sales and purchased a JA Nine firearm for himself. (SUMF ¶ 40.) This transfer did not appear suspicious to Rice. (SUMF ¶ 42.) On November 24, 2015, Samuels returned to CR Sales to complete a private firearm transaction for a prospective buyer, Jennita Price. (SUMF ¶ 43.) The prospective buyer, Jennita Price, was a friend of Samuels’ wife. (SUMF ¶ 43.) Again, Rice testified to this transaction which further solidifies CR Sales’ complete lack of knowledge of any criminal conduct:

Q. I forgot about transaction we are on. Did you believe at this point that Mr. Samuels was trafficking in firearms?

MR. SCHULTZ: No foundation. Speculation.

A. I did not know that.

Q. (BY MS. LEFKOWITZ)) Did you believe that Mr. Samuels was dealing in Jimenez Arms firearms, at this point?

A. I did not know that.

(SUMF ¶ 45.)

On November 30, 2015, a firearm was transferred from La Familia Pawn Shop to CR Sales and was ultimately transferred to Jim Andrews. (SUMF ¶ 46.) According to ATF Agent Brock, this firearm was purchased by Samuels from La Familia Pawn Shop through Gunbroker.com and was shipped to CR Sales to complete the transfer. (SUMF ¶ 47.) This firearm was ultimately transferred to Jim Andrews on December 4, 2015. However, Rice had no idea that Samuels had any involvement in this transfer. (SUMF ¶ 49.)

At this point, Samuels did not conduct another private firearm transfer at CR Sales for approximately another year. In a six-month period, from June 1, 2015, to December 5, 2015, Samuels—at the most—utilized CR Sales to conduct and complete 10 to 11 private firearm transfers. When questioned about all 10 or 11 transfer, Rice testified that these transfers—even though they were for Jimenez Arms firearms—were not suspicious. (SUMF ¶ 7.) CR Sales employee, Don Basso emphasized this conclusion:

Q. (By Mr. Gerber) So is nine transfers a lot in your opinion?

A. Well, not necessarily. I have on occasion had a customer ask me how many guns have they transferred in as a joke because they bought so many guns, and I would run something like [customer transaction sheet] to look at. And I can tell you there is some customer that have far bigger ones than [Samuels].

(SUMF ¶ 8.)

Approximately a year later, on November 2, 2016, Samuels returned to CR Sales in order to pick up three firearms. (SUMF ¶ 52.) This was the exact transaction the evidentiary record indicates any support for the conclusion that CR Sales knew of Samuels' criminal conduct. Basso testified that this was the transaction that was the “red flag” to him and reported it to Rice as a suspicious transaction. (SUMF ¶ 53.) Rice agreed that this was the moment he was suspicious of potential criminal conduct:

Q. So when did you form the opinion that Mr. Samuels may be doing something wrong?

A. I personally formed that opinion on November 2nd, 2016. I believe.

(SUMF ¶ 54.)

When Samuels appeared at CR Sales on November 2, 2016, Rice explained that CR Sales no longer wanted to do anymore firearm transfers for Samuels. (SUMF ¶ 55.) On that date, Samuels called the ATF and reported his suspicions regarding Samuels and his most recent transaction. (SUMF ¶ 56.) Accordingly, the evidentiary record indicates that CR Sales was not aware nor had direct or indirect knowledge of Samuels' criminal conduct until November 2, 2016. With these uncontroverted facts established, each and every plead predicate statute fails because the indispensable element of a "knowing" violation cannot be established.

**ii. Alleged Predicate Statute No. 1 – 18 U.S.C. § 2.**

The City has alleged that CR Sales knowingly violated 18 U.S.C. § 2. *See, e.g.*, Pet. ¶ 86. As discussed, this is a statute that cannot be considered as a predicate statute because this is a statute of general applicability and is not applicable to the sale or marking of a firearm. *See* 15 § 7903(5)(A)(iii). Section 2 is a federal penal statute that provides that one who aids, abets, counsels, commands, induces or procures a commission against the United States can be punished as a principal. For the City to allege that CR Sales "knowingly" violated this statute is nonsensical. Nothing in the evidentiary record supports the notion that CR Sales was practically certain—let alone even aware—they were violating a federal aiding and abetting penal statute.

To reemphasize, the PLCAA imposes a heightened standard of culpability that must be proven in order for the predicate exception to apply. Furthermore, to be a "knowing" violation, the Missouri General Assembly has provided that a person must be "aware of the nature of his or her conduct or that those circumstances exists" or "when he or she is aware that his or her conduct is

practically certain to cause that result.” Section 562.016.3, RSMo. Accordingly, for 18 U.S.C. § 2 to serve as a predicate statute, the City must prove that CR Sales was aware of the nature of its conduct or was practically certain it was aiding, abetting, counseling, commanding, inducing or procuring the commission of an offense against the United States. *See* 18 U.S.C. § 2. The City has failed to show this requisite culpability.

CR Sales—as an FFL—lawfully facilitated the private firearm transfers discussed above. CR Sales fully complied with federal law and regulations when conducting these transactions. Critically, it was not until November 2, 2016, CR Sales had any suspicion, let alone knowledge, of Samuels’ criminal conduct. Once CR Sales became aware of this suspicious activity, it immediately reported it to the ATF. Acting as a third-party FFL that facilitated private firearm transfers cannot a basis for imposes this requisite culpability. Indeed, the ATF supports this procedure and CR Sales’ conduct. *See* ATF Procedure 2020-2 (“In November of 2016, ATF issued *Facilitating Private Sales: A Federal Firearms Licensee Guide*, encouraging FFLs to facilitate the transfer of firearms between private individuals to enhance public safety and assist law enforcement.”). Thus, CR Sales was lawfully acting in a manner, that is not only lawful, but encourage by the ATF. There is no evidence that CR Sales “knowingly” aided and abetted Samuels in his illegal trafficking of firearms. Instead, CR Sales took precise action in order to prevent this illegal conduct for continuing when it reported Samuels to the AFT. Accordingly, since there is no evidence CR Sales “knowingly” violated 18 U.S.C. § 2, it cannot serve as a predicate statute.

**iii. Alleged Predicate Statute No. 2 – 18 U.S.C. § 4.**

The City has plead that CR Sales knowingly violated 18 U.S.C. § 4. *See, e.g.,* Pet. ¶ 86. As with the previous statute, this is a statute of general applicability and not applicable the sale or marketing of firearms—as required the PLCAA, accordingly, it cannot be considered for the

predicate exception. Notwithstanding, even if this Court finds that this statute is applicable, the City cannot establish that CR Sales “knowingly” violated it. 18 U.S.C. § 4 provides that “[w]hoever, having knowledge of the actual commission of a felony . . . , conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority” will be fined or imprisoned. As the record indicates, CR Sales—as soon as it became suspicious of Samuels’ criminal activity—immediately contacted the ATF and reported its suspicions. Thus, 18 U.S.C. § 4 cannot serve a predicate statute because CR Sales did not “knowingly” violate this statute; rather it entirely and reasonably complied with it.

**iv. Alleged Predicate Statute No. 3 – 18 U.S.C. § 371.**

The City has plead that CR Sales knowingly violated 18 U.S.C. § 371. *See, e.g.*, Pet. ¶ 86. As with the previous two statutes, this statute cannot be considered a predicate statute because it is a statute of general applicability and not one that is solely applicable to the sale or marketing of a firearm. No matter this hurdle, the City is unable to prove that CR Sale’s knowingly violated this statute. 18 U.S.C. § 371 is a criminal conspiracy statute which provides that if one conspirator commits an “act to effect the object of the conspiracy” all of the conspirators shall be guilty under the statute. Moreover, “[i]t is fundamental that a conviction for conspiracy under 18 U.S.C. § 371 cannot be sustained unless there is ‘proof of an agreement to commit an offense against the United States.’” *Ingram v. U.S.*, 360 U.S. 672, 677–78 (1959) (citations omitted) (cleaned up).

The City cannot establish CR Sales knowingly violated this statute because CR Sales was not aware of any criminal conduct until November 2016. There was not a concocted scheme between Samuels and CR Sales to illegally traffic firearms; rather CR Sales was merely lawfully acting as an FFL to facilitate private firearm transfers. CR Sales could not have “knowingly” violated this statute because there was no conspiracy, agreement, or understanding between CR

Sales and Samuels to undertake criminal conduct. Samuels expressly denied this notion. (SUMF ¶ 56.) Since the record is devoid of any evidence that would indicate the fundamental elements of a criminal conspiracy are present and because there is no evidence indicating CR Sales “knowingly” entered into a criminal conspiracy, this statute cannot serve as a predicate statute.

**v. Alleged Predicate Statute No. 4 – 18 U.S.C. § 922(a)(1).**

18 U.S.C. § 922(a)(1) provides that it shall be unlawful for any person to “ship, transport, or receive any firearm in interstate or foreign commerce” without a proper license to do so. This statute unequivocally cannot serve as a predicate statute because CR Sales could not have violated it—let alone knowingly violate it. CR Sales is a licensed FFL that can legally retail firearms. Moreover, CR Sales could not have knowingly violated this statute because it is solely associated with “ship[ping], transport[ing], or receiv[ing]” firearms *without* a proper license. It is undisputed that CR Sales possesses a proper license to participate in these transfers of firearms. Thus, this predicate statute cannot serve as a predicate statute.<sup>12</sup>

**vi. Alleged Predicate Statute No. 5 – 18 U.S.C. § 922(a)(2).**

18 U.S.C. § 922(a)(2) provides that a licensed firearm importer, manufacturer, dealer, or collector cannot ship or transport “any firearm to any person other than a licensed importer, licensed dealer, or licensed collector.” This statute cannot serve as a predicate statute for this matter because CR Sales did not “ship or transport in interstate or foreign commerce” any firearm. CR Sales—as an FFL—lawfully facilitated private firearm transactions. CR Sales was not shipping or transporting any firearm in interstate commerce; rather it was receiving firearms from online

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<sup>12</sup> 18 U.S.C. § 922(a)(1) contains two subsections. Subsection (A), as discussed above, concerns the lawful shipping, transporting, and receiving of firearms. Subsection (B) concerns the lawful shipping, transporting, and receiving of ammunition. *See id.* 922(a)(1)(B). This case does not concern shipping, transporting, and receiving of ammunition with a proper license. However, to the extent subsection (B) would be remotely applicable, it fails for the same reasons subsection (A) fails: CR Sales is a licensed FFL.



markets and completing NICS background checks and finalizing required paperwork, such as ATF Form 4473. This statute immediately fails as a predicate statute.

**vii. Alleged Predicate Statute No. 6 – 18 U.S.C. § 922(b)(3).**

18 U.S.C. § 922(b)(3) provides that that a licensed importer, manufacturer, dealer or collector cannot sell or deliver “any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in . . . the State in which the licensee’s place of business is located.” There is no evidence that supports Samuels or any of the prospective buyers that conducted private transfers at CR Sales were not residents of Missouri. Moreover, CR Sales—for each of the transfers—conducted NICS background checks and required that ATF Form 4473 be filled out. Each ATF Form 4473 for all of the transfers indicate that all of the relevant parties were residents of Missouri. CR Sales fully complied with ATF guidance regarding facilitating private firearm transfers. Without evidentiary support that Samuels or the prospective buyers were no residents of Missouri, CR Sales could not have “knowingly” sold or delivered firearms to a nonresident of Missouri.

**viii. Alleged Predicate Statute No. 7 – 18 U.S.C. § 922(m).**

18 U.S.C. § 922(m) provides that a licensed importer, manufacturer, dealer, or collector cannot “knowingly make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep” under federal law. Here, CR Sales could not have knowingly violated this statute—nor does it appear the City reasonably believes it did. CR Sales properly kept and maintained every record it was required to keep under federal law. Moreover, CR Sales fully complied with the ATF guidance regarding the facilitation and record keeping of private transfers. Critically, much of the records CR Sales kept were invaluable evidence used in the criminal prosecution of Samuels. The evidentiary record is entirely silent on

any action CR Sales undertook to falsify or improperly maintain any record regarding the firearms transfers that occurred at its store. Thus, this cannot be considered a predicate statute.

**ix. Alleged Predicate Statute No. 8 – 18 U.S.C. § 922(t)(1).**

18 U.S.C. § 922(t)(1) provides that an FFL cannot transfer a firearm to any person unless a NICS background check is conducted and a unique identification number is provided, or if the NICS system has not notified that the transfer would violate federal law after three days from the FFL's initial contact with the NICS system. Here, CR Sales lawfully completed a NICS background check for each and every transfer that occurred at its store. The only time this statute could have been implicated was for Rose Stanford's firearm transfer at CR Sales on November 13, 2015. Rice testified that he did not receive an immediate response from the NICS system, regarding Stanford's qualifications to obtain the firearm. However—and in full compliance with section 922(t)(1)(B)(ii)—after the statutory three-day waiting period elapsed, CR Sales transferred the gun to Stanford. (SUMF ¶ 38.) Moreover, for every other transfer that occurred as CR Sales, an NICS background check was ran. CR Sales fully complied with this statute and fully complied with the ATF's guidance on facilitating private transfers. Thus, since the City cannot show that CR Sales knowingly violated this statute, it cannot serve as a predicate statute.

**x. Alleged Predicate Statute No. 9 – 18 U.S.C. § 923(a).**

18 U.S.C. § 923(a) provides that “[n]o person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General.” This statute immediately fails to serve as a predicate statute. CR Sales was properly licensed to engage in the business of dealing firearms. Accordingly, like every other plead statute, it cannot be a predicate statute.

**xi. Alleged Predicate Statute No. 10 – 18 U.S.C. § 924(a)(1).**

18 U.S.C. § 924(a)(1) reads as follows:

Except as other provided in this subsection, subsection (b), (c), (f), or (p), of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l);

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

As with the other plead predicate statutes, it is unclear what the City’s legal basis for alleging CR Sales knowingly violated this statute. Notwithstanding, turning to the merits of this statute makes it resoundingly clear that CR Sales could not have plausibly “knowingly” violated it. CR Sales could not have knowingly violated subsection (A) because it never made a false statement or representation in violation of federal law. Subsection (B) is entirely irrelevant to this litigation and it could not have been “knowingly” violated.<sup>13</sup> CR Sales could not have “knowingly” violated

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<sup>13</sup> Subsection (B) provides that a person can be violated 18 U.S.C. 924(a)(1)(B) if that person “knowingly violates subsection (a)(4), (f), (k), or (q) of section 922.” 18 U.S.C. § 922(a)(4) provides that a licensed importer, manufacturer, dealer, or collector cannot “transport in interstate commerce or foreign commerce any destructive device, machinegun, . . . , short-barreled shotgun, or short barreled rifle.” This is not applicable to this litigation. 18 U.S.C. § 922(f) relates to a “common or contract carrier’s” duties regarding the transportation or delivery of firearms in interstate commerce. Again, clearly not relevant to this litigation. 18 U.S.C. § 922(k) states that it is unlawful to transport or receive a firearm with its serial number removed. Again, not relevant to this litigation. Finally, 18 U.S.C. § 922(q) provides

subsection (C) because it was not importing or bringing firearms into the United States. Finally, CR Sales could not have “knowingly” violated subsection (D) because it did not willfully violate any provision of this chapter.

**xii. Alleged Predicate Statute No. 11 – 18 U.S.C. § 924(a)(3).**

18 U.S.C. § 924(a)(3) provides that it is unlawful for a licensed firearms dealer, importer, manufacturer or collector to “make[] any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or” to violate subsection (m) of section 922. Again, this statute cannot serve as a predicate statute because CR Sales could not have plausibly knowingly violated this statute. This matter does not concern whether CR Sales made a false statement or representation regarding its recordkeeping. There is no indication that CR Sales made a false statement or representation; rather CR Sales fully complied with the requirements set out by Congress and the ATF to lawfully facilitate private firearm transfers. Nothing in the evidentiary records plausibly supports the notion that CR Sales made false statement or representation. Furthermore—and as discussed above—CR did not violate subsection (m) of section 922, because it properly kept and maintained every record it was required to keep under federal law. *See id.* § 922(m); *supra* Section III, E, 2, viii.

**xiii. Alleged Predicate Statute No. 12 – 27 C.F.R. § 478.29.**

The City alleged that CR Sales knowingly violated 27 C.F.R. § 478.29. *See, e.g.,* Pet. ¶ 86. As an initial matter—and as previous discussed—this cannot serve as a “predicate statute” because it is not a statute—it is a Federal Regulation. Notwithstanding, if the Court were to find this regulation can be a predicate statute, it still cannot properly serve as a predicate statute because the City cannot establish that CR Sales knowingly violated this regulation. 27 C.F.R. § 478.29

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specific findings of Congress and provides that certain guns cannot be transferred into a school zone. Again, irrelevant to this subject litigation.

provides that no person other than a licensed firearm importer, manufacturer, dealer, or collector can “transport or receive in the State where the person resides . . . any firearm purchased or otherwise obtained by such person outside that State[.]” There is no reasonable argument that supports the conclusion that CR Sales knowingly violated this regulation. CR Sales was, at all relevant times, a licensed firearms dealer. This regulation solely pertains to persons, without a proper license, transporting or receiving firearms from another jurisdiction. Indeed, the title of the regulation is “§ 478.29 Out-of-State acquisition of firearms by nonlicensees.” *Id.* § 478.29. Since CR Sales was a properly licensed firearms dealer, this regulation is inapplicable and undoubtedly cannot serve as a predicate statute.

**xiv. Alleged Predicate Statute No. 13 – 27 C.F.R. § 478.99(a).**

27 C.F.R. § 478.99(a) provides that a licensed firearm importer, manufacturer, dealer, or collector “shall not sell or deliver any firearm to any person not licensed under this part and who the licensee knows or has reasonable cause to believe does not reside in . . . the State in which the licensee’s place of business or activity is located[.]” Initially, this cannot serve as a predicate statute because it is a regulation, not a statute. Furthermore, there is no material difference between this regulation and 18 U.S.C. § 922(b)(3), which was also plead as a predicate statute. *See supra* Section III, E, 2, vii. There is no evidence that supports Samuels or any of the prospective buyers that conducted private transfers at CR Sales were not residents of Missouri. CR Sales undertook due diligence to initiate NICS background checks and complete 4473 Forms. There is no indication, nor evidence, that supports that Samuels or any prospective buyer that had a firearm transferred to him were not residents of Missouri. Accordingly, this regulation cannot serve as a predicate statute.

**xv. Alleged Predicate Statute No. 14 – 27 C.F.R. § 478.102.**

27 C.F.R. § 478.102 provides that a licensed firearm importer, manufacturer, or dealer “shall not sell, deliver, or transfer a firearm to any other person who is not licensed” without first completing and complying with the NICS background check requirements. There is no material difference between his regulation and 18 U.S.C. § 922(t)(1), which was also plead as a predicate statute. *See* Section III, E, 2, ix. As discussed, for each and every transfer that occurred at CR Sales, CR Sales initiated a NICS background check on the prospective buyer and fully complied with the NICS requirements. *See id.* Without evidentiary support showing that CR Sales “knowingly” failed to comply with NICS background check requirements, this regulation cannot plausibly serve as a predicate statute.

**xvi. Alleged Predicate Statute No. 15 – 27 C.F.R. § 478.123(b)**

27 C.F.R. § 478.123(b) provides that “[a] record of firearms disposed of by a manufacturer to another licensee and a separate record of armor piercing ammunition dispositions to governmental entities, for exportation, or for testing or experimentation . . . shall be maintained by the licensed manufacturer on the licensed premises.” This clearly is inapplicable to CR Sales; accordingly, it fails to serve as a predicate statute.

**xvii. Alleged Predicate Statute No. 16 – 27 C.F.R. § 478.123(d).**

27 C.F.R. § 478.123(d) provides that “[e]ach licensed manufacturer shall maintain separate records of the sales or other dispositions made of firearms to nonlicensees.” This regulation solely pertains to a firearm manufacturer’s recordkeeping requirements. CR Sales is not a firearms manufacturer. Accordingly, this cannot serve as a predicate statute because CR Sales could not have plausibly knowingly violated it.

**xviii. Alleged Predicate Statute No. 17 – 27 C.F.R. § 478.124(a).**

27 C.F.R. § 478.124(a) provides that a licensed firearm importer, manufacturer, or dealer “shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person other than another licensee, unless the licensee records the transaction on a firearms transaction record, Form 4473[.]” This regulation cannot serve as a predicate statute because CR Sales was not selling or disposing firearms; rather, it was merely facilitating the private transfer of firearms. Notwithstanding, to the extent this regulation applies to CR Sales, it immediately fails because CR Sales properly and sufficiently recorded each transfer on a Form 4473 and fully complied with the ATF’s guidance for facilitated private transfers. (SUMF ¶ 58.) Thus, this plead predicate statute, along with every other statute and regulation plead by the City unequivocally fails.

**F. The City’s Negligence Per Se cause of action fails as a matter of law.**

The City’s negligence per se cause of action fails as a matter of law because the City has failed to establish a statutory duty or standard of care that CR Sales allegedly violated. The PLCAA—through an exception—permits negligence per se causes of actions to bypass the general prohibition. *See* 15 U.S.C. § 7903(5)(A)(ii). Under Missouri law, negligence per se is a form of ordinary negligence that results from the violation of a statute. *See Lowdermilk v. Vescovo Bldg. and Realty Co., Inc.*, 91 S.W.3d 617, 628 (Mo. App. E.D. 2002). “Negligence per se arises where the legislature pronounces in a statute that the conduct of a reasonable person must be, whether or not the common law would require similar conduct, and the court then adopts the statutory standard of care to define the standard of conduct of reasonable person.” *Id.* (citing *Monteer Prospectors Lounge, Inc.*, 821 S.W.2d 898, 900 (Mo. App. W.D. 1992)).

In order for the City to succeed in its negligence per se cause of action, it is incumbent on the City to establish “that a statute created a duty of care [CR Sales] owed personally to” Plaintiff and its residents. *Elkins*, 633 S.W.3d at 537–38. Here, the City alleges that CR Sales violated the

following statutes: 18 U.S.C. §§ 2, 4, 371, 922(a)(1), 922(a)(2), 922(b)(3), 922(m), 922(t)(1), 923(a), 924(a)(1), and 924(a)(3). *See* Pet. ¶ 118. The City further alleges CR Sales violated the following federal regulations: 27 C.F.R. §§ 478.29, 478.99(a), 478.102, 478.123(b), 478.123(d), and 478.124(a). *Id.* Based on these alleged violations, the City claims the listed statutes and regulations “are intended to curb firearm crime, prevent access to firearms by persons prohibited from possessing them, and protect public safety.” *Id.* ¶ 119. Thus, according to the City, “The City and its residents are within the class of persons meant to be protected by these laws and regulations.” *Id.* ¶ 120.

No matter, this negligence per se cause of action fails as a matter of law. The Missouri Court of Appeals, just last year, addressed precisely whether a plaintiff can rely on 18 U.S.C. § 922 as a basis for establishing a negligence per se cause of action under the PLCAA. *See Elkins*, 633 S.W.3d at 537–39. The *Elkins* Court held squarely that a plaintiff cannot, stating, plaintiffs “cannot rely on federal criminal statutes related to the sale of firearms and ammunition as establishing a duty or standard of care for a negligence per se claim in Missouri’s state courts. *Id.* at 539. Here, the City alleges that CR Sales allegedly violated numerous federal criminal statutes and regulations—including 18 U.S.C. § 922. Because these are federal criminal statutes and regulations that do not create an express or implied private, civil liability actions, these statutes cannot serve as a basis in which negligence per se can be premised. *See id.* at 538. Moreover, the PLCAA explicitly provides that “no provision of this chapter shall be construed to create a public or private cause of action or remedy.” 15 U.S.C. § 7903(5)(C). Accordingly, “This express negation of private right or remedy is dispositive,” *Elkins*, 633 S.W.3d at 539, and the City’s negligence per se cause of action fails a matter of law because it is entirely presupposed on the violation of federal criminal statutes—which is not permitted under *Elkins*. Since the City cannot



establish a statutory standard of care recognizable by Missouri state courts, it's negligence per se cause of action must be dismissed.

**G. The City's Negligent Entrustment cause of action fails as a matter of law.**

Although the PLCAA provides that civil suits alleging negligent entrustment are not preempted, *see* 15 U.S.C. § 7903(5)(A)(ii), the City's allegations of negligent entrustment against CR Sales fails as a matter of law. The PLCAA cannot be utilized to create a private cause of action for negligent entrustment. *See id.* § 7903(5)(C) (“[N]o provision of this chapter shall be construed to create a public or private cause of action or remedy.”). Under Missouri law, to establish a prima facie case sufficient enough to survive summary judgment,<sup>14</sup> the City must prove: (1) the entrustee was incompetent by reason of age, inexperience, habitual recklessness or other; (2) the entrustor knew or should have known of the entrustee's incompetence; (3) there was entrustment of the chattel; and (4) the negligence of the entrustor concurred with the conduct of the entrustee to cause the plaintiff's injuries. *See Elkins*, 633 S.W.3d at 534 (quoting *Matysyuk v. Pantyukhin*, 595 S.W.3d 543, 549 (Mo. App. W.D. 2020)).

The City's allegation of negligent entrustment against CR Sales is presupposed that CR Sales “knew or should have known that Samuels was engaged in unlicensed dealing in firearms.” Pet. ¶ 99. The City is unable to establish its prima facie case of negligent entrustment because it cannot show (1) there was an incompetent entrustee that was supplied a chattel that CR Sales knew or should have known of the incompetence of that entrustee; and (2) that CR Sales “supplied” chattel to an incompetent entrustee.

**1. *The City cannot establish that there was an “incompetent” entrustee sufficient to establish a prima facie case.***

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<sup>14</sup> CR Sales can establish a right to summary judgment by negating only one of the requisite elements of a claim for negligent entrustment. *See Hallquist v. Smith*, 189 S.W.3d 173, 176 (Mo. App. E.D. 2006).

The City’s Petition does not sufficiently allege—nor has it proven that there was an “incompetent” entrustee. “Proof of the entrustee’s incompetence is essential to establish liability under the doctrine of ‘negligent entrustment.’” *Evans v. Allen Auto Rental & Truck Leasing Co.*, 555 S.W.2d 325, 326–27 (Mo. banc 1977). “Failure to plead incompetence precludes an action for negligent entrustment.” *Wise v. Crump*, 978 S.W.2d 1, 3 (Mo. App. E.D. 1998). The City’s Petition fails to indicate precisely who the City alleges was the “incompetent” entrustee; rather, the Petition seems to conflate both the prospective buyers and Samuels as incompetent entrustees. Notwithstanding the inadequacies in the City’s Petition, the only plausible party that can be considered the “entrustee” are the prospective buyers—not Samuels. Samuels cannot be the entrustee because he was not the party that was supplied with a firearm. Samuels was merely utilizing CR Sales as a third-party FFL to facilitate private party sales.

Accordingly, Samuels, for purposes of this negligent entrustment cause of action, cannot be considered the entrustee because he was not supplied with a firearm—rather he was the supplier. Indeed, the PLCAA supports this conclusion. The statute defines negligent entrustment as “the supplying of a qualified product by a seller for the use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in manner” involving risk of injury to others. 15 U.S.C. § 7903(5)(B). Here, Samuels initiated private firearm sales through secondary markets, such as Gunbroker.com. (SUMF ¶ 9.) In order to lawfully conduct the private transaction, Samuels was required to ship the firearm to an FFL—such as CR Sales. *See Recordkeeping and Background Check Procedure for Facilitation of Private-Party Firearms Transfers*, ATF PROCEDURE 2020-2 (Sept. 2, 2020) (hereinafter “ATF Procedure 2020-2.”) Once the firearm was received by CR Sales, it was responsible for facilitating the private transaction by completing an ATF Form 4473, *see* ATF

Procedure 2020-2, and completing a NICS background check. *See* 18 U.S.C. § 922(t)(1)(A). Once the requisite procedures were finalized, the private transaction occurred. Samuels—as the original seller/transferor—never received or was “supplied” a firearm. Thus, since he was not the party that was supplied with a firearm, he cannot be considered an entrustee for purposes of negligent entrustment. *See* 15 U.S.C. § 7903(5)(B); *Matysyuk*, 595 S.W.3d at 549.

Thus, the only plausible party that can be considered an entrustee was the prospective buyer/transferee. Here, the City’s negligent entrustment cause of action fails because it cannot show that these prospective buyers were incompetent under Missouri law, or that CR Sales knew or should have known of their incompetence. In a six-month period, from June 1, 2015, to December 5, 2015, Samuels—at the most—utilized CR Sales to conduct and complete 10 to 11 private firearm transfers. For each of those transfers, CR Sales fully complied with federal law and the ATF’s guidance for facilitating private transfers. In accordance with federal law and ATF guidance, CR Sales observed and followed NICS background check requirements and completed Form 4473 for each transfer.

For each and every transfer that occurred at CR Sales, a Form 4473 was completed by the relevant parties. In order for a prospective buyer to receive the firearm, the prospective buyer had to complete Section B of the Form 4473, which required the prospective buyer to enter personal information indicating they are legally authorized possess the firearm. The first transfer occurred on June 1, 2015, in which Samuels transferred a firearm to James Joyce. Rice testified that there was nothing suspicious about this transfer (SUMF ¶ 17.) Furthermore, nothing indicates that Joyce was incompetent under Missouri law. Joyce filled out the following portion of the Form 4473:

10.a. Ethnicity		10.b. Race (Check one or more boxes.)	
<input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino		<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input checked="" type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	
11. Answer questions 11.a. (see exceptions) through 11.i. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.			
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning:</b> You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.		Yes	No
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)		Yes	No
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)		Yes	No
d. Are you a fugitive from justice?		Yes	No
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?		Yes	No
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)		Yes	No
g. Have you been discharged from the Armed Forces under dishonorable conditions?		Yes	No
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)		Yes	No
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)		Yes	No
j. Have you ever renounced your United States citizenship?		Yes	No
k. Are you an alien illegally in the United States?		Yes	No
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.		Yes	No
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.		Yes	No
13. What is your State of residence (if any)? (See Instructions for Question 13.)	14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.)		
MISSOURI	<input checked="" type="checkbox"/> United States of America <input type="checkbox"/> Other (Specify)		
15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?			

SUMF ¶ 15; Ex. I.

As the Form 4473 indicates, Joyce provided relevant personal information and information indicating he was legally capable of possessing a firearm in compliance with 18 U.S.C. § 922. Not only is there no evidentiary support for the notion that Joyce was “incompetent” for purposes of negligent entrustment. Critically, there is no reasonable argument that supports the conclusion that CR Sales knew or should have known of Joyce’s alleged incompetence. CR Sales fully complied with ATF guidance on how to facilitate private firearm transfers as an FFL. NICS background checks were conducted and a Form 4473 was completed.

CR Sales consistently followed ATF guidance and fully complied with federal law while conducting the private transfers at its store for the six-month period. For each transfer that occurred at CR Sales, a NICS background check was ran and the prospective buyer completed a Form 4473. For each transfer, the prospective buyer was legally competent to possess a firearm. The second time Samuels was at CR Sales, he purchased a firearm for himself on July 3, 2015. The Form 4473

Samuels filled out indicated his current residence was located at 2201 E 38<sup>th</sup> Street, Kansas City, Missouri. Moreover, Samuels filled out the following portion of the Form:

10.a. Ethnicity		10.b. Race (Check one or more boxes.)	
<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> American Indian or Alaska Native	<input checked="" type="checkbox"/> Black or African American	<input type="checkbox"/> White
<input checked="" type="checkbox"/> Not Hispanic or Latino	<input type="checkbox"/> Asian	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander	

  

11. Answer questions 11.a. (see exceptions) through 11.i. and 12. (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.	
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d. Are you a fugitive from justice?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
j. Have you ever renounced your United States citizenship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
k. Are you an alien illegally in the United States?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

  

13. What is your State of residence (if any)? (See Instructions for Question 13.) <u>Missouri</u>	14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input type="checkbox"/> Other (Specify) <input checked="" type="checkbox"/> United States of America	15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?
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SUMF ¶ 18; Ex. J.

As the above indicates, Samuels was not “incompetent” to possess a firearm. Moreover, there is no indication or inference that could be formed that supports the notion that CR Sales knew or should have known of Samuel’s alleged incompetence. Samuels—a captain of the Kansas City Fire Department—was lawfully receiving a firearm from CR Sales. Not only was Samuels the City’s own high-ranking employee, he also filled out the Form 4473 which provided he was lawfully capable of possessing the firearm. There is no reasonable argument the City could make that supports the conclusion that CR Sales knew or should have known of any alleged incompetence. CR Sale’s corporate representative explicitly testified that nothing about this transaction was suspicious. (SUMF ¶ 20.)

Similarly, the next transfer, which occurred on August 1, 2015, the prospective buyer filed out a Form 4473:

<b>10.a. Ethnicity</b> <input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino		<b>10.b. Race (Check one or more boxes.)</b> <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input checked="" type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	
<b>11. Answer questions 11.a. (see exceptions) through 11.l and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.</b>			
<b>a. Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>		Yes	No
<b>b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)</b>		Yes	No
<b>c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)</b>		Yes	No
<b>d. Are you a fugitive from justice?</b>		Yes	No
<b>e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?</b>		Yes	No
<b>f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)</b>		Yes	No
<b>g. Have you been discharged from the Armed Forces under dishonorable conditions?</b>		Yes	No
<b>h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)</b>		Yes	No
<b>i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)</b>		Yes	No
<b>j. Have you ever renounced your United States citizenship?</b>		Yes	No
<b>k. Are you an alien illegally in the United States?</b>		Yes	No
<b>l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.</b>		Yes	No
<b>12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.</b>		Yes	No
<b>13. What is your State of residence (if any)? (See Instructions for Question 13.)</b> MISSOURI	<b>14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.)</b> <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> United States of America		<b>15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?</b>

SUMF ¶ 21; Ex. K.

Again, the prospective purchaser appropriately filled out the Form 4473 indicating he was lawfully capable of possessing the firearm. After an NICS background check was performed and the prospective buyer filled out the above form, there was nothing indicating Paige was an incompetent entrustee. Moreover, nothing about this transaction was suspicious to CR Sales (SUMF ¶ 23.) Paige was not an incompetent entrustee for purposes of negligent entrustment and there is undoubtedly no evidence that shows CR Sales knew or should have known of alleged incompetence.

On October 14, 2015, Samuels transferred a firearm to his brother—Henry Samuels. For this transaction a NICS background check was ran and Henry Samuels filled out the Form 4473:

10.a. Ethnicity		10.b. Race (Check one or more boxes.)	
<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> American Indian or Alaska Native	<input checked="" type="checkbox"/> Black or African American	<input type="checkbox"/> White
<input checked="" type="checkbox"/> Not Hispanic or Latino	<input type="checkbox"/> Asian	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander	

  

11. Answer questions 11.a. (see exceptions) through 11.i. and 12. (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.	
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d. Are you a fugitive from justice?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
j. Have you ever renounced your United States citizenship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
k. Are you an alien illegally in the United States?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
13. What is your State of residence (if any)? (See Instructions for Question 13.)	Missouri
14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.)	<input checked="" type="checkbox"/> United States of America <input type="checkbox"/> Other (Specify) _____
15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?	

SUMF ¶ 25; Ex. M.

Similar to the other transfers, Henry Samuels was not an incompetent entrustee that was incapable of possessing a firearm. The NICS and Form 4473 furthermore provided the necessary evidence for CR Sales to continue with the transfer. Furthermore, Rice testified that nothing about this transaction was suspicious at the time. (SUMF ¶ 27.) Thus, Henry Samuels was not an incompetent entrustee—nor did CR Sales know or should have known about any alleged incompetence.

The next transaction occurred on October 30, 2015, in which Jeron Wilson was the prospective buyer. Wilson filled out the following portion of the Form 4473:

10.a. Ethnicity		10.b. Race (Check one or more boxes.)	
<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> American Indian or Alaska Native	<input checked="" type="checkbox"/> Black or African American	<input type="checkbox"/> White
<input checked="" type="checkbox"/> Not Hispanic or Latino	<input type="checkbox"/> Asian	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander	

  

11. Answer questions 11.a. (see exceptions) through 11.i. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.	
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d. Are you a fugitive from justice?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
j. Have you ever renounced your United States citizenship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
k. Are you an alien illegally in the United States?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

  

13. What is your State of residence (if any)? (See Instructions for Question 13.)	14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.)	15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?
Missouri	<input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> United States of America	

SUMF ¶ 29; Ex. N.

Again, the NICS background check that was performed and the Form 4473 provided clear evidence that Wilson was not an incompetent entrustee that was not capable of possessing a firearm. When questioned about this transfer, Rice testified that nothing about this transfer was suspicious at the time. (SUMF ¶ 31.) Accordingly, nothing in the record supports the notion that Wilson was incompetent to possess a firearm or CR Sales knew or should have known that Wilson was incompetent.

The next transfer occurred on November 5, 2015, when a firearm was transferred to Jim Andrews. Andrews filed out the following Form 4473:



10.a. Ethnicity <input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino		10.b. Race (Check one or more boxes.) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input checked="" type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	
11. Answer questions 11.a. (see exceptions) through 11.i. and 12. (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.			
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>		Yes	No
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)		Yes	No <input checked="" type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)		Yes	No <input checked="" type="checkbox"/>
d. Are you a fugitive from justice?		Yes	No <input checked="" type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?		Yes	No <input checked="" type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)		Yes	No <input checked="" type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?		Yes	No <input checked="" type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)		Yes	No <input checked="" type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)		Yes	No <input checked="" type="checkbox"/>
j. Have you ever renounced your United States citizenship?		Yes	No <input checked="" type="checkbox"/>
k. Are you an alien illegally in the United States?		Yes	No <input checked="" type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.		Yes	No <input checked="" type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.		Yes	No <input checked="" type="checkbox"/>
13. What is your State of residence (if any)? (See Instructions for Question 13.) Missouri	14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> United States of America	15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?	

SUMF ¶ 33; Ex. O.

With the NICS background check indicating the transfer could proceed and Andrews providing the relevant information on the Form 4473, there is no evidence of incompetency on behalf of Andrews. Moreover, Rice testified this transfer was not suspicious during this transaction and had no knowledge of any alleged scheme to traffic firearms. (SUMF ¶ 35.) Accordingly, there is no evidence that show Andrews was incompetent or that CR Sales knew or should have known of that incompetency.

The next transfer occurred on November 6, 2015, when Samuels transferred a firearm to his niece, Rose Marie Stanford. (SUMF ¶ 36.) Stanford filed out the following Form 4473:

10.a. Ethnicity		10.b. Race (Check one or more boxes.)	
<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> American Indian or Alaska Native	<input checked="" type="checkbox"/> Black or African American	<input type="checkbox"/> White
<input checked="" type="checkbox"/> Not Hispanic or Latino	<input type="checkbox"/> Asian	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander	

11. Answer questions 11.a. (See exceptions) through 11.l. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.		
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
d. Are you a fugitive from justice?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
j. Have you ever renounced your United States citizenship?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
k. Are you an alien illegally in the United States?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

13. What is your State of residence (if any)? (See Instructions for Question 13.) <b>Missouri</b>	14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> United States of America	15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?
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SUMF ¶ 36; Ex. P.

Rice testified that this transaction was not suspicious to him. (SUMF ¶ 39.) Moreover, because the NICS background check allowed for the transfer and Stanford filled out the Form 4473 indicating she was not barred by federal law to possess the firearm, there is no evidence that she was incompetent or that CR Sales knew or should have known of that incompetence.

The next transfer occurred on November 14, 2015, in which Samuels received a firearm for himself. Samuels completed the following portion of the 4473 Form:

10.a. Ethnicity		10.b. Race (Check one or more boxes)	
<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> American Indian or Alaska Native	<input checked="" type="checkbox"/> Black or African American	<input type="checkbox"/> White
<input checked="" type="checkbox"/> Not Hispanic or Latino	<input type="checkbox"/> Asian	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander	

  

11. Answer questions 11.a. (see exceptions) through 11.i. and 12. (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.	
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d. Are you a fugitive from justice?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
j. Have you ever renounced your United States citizenship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
k. Are you an alien illegally in the United States?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

  

13. What is your State of residence (if any)? (See Instructions for Question 13.) <b>MISSOURI</b>	14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input type="checkbox"/> Other (Specify) <input checked="" type="checkbox"/> United States of America	15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?
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SUMF ¶ 40; Ex. Q.

At this point, Rice testified that this was not suspicious to him at the time. (SUMF ¶ 42.) CR Sales presumably recognized Samuels at this point and knew he was captain of the Kansas City Fire Department. The relevant background checks and forms were all completed and nothing indicated that Samuels was suspicious. Accordingly, there could not have been a negligent entrustment here because Samuels was not incompetent and CR Sales did not know or should have known of that incompetency.

The next transfer occurred on November 24, 2015, when Samuels transferred a firearm to this wife's friend, Jennita Price. Price filled out the following portion of the Form 4473:

10.a. Ethnicity		10.b. Race (Check one or more boxes.)	
<input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino		<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input checked="" type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	
11. Answer questions 11.a. (see exceptions) through 11.l and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.			
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
d. Are you a fugitive from justice?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
j. Have you ever renounced your United States citizenship?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
k. Are you an alien illegally in the United States?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
13. What is your State of residence (if any)? (See Instructions for Question 13.)	14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.)		15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?
MISSOURI	<input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> United States of America		

SUMF ¶ 43; Ex. R.

Just like every other transfer that occurred at CR Sales, a NICS background check was performed, and Price filled out the Form 4473 which provided the necessary evidence for the transfer to be completed. Moreover, Rice testified that nothing about this transfer was suspicious to him, nor did he have any knowledge that Samuels was trafficking guns. (SUMF ¶ 45.) Price was not incompetent for purposes of negligent entrustment and there is no evidence showing that CR Sales knew or should have known of her incompetence.

The next transfer occurred on December 4, 2015, in which Jim Andrews was the prospective buyer. However, Rice had no idea that Samuels had any involvement in this transfer. (SUMF ¶ 49.) Notwithstanding, Andrews properly filled out the relevant portion of the Form 4473 indicating he was competent to possess a firearm:

10.a. Ethnicity <input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino		10.b. Race (Check one or more boxes.) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input checked="" type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	
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11. Answer questions 11.a. (see exceptions) through 11.i. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.	
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d. Are you a fugitive from justice?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
j. Have you ever renounced your United States citizenship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
k. Are you an alien illegally in the United States?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

13. What is your State of residence (if any)? (See Instructions for Question 13.) Missouri	14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input checked="" type="checkbox"/> United States of America <input type="checkbox"/> Other (Specify)	15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?
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SUMF ¶ 46; Ex. S.

The consistent trend continues: there is no evidence that remotely supports the notion that Andrews was an incompetent entrustee or that CR Sales knew or should have known that Andrews was an incompetent entrustee. Thus, this cannot serve as a basis for establish negligent entrustment on behalf of CR Sales.

On December 5, 2015, Samuels transferred a firearm to James Nash. To complete the transfer Nash filed out the following Form 4473:

10.a. Ethnicity		10.b. Race (Check one or more boxes.)	
<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> American Indian or Alaska Native	<input checked="" type="checkbox"/> Black or African American	<input type="checkbox"/> White
<input checked="" type="checkbox"/> Not Hispanic or Latino	<input type="checkbox"/> Asian	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander	

  

11. Answer questions 11.a. (see exceptions) through 11.i. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.	
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d. Are you a fugitive from justice?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
j. Have you ever renounced your United States citizenship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
k. Are you an alien illegally in the United States?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
13. What is your State of residence (if any)? (See Instructions for Question 13.)	KC, MO
14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.)	<input checked="" type="checkbox"/> United States of America <input type="checkbox"/> Other (Specify) _____
15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?	J.4 N

SUMF ¶ 50; Ex. T.

During this six-month period, there was no more than 10 or 11 transfers that occurred at CR Sales. When questioned about all 10 or 11 transfer, Rice testified that these transfers—even though they were for Jimenez Arms firearms—were not suspicious. (SUMF ¶ 7.) For every transfer that occurred, a NICS background check was properly conducted and a Form 4473 was completed. The record is entirely devoid of anything that would support the conclusion that any of the prospective buyers were incompetent; nor is there any evidence that supports the conclusion that CR Sales knew or should have known about a prospective buyer being incompetent. Finally, the last transfer that occurred in 2016 cannot serve as a basis for establishing negligent entrustment because this is when CR Sales properly reported Samuels to the ATF. Notwithstanding, nothing in the record shows that the prospective buyers at the last transfer were incompetent or that CR Sales knew of the prospective buyer incompetence. Rather, this is where CR Sales became aware

of suspicion associated with Samuels—not the prospective buyers. Accordingly, the merits of the City’s negligent entrustment claim fails as a matter of law because it cannot provide evidence to establish these indispensable elements that are required to present a prima facie case.

***2. The City cannot establish that CR Sales “supplied” chattel to an incompetent party.***

The City’s negligent entrustment cause of action fails as a matter of law because it cannot show that CR Sales supplied chattel to an incompetent party. The Missouri Supreme Court has explained that “negligent entrustment occurs when the defendant ‘supplies’ a chattel to another” with actual or constructive knowledge that the entrustment creates an unreasonable risk of injury. *Delana*, 585 S.W.3d at 325. There is a “fundamental element” that the “defendant must have ‘supplied’ a chattel to a third party who causes injury with the chattel.” *Lockhart v. Carlyle*, 585 S.W.3d 310, 316 (Mo. App. W.D. 2019). Here, CR Sales could not have “supplied” the firearms to the prospective buyers because CR Sales had no ownership interest in the firearms. Samuels purchased these firearms from an online market and the only reason the firearms were shipped to CR Sales was because it was listed on the website as an FFL that was in close proximity to Samuels. CR Sales’ role was to merely finalize the requisite background checks and paperwork to ensure the private transfer was being conducted lawfully. CR Sales was not the party providing firearms to any party—rather was merely facilitating the transfer from Samuels to a third party. Accordingly, CR Sales did not “supply” a chattel to an incompetent party.

**IV. CONCLUSION**

Examining the City’s lawsuit with the slightest scrutiny reveals that every aspect of its lawsuit against CR Sales fails as a matter of law. Every cause of action alleged against CR Sales must be dismissed because of Section 21.750, RSMo. Just like the City of St. Louis was prohibited from suing gun manufacturers and retailers to address the issue of straw purchases, the City of

Kansas City similarly is statutorily prohibited. In the alternative, the PLCAA prevents the City from bringing its common law causes of action of negligence, public nuisance, and civil conspiracy because the City cannot establish that CR Sales “knowingly” violated any of the plead 17 predicate statutes. The City’s negligent per se cause of action fails because a plaintiff cannot utilize federal statutes and regulations to establish a statutorily violation for purposes of negligence per se in Missouri state court. Finally—and alternatively—the City’s negligent entrustment action fails as a matter of law because the evidentiary record is devoid of any support that shows the prospective buyers were incompetent and that CR Sales knew of any alleged incompetence. CR Sales recognizes that the City has important governmental interests in addressing gun violence within its City. However, it is not the role of this Court to adhere to the City’s plan to legislate through litigation. The City must address its gun violence problems through traditional notions of governance—not by exploring “creative, transformative, and novel” lawsuits against entities such as CR Sales. Accordingly, this lawsuit must be dismissed. *See* Section 21.750, RSMo.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

It is hereby certified that notification of the filing of the above and foregoing was served electronically via the Court's ECF filing system, this 26th day of April, 2022 to:

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