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

CITY OF KANSAS CITY, MISSOURI,	)	
	)	
Plaintiff,	)	Case No. 2016-CV00829
	)	
v.	)	
	)	Division 9
JIMENEZ ARMS, INC., et al.,	)	
	)	
Defendants.	)	

PLAINTIFF'S OPPOSITION TO DEFENDANT CR SALES FIREARMS LLC'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Plaintiff City of Kansas City, Missouri (the "City") seeks to hold Defendant CR Sales Firearms LLC ("CR Sales") accountable under well-established principles of tort law for its facilitation of a trafficking ring that funneled illegal handguns into the Kansas City community. The facts in this case are straightforward: from 2015-2016, CR Sales completed 15 gun transfers at the behest of James Samuels, even though it knew that Samuels was dealing in firearms without a license—a crime under federal law. CR Sales knew this because Samuels told them that he was reselling guns for money. And CR Sales even admits that it knew James Samuels was engaged in unlawful conduct at the same time that it transferred guns to and from him. Some of the guns transferred by CR Sales have been recovered by the Kansas City Police Department—one in a shooting that injured a police officer and a bus driver—and others are still circulating in Kansas City or elsewhere. CR Sales broke federal firearms law and should be held accountable for its conduct. There is more than enough evidence to send this case to a jury.

CR Sales' motion for summary judgement makes three main arguments, each of which is premised on mistakes of law and fact.

First, CR Sales argues that it is immunized from liability by both state and federal law. But both the federal and state gun industry immunity laws allow claims to proceed when a defendant engages in unlawful conduct, which is exactly what CR Sales did here. The Missouri immunity statute prohibits local governments from bringing a lawsuit "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." Mo. Rev. Stat. § 21.750.5 (emphasis added). As a sister court recently held about a companion provision within the same statute, the use of the word "lawful" means that

the statute does not apply to the "*unlawful* . . . sale of firearms or ammunition." Order Denying Defendant's Motion to Dismiss for Failure to State a Claim for Public Nuisance, *Crawford v. Jimenez Arms*, 1916-CV17245 (Jackson Cty. Ct. Feb. 3, 2020) (emphasis in original) (citing Mo. Rev. Stat. § 21.750.4), attached as Exhibit 35. The gravamen of the City's claim is that CR Sales broke the law and should be held accountable for that *unlawful* conduct.

CR Sales further argues that the federal Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq* ("PLCAA") bars the City's claims. PLCAA provides some immunity from liability to members of the gun industry from lawsuits "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 [firearm or ammunition] by the person or a third party." 15 U.S.C. § 7903(5)(A). But PLCAA also carves out several exceptions to this grant of immunity, three of which are relevant here: (1) PLCAA does not apply to an action in which the defendant has knowingly violated a "State or Federal statute applicable to the sale or marketing" of guns or ammunition (this is known as the "predicate exception"); (2) it also does not apply to claims for negligence per se and (3) negligent entrustment. 15 U.S.C. § 7903(5)(A)(ii)-(iii). The City's claims in this lawsuit fit neatly within these three exceptions. Importantly, the predicate exception applies to the e*ntire* action because CR Sales' behavior was not just negligent and a nuisance, but also violated federal firearms laws. Therefore, PLCAA offers no help to CR Sales.

Next, CR Sales argues that there is no evidence in the record that the store knowingly violated federal firearms laws when it transferred firearms to and from James Samuels, citing the self-serving testimony of CR Sales' owner, Charles Rice. A fuller, and fairer, review of the record makes plain that there is such evidence, resulting in a genuine dispute of multiple issues of material fact, especially when viewing the evidence in the light most favorable to the City, as must be done

on summary judgment. Two critical facts foreclose summary judgment in this case. First, James Samuels testified at his deposition that *he told* CR Sales that he was reselling guns—i.e., that he was engaged in the business of selling firearms without a license. City's Statement of Disputed Facts ("SODF") ¶ 68. Additionally, CR Sales' owner is on record saying that he figured out that Samuels was a gun trafficker, and nonetheless transferred several firearms to him on November 2, 2016. SODF ¶ 80. Even CR Sales' own expert testified that this is a violation of federal law. SODF ¶ 84. The standard for knowing "merely requires proof of knowledge of the facts that constitute the offense," and "does not necessarily have any reference to a culpable state of mind or to knowledge of the law," *Bryan v. United States*, 524 U.S. 184, 192-93 (1998), but based on these facts, summary judgment would be inappropriate under any construction of that term.

CR Sales' gun transfers to and from Samuels when it knew he was engaged in an illegal firearms business were illegal in two ways: (1) CR Sales conspired with and aided and abetted Samuels' illegal business of selling firearms without a license, in violation of 18 U.S.C. § 923(a) (the gun trafficking crime); and (2) CR Sales broke federal firearms recordkeeping laws by signing and certifying on federal forms that it did not believe that the transactions were illegal and accepting materially false sales forms from Samuels (the straw purchasing crime). Because of this, CR Sales cannot take refuge under either the federal or state firearms immunity law.

Finally, CR Sales argues that the City's negligent entrustment and negligence per se claims fail as a matter of law. Initially, it bears noting that CR Sales acknowledges—as it must—that PLCAA creates exceptions for each of these claims. *See* CR Sales' Br. at 39, 41; *see also* 15 U.S.C. § 7903(5)(A)(ii).

With respect to the negligent entrustment claim, CR Sales has failed to establish that there are no set of facts under which a jury could conclude that CR Sales negligently entrusted multiple

firearms to James Samuels and his buyers. In fact, the evidence shows that each element of the negligent entrustment tort is met: (i) CR Sales had control of the firearms at issue; (ii) CR Sales knew or had reason to know that Samuels and his buyers were incompetent to possess such firearms because they were, respectively, a gun trafficker and customers of a gun trafficker who are each prohibited from receiving firearms; (iii) despite this knowledge, CR Sales supplied the firearms to Samuels and his buyers; and (iv) these firearms were used to cause injury to the City. *See Matysyuk v. Pantyukhin*, 595 S.W.3d 543, 549 (Mo. Ct. App. 2020) (listing negligent entrustment elements).

CR Sales' negligence per se argument boils down to its claim that federal firearms laws do not create a private right of action and cannot form the legal underpinning of a negligence per se claim. CR Sales' Br. at 39-41. But the City, a public entity, is within the class that federal firearms laws seek to protect. "Congress's focus was on protecting the public *in general* from gun crime and violence at the hands of felons and irresponsible persons." *Elkins v. Acad. I, LP*, 633 S.W.3d 529 (Mo. Ct. App. 2021) (italics in original). And the City brings this case here to protect its citizens. Federal firearms law, therefore, creates a standard of care by which CR Sales must abide.

* * * * *

This is a trial-worthy case. The City should have its chance to prove that CR Sales broke the law and that these violations caused harm to the City. Gun trafficking foreseeably leads to gun crime. And that was proven true in this case on July 2, 2020, when a man used one of the guns trafficked though CR Sales to shoot a bus driver and police officer on a public bus. SODF ¶¶ 85-88. Had CR Sales fulfilled its legal obligation and refused to transfer that gun (and others) to Samuels, that shooting would not have happened, and the City would be safer. The City thus

respectfully urges this Court to deny CR Sales' motion for summary judgment and send this case to trial.

LEGAL STANDARD

"Summary judgment is only appropriate 'if there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law.'" *Malin v. Mo. Ass'n of Community Task Forces*, 605 S.W.3d 419, 422 (Mo. Ct. App. 2020) (quoting *SNL Securities, L.C. v. Nat'l Ass'n of Ins. Comm'rs*, 23 S.W.3d 734, 735-36 (Mo. Ct. App. 2000)). "A genuine issue that will prevent summary judgment exists where the record shows two plausible, but contradictory, accounts of the essential facts . . . ." *Eivins v. Mo. Dep't of Corr.*, 636 S.W.3d 155, 164 (Mo. Ct. App. 2021). A court must "view the record in the light most favorable to the non-moving party and accord the non-moving party all reasonable inferences that may be drawn from the record." *Malin*, 605 S.W.3d at 422 (quoting *SNL Securities*, 23 S.W.3d at 735). The party moving for summary judgment "bears the burden of establishing a legal right to judgment and the absence of any genuine issue of material fact required to support the claimed right to judgment." *Eivins*, 636 S.W.3d at 164.

ARGUMENT

I. There is ample evidence that CR Sales broke federal firearms laws.

CR Sales' argument that it is immune from liability under federal and state law requires that the company show, *inter alia*, that it did not knowingly violate a federal or state gun law. *See infra* Sections II and III. But the record is replete with evidence that the company *did* violate such laws, and this evidence is more than sufficient to establish a "genuine issue[] of material fact." *Malin*, 605 S.W.3d at 422 (quoting *SNL Securities*, 23 S.W.3d at 735-36).

While CR Sales' motion cherry-picks self-serving testimony, the record contains substantial evidence showing that it knowingly broke federal gun laws by helping James Samuels engage in the business of dealing firearms without a license, i.e., traffic guns. The record also contains evidence indicating that CR Sales violated federal firearms record-keeping laws when it signed forms certifying to the legality of these transfers. This section explains the factual underpinning of the City's claims and explains how CR Sales broke the law, which, as explained in Sections II and III, means that CR Sales is not immune from liability under federal or state law.

A. CR Sales knew James Samuels was a gun trafficker but nevertheless broke the law by transferring guns at his behest.

1. There is strong and direct evidence that CR Sales knew that James Samuels was a gun trafficker in 2015.

James Samuels is a convicted gun trafficker. CR Sales' Statement of Uncontroverted Material Facts ("SUMF") ¶ 3. In 2020, Samuels pled guilty to engaging in the business of dealing in firearms without a license, conspiring to make false statements during purchase of firearms, and selling a firearm and ammunition to a prohibited person, in violation of: (1) 18 U.S.C.§§ 371 and 924(a)(1)(A); (2) 18 U.S.C. §§ 922(a)(1)(A) and 923(a), and; (3) 18 U.S.C. §§ 922(d)(1) and 924(a)(2); CR Sales' SUMF Ex. C. His scheme involved buying guns cheaply, then transferring the guns at a federal firearms licensees ("FFL") to straw purchasers who could pass a background check, so he could create "paper to cover" him, before transferring the guns to the actual purchaser, who was typically someone who could not pass a background check. SODF, Ex. 24, ¶ 44. One of the FFLs that Samuels relied on to execute his scheme was CR Sales.

Samuels started going to CR Sales on June 1, 2015, to conduct his illegal business. CR Sales' SUMF ¶¶ 13-16, Ex. I. His *modus operandi* was to purchase cheap Jimenez Arms pistols from a website called Gunbroker.com and have them shipped to CR Sales where he would pick

them up. SODF ¶¶ 9-13, 59. He would also bring customers to CR Sales to transfer pistols to them. SODF ¶ 59. Between June 1, 2015, and December 5, 2015, Samuels came back to CR Sales at least ten times to both have guns transferred to him and transfer guns to third parties. SODF ¶ 59. Six of these transactions (all Jimenez Arms pistols) were within a 41-day period between October 14 and November 24, 2015. SODF ¶¶ 59, 79(d). There is ample evidence that shows that CR Sales was on notice about this illegal scheme and contradicts CR Sales' assertion that it did not know Samuels was dealing in firearms without a license.

First, James Samuels himself testified that *he told* CR Sales that he was reselling the guns that he was picking up at CR Sales:

> Q. So you told them you were buying guns and then transferring guns for money?
>
> A. Yes.
>
> Q. Okay. Did you ever tell them that you did not have a Federal Firearms' License?
>
> A. They knew that because I was using them to complete the transfer. If I had had a license, I would have just completed the transfer myself.
>
> Q. All right. So I guess what you're saying, then, it was like you weren't hiding what you were doing?
>
> A. No.
>
> (MR. SCHULTZ: Objection to the form of the question)
>
> A. No, I was not.
>
> Q. And you had no reason to hide what you were doing?
>
> A. No.

SODF ¶ 68; Ex. 5, Samuels Depo. 27:14-28:5.

Samuels' testimony that he told CR Sales that he was reselling guns and that they knew that he did not have a license creates a sufficient factual dispute to defeat summary judgment.[1] It is direct evidence contradicting CR Sales' implausible claim that it did not know that James Samuels was trafficking firearms until November of 2016. *See* CR Sales' Br. at 23, 31. This testimony, moreover, aligns with that of a CR Sales' employees who testified that "usually, 90 percent of [gun traffickers] will tell you they're selling them on the side." SODF ¶ 69.

Second, ten out of the 11 guns in these 2015 transactions were Jimenez Arms pistols. SODF ¶¶ 59, 78. As Charles Rice, CR Sales' owner, stated in an interview shortly after Samuels' arrest: "[Jimenez Arms guns] are not something you would collect. It's more something that someone might want on the street, a throwaway-type gun. That raised red flags." SODF ¶ 80(e); *see also* SODF Ex. 3 Rice Depo., 39:1-22 (Charles Rice testifying that Jimenez Arms guns are "junky firearm[s]," "that they were not stocked by CR Sales, and agreeing that they are "not something you would collect," but are "something that somebody might want on the street"). Don Basso, the assistant manager and clerk on many of the transactions, similarly testified that Jimenez Arms pistols are "crap," "junk," and a product of "poor materials" and "poor workmanship." SODF ¶ 75. And the City's trafficking expert and former ATF Agent, Joseph Bisbee, explained that Jimenez Arms gun are "common to see in firearms trafficking schemes." SODF ¶ 76. CR Sales does not—and, indeed, cannot—offer a plausible explanation for why Samuels would be buying and selling so many of these junky, non-collectors' items other than gun trafficking.

[1] Charles Rice testified that he was never told that Samuels had a license to engage in the business of firearms dealing and would not have needed to run a background check on Samuels if he did have one. SODF ¶ 68. Under Federal law, an FFL like CR Sales only needs to conduct background checks for gun transfers on unlicensed individuals, not on other FFLs. 18 U.S.C. § 922 (t)(1) (requiring background checks on unlicensed individuals).

Third, Samuels completed several transactions within suspiciously short time frames. For example, on October 30, 2015, Samuels came in and transferred a Jimenez Arms J.A. 9 to one of his buyers. SODF ¶¶ 59, 79. Then one day later, he came in and transferred an identical firearm to another buyer. SODF ¶¶ 59, 79. That transfer was not completed until November 5, 2015 because the buyer's background check came back as "Delay." SODF ¶ 59 Then the day after, on November 6, 2015, Samuels came back in and transferred another one of the same exact guns to yet another buyer. SODF ¶¶ 59, 79. That transfer was also delayed and was not completed until November 13, 2015. SODF ¶ 59. Then the next day—November 14, 2015—Samuels came back to the store and picked up the exact same type of gun that he had just transferred three times to three different individuals. SODF ¶ 59. It's difficult to imagine what plausible explanation there is for this set of circumstances other than the most obvious one—Samuels was dealing in firearms.

Fourth, Samuels utilized CR Sales to both *buy and sell* Jimenez Arms firearms in 2015—ten in total. SODF ¶¶ 59, 78. CR Sales thus had actual knowledge of both his buying and selling of guns. And he brought in eight separate people to whom he sold a firearm at CR Sales. SODF ¶ 59. All of this information was available to CR Sales at any time because CR Sales maintains a customer profile for each of its customers that can be called up to view the records of their transactions. SODF ¶ 60.

The City's trafficking expert reviewed this record and identified numerous red flags in total—more than enough to conclude that CR Sales knew full well that James Samuels was a trafficker. SODF ¶ 77. Based on this, Mr. Bisbee concluded that signs of trafficking should have been evident to CR Sales by the third or fourth transaction in 2015. SODF ¶ 77. Yet, CR Sales completed *eleven* transfers total for Samuels in 2015. SODF ¶¶ 59, 78. Notwithstanding CR Sales' self-serving assertions that the transactions were "not necessarily" suspicious, *see* CR Sales' Br.

at 26-27, there is ample evidence from which a jury could draw the conclusion that CR Sales knew full well that Samuels was using its store to traffic firearms in 2015, especially when the evidence is viewed in the light most favorable to the plaintiff.

2. CR Sales transferred guns to Samuels on November 2, 2016, with actual knowledge that he was engaged in the business of dealing in firearms without a license.

CR Sales admitted that it believed on November 2, 2016, that James Samuels was a gun trafficker who was purchasing guns for resale, but it nonetheless completed four transactions for him on that date. CR Sales' SUMF ¶¶ 53-54 (admitting CR Sales' suspicion of Samuels on November 2, 2016). As even the CR Sales' own expert admits, an FFL must decline to perform a transfer that it knows is illegal, and CR Sales' failure to do so here defeats any claim to summary judgment. SODF ¶ 84.

Shortly after Samuels was arrested, Charlies Rice, CR Sales' owner, did an interview on local television in which he said: "I said something to [Samuels] about it**. Look, you can't be dealing in firearms without a license.** You're going to get yourself in trouble. And I'm not going to get myself in trouble." SODF ¶ 80(e) (emphasis added). During his deposition, Rice testified that he "formed [the] opinion on November 2, 2016" that Samuels was engaged in wrongdoing. SODF ¶ 80(c), Ex. 3, Rice Depo. 73:20-21. Assistant Manager Mr. Basso also testified that "it appeared that [Samuels] was doing business without a license and that he was, you know, getting people lined up to sell the guns to and when it became *obvious* I told Charlie [Rice] . . . ." CR Sales' SUMF, Ex. H at 63:24-64:14 (emphasis added); SODF ¶ 80(b).

Notwithstanding CR Sales' admitted knowledge of Samuels' illegal scheme on November 2, 2016, CR Sales transferred three Jimenez Arms pistols to Samuels that day. CR Sales' SUMF ¶ 52, Ex. U. At the same time, CR Sales facilitated a transfer of a Jimenez Arms pistol from Samuels

to one of the other individuals who accompanied him to the store. SODF ¶ 59. CR Sales was aware that they can decline to transfer a firearm if the transaction appears to be illegal, yet it transferred three guns to a trafficker, and one gun from a trafficker to a likely straw purchaser. SODF ¶¶ 59, 62, 83. This decision was tragic: One of the four guns transferred that day, bearing the serial number 289062, was used on July 2, 2020, to shoot a police officer and bus driver on a public bus. SODF ¶¶ 85-88.

In a bid to explain away its behavior, CR Sales claims that it called the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") to report Samuels *after* it assisted him in completing these illegal transactions. SODF ¶ 81 (b), (d) (citing Ex. 33, CR Sales' RFA Response No. 3 admitting to the City's request for admission that "Charles Rice did not call law enforcement before transferring Jimenez Arms pistol bearing serial number 289062 to James Samuels on November 2, 2016"). Although its brief is unclear on this point, CR Sales appears to suggest that the call to the ATF somehow immunizes it from knowingly transferring guns to a gun trafficker on this date. CR Sales' Br. at 28-29. This is wrong for two reasons.

As an initial matter, there is no principle of law—and CR Sales cites none—that absolves one participating in a crime if they call law enforcement to report that crime. While cooperation with the government often leads to reduced sentences, it does not negate the fact that someone has committed the crime.

Second, it is far from certain that this phone call even happened. The testimony about this is conflicting and requires a credibility determination that cannot be made on summary judgment. While CR Sales says the call happened *after* the transaction took place, CR Sales' SUMF ¶ 56, Mr. Basso testified that the call happened prior to the transaction being completed and that CR Sales was instructed by the ATF to complete the transaction. SODF ¶ 81(a). But CR Sales has not

been able to produce a shred of documentation to back up this phone call—no phone records, no notes, no emails memorializing this call—nothing. SODF ¶ 81(e). Charles Rice cannot even remember the name of the person that he purportedly talked to or what exactly he said. SODF ¶ 81(c). And despite the fact that the store maintains a "Do Not Sell" list, there is no indication that Samuels was placed on it. SODF ¶ 82.

B. CR Sales' Violations of Law

When CR Sales became aware that James Samuels was engaged in the business in dealing firearms without a license, it became obligated not to transfer guns to or from him. Its continued transactions with him broke the law in two ways.

First, CR Sales violated the law by knowingly assisting James Samuels with his illegal firearms business. A bedrock of federal firearms law is that "[n]o person shall engage in the business of . . . dealing in firearms. . . until he has filed an application with and received a license to do so from the Attorney General." 18 U.S.C. § 923(a); *see also* 18 U.S.C §§ 922(a)(1)(a) ("It shall be unlawful—(1) for any person— (A) except a . . . licensed dealer, to engage in the business of . . . dealing in firearms . . . ."). Federal law specifies that "a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms" is engaged in the business of dealing firearms, but excludes "a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms." 18 U.S.C. § 921(a)(21)(C). Here, CR Sales' owner is on record saying that he told Samuels, "[l]ook, you can't be dealing in firearms without a license,"—yet he still transferred four firearms to and from Samuels that day. SODF ¶¶ 59, 81(e).

Assisting one in the crime of engaging in the business of dealing in firearms without a license is itself a crime. *See* 18 U.S.C §§ 2, 371 (aiding and abetting and conspiracy liability).[2] Taking conspiracy first, the crime of conspiracy is well established under federal law. The elements of a conspiracy are: (i) an agreement between two or more people to pursue an unlawful objective; (ii) voluntary agreement by the defendant to pursue the unlawful objective; and (iii) an overt act to further the objective of a conspiracy by one or more members of the conspiracy. *U.S. v. Hern*, 926 F.2d 764, 767-68 (8th Cir. 1991) (upholding licensed gun dealer's conviction for conspiracy to sell firearms to out-of-state residents). "[T]he law of conspiracy is clear that conspirators need not know or even have contact with each other. It is sufficient that a conspirator knows that the purpose or complexity of the scheme requires the aid and assistance of additional persons." *U.S. v. Goodson*, No. 10-CR-00517, 2011 U.S. Dist. LEXIS 143984, at *6 (E.D. Mo. Nov. 23, 2011).

There is ample evidence in the record that would permit a finder of fact to find that each element of a conspiracy has been satisfied. First, CR Sales knew Samuels did not have a federal firearms license, and Samuels told CR Sales that he was engaged in the business of selling guns. Yet, CR Sales continued to supply him with firearms and assist him with transferring firearms to third parties. The unlawful objective of this conspiracy was to profit from Samuels' unlawful business—CR Sales received $20 to $43 each time that it transferred guns to or from Samuels. SODF ¶ 70. Finally, CR Sales committed an overt act to further the objective of a conspiracy by completing these transfers for Samuels. Both Samuels and CR Sales profited from this set up. SODF ¶¶ 65, 67, 70. That Samuels did not subjectively believe that he was engaged in a conspiracy

[2] *See infra* Section III(B) for additional discussion of conspiracy and aiding and abetting liability.

with CR Sales, see CR Sales' SUMF ¶ 57, does not negate the fact that his and CR Sales' actions support such a claim.

Aiding and abetting liability under 18 U.S.C. § 2 is similar to conspiracy liability but "rests on a broader base; it states a rule of criminal responsibility for acts which one assists another in performing." *Nye & Nissen v. United States*, 336 U.S. 613, 620 (1949). "Under § 2, the acts of the principal become those of the aider and abettor as a matter of law." *United States v. Simpson*, 979 F.2d 1282, 1285 (8th Cir. 1992), abrogated on other grounds by *Dixon v. United States*, 548 U.S. 1, (2006). To be held liable under this theory "requires the existence of 'some affirmative participation which at least encourages the perpetrator.'" *United States v. Baumgarten*, 517 F.2d 1020, 1027 (8th Cir. 1975) (quoting *United States v. Thomas*, 469 F.23 145, 147 (8th Cir. 1972))..

As with conspiracy, there is sufficient evidence in the record that a fact-finder could find that CR Sales aided and abetted Samuels' illegal scheme. CR Sales was not a passive vessel for Samuels' business; it provided a critical component of Samuels unlawful enterprise by allowing him to use its license to conduct his own firearms business. Samuels, moreover, brought in numerous third parties for whom CR Sales completed paperwork and transferred guns to at Samuels' behest. SODF ¶ 59. These were all forms of active participation in Samuels' scheme to sell guns without a license. CR Sales thus aided and abetted Samuels unlawful scheme.

Second, CR Sales broke federal recordkeeping laws by transferring guns to Samuels when it knew that he was not the actual purchaser and instead had plans to resell them. Federal law imposes obligations on gun dealers to keep and maintain certain records and follow a procedure which includes filling out ATF Form 4473 prior to transferring a gun to a person without a license and keeping an acquisition and disposition log of all firearms it transfers. *See* 27 C.F.R. §§ 478.123(d), 478.125(e). Making a false entry into those records is a crime. 18 U.S.C. 922 (m) ("It

shall be unlawful for any . . . licensed dealer . . . knowingly to 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 pursuant to section 923 of this chapter [18 USCS § 923] or regulations promulgated thereunder."). Federal law also prohibits straw purchasing—i.e., purchasing a gun for someone else (unless it is a gift). *See generally Abramski v. United States*, 573 U.S. 169 (2014). For this reason, any customer at a gun dealer must certify on the Form 4473 that they are buying the gun for themselves. *Id.* at 173-74.

"A dealer violates the [Gun Control Act[3]] if the dealer transfers a firearm based upon information in ATF Form 4473 that he knows or has reason to believe is false." *Shawano Gun & Loan, LLC v. Hughes*, 650 F.3d 1070, 1073 (7th Cir. 2011) (citing 18 U.S.C. §§ 922(m) and 924(a)(1)(A)) and 27 C.F.R. § 478.124(c)); *Williams v. Beemiller*, Inc., 952 N.Y.S.2d 333, 339 (N.Y. App. Div. 2012), *opinion amended on reargument*, 962 N.Y.S.2d 834 (N.Y. App. Div. 2013); *see also Corporan v. Wal-Mart Stores E., LP*, No. 16-CV-2305-JWL, 2016 WL 3881341, at *3 (D. Kan. July 18, 2016) ("Assuming, then, that plaintiff could amend her complaint to include the allegation that Form 4473 was signed by a salesperson with knowledge of the transaction . . . , then plaintiff will have alleged sufficient facts . . . to support a plausible claim that defendants certified to their belief that the sale was lawful when, in fact, they had knowledge that Reidle was not the actual buyer of the firearm.").[4]

[3] The City uses the term "Gun Control Act" to refer to provisions of the "Omnibus Crime Control and Safe Streets Act of 1968 and the Gun Control Act of 1968," as well as subsequent acts of congress that were folded into these provisions in the U.S. Code codified at 18 U.S.C. § 921 et seq.

[4] Relatedly, "a licensed dealer may be criminally liable for aiding and abetting a gun purchaser's making of false statements or representations in the dealer's firearms transfer records." *Williams*, 952 N.Y.S. 2d at 339. Thus, by *accepting* the ATF Form 4473 from Samuels that contained materially inaccurate statements—that Samuels was the actual purchaser of the weapon

When an FFL transfers a gun to a third party—as CR Sales did to Samuels and his associates at least 15 times—an employee of the FFL must sign the following statement: "it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this [Form 4473] to the person identified in Section A [the transferee/buyer]" based upon their review of the 4473 Form and knowledge of state and federal firearms laws. SODF ¶ 63. In turn, federal regulations state that an FFL "shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm and transfer the firearm described on the Form 4473." 27 C.F.R. § 478.124(c)(5). The transferee of the firearm is asked on Form 4473 whether he or she is "the actual transferee/buyer of the firearm(s) listed on this form?" and the form further warns: "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." SODF ¶ 64.

Here, as explained above, there is evidence in the record that CR Sales knew that Samuels was not purchasing firearms for himself but was instead buying them to resell. Indeed, Samuels himself testified that he told CR Sales that he was transferring guns for money. SODF ¶ 68. Though CR Sales says it did not know that Samuels was not the actual purchaser of these guns, his testimony makes this a disputed material fact. And indeed, CR Sales' own statements indicates it had knowledge that the November 2, 2016 transactions were illegal. *See supra* Section I(A)(2). On that date, CR Sales transferred *three* Jimenez Arms pistols to Samuels that it knew full well he did not intend on keeping, as explained in detail above. By accepting these obviously false 4473

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when he was not—CR Sales unlawfully aided and abated Samuels violation of 18 U.S.C. § 922(a)(6), prohibiting a person from "mak[ing] any false or fictitious oral or written statement . . . intended or likely to deceive [a] . . . dealer . . . with respect to any fact material to the lawfulness of the sale . . . ."

Forms from Samuels and countersigning them, CR Sales violated 27 C.F.R. § 478.124(c), which requires 4473 Forms to be signed only if the transferee may legally acquire the firearm, as well as 18 U.S.C. 922(m), which prohibits false entry in a required firearms record.

II. Mo. Rev. Stat. § 21.750 does not protect CR Sales in this case because it only applies to lawful conduct.

CR Sales' argument about Missouri's immunity statute is premised on a simple mistake of law. The City's claim here is predicated on CR Sales' *illegal* conduct (not the illegality of other's conduct). But Section 21.750.5 applies only to the "*lawful* design, manufacture, marketing, distribution, or sale of firearms or ammunition to the public." *Id*. (emphasis added). Thus, it does not apply to the "*unlawful* . . . sale of firearms or ammunition," as Judge Campbell recently held in a case related to this one about Section 21.750.4, which uses the same operative, modifying word: "lawful." Order Denying Defendant's Motion to Dismiss for Failure to State a Claim for Public Nuisance, *Crawford v. Jimenez Arms*, 1916-CV17245 (Jackson Cty. Cir. Ct. Feb. 3, 2020), Ex. 35 (emphasis in original). Put simply, "lawful," means what it says.

This section first examines the plain text of this statute, it then explains why the main precedent on which CR Sales relies, *St. Louis v. Cernicek*, is inapposite, and finally it analyzes CR Sales' out of state statutes and precedent, which support the City's claim here.

A. The plain language of the statute permits the City's claims based on CR Sales' illegal conduct.

Missouri's gun industry immunity law does not apply to lawsuits seeking accountability for unlawful conduct. As explained above, there is substantial evidence that CR Sales violated the law when it knowingly sold guns to James Samuels. Missouri's firearms immunity statute, by contrast, prevents a city from bringing any suit based on *lawful* activity by firearms dealers and manufacturers:

> 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.

Mo. Rev. Stat. § 21.750.5 (emphasis added). The statute also declares a legal principle that *lawful* firearms activity is not a nuisance: "The *lawful* design, marketing, manufacture, distribution, or sale of firearms or ammunition to the public is not an abnormally dangerous activity and does not constitute a public or private nuisance." Mo. Rev. Stat. § 21.750.4 (emphasis added).

The upshot of these two provisions is clear: a plaintiff may not bring a claim against a firearms manufacturer for certain *lawful* activity but may bring such a case—as is done here—based on the ""*unlawful* . . . sale of firearms or ammunition." *See* Order Denying Defendant's Motion to Dismiss for Failure to State a Claim for Public Nuisance, *Crawford v. Jimenez Arms*, 1916-CV17245 (Jackson Cty. Cir. Ct. Feb. 3, 2020), Ex. 35 (emphasis in original). Any other reading would impermissibly erase the word "lawful" from the statute. And the Court "must presume every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language." *Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013). Thus, since the City's claim is that CR Sales acted *unlawfully* (a claim that is well supported by the evidence), Mo. Rev. Stat. § 21.750.5 does not apply to the City's lawsuit.

B. The main precedent that CR Sales relies on, *St. Louis v. Cernicek,* is premised on a distinct legal theory from the one the City relies on in this case and is thus inapposite.

CR Sales relies heavily on *St. Louis v. Cernicek*, 145 S.W.3d 37 (E.D. Mo. Ct. App. 2004) to try and obscure the plain language of the statute, arguing that *Cernicek* is "almost identical" to the case here. CR Sales' Br. at 5. Not so. *Cernicek* stands for the proposition that *tortious* conduct is not necessarily *unlawful* within the meaning of Section 21.750.5, i.e., conduct can be tortious,

but not in violation of any statute. The City's claim here, by contrast, is that CR Sales' conduct was *illegal*—i.e., it violated federal firearms law—in addition to being tortious. *Cernicek's* core holding, therefore, does not bind this Court—and, indeed, as explained below, the reasoning of *Cernicek* supports the City's argument.

By way of background, *Cernicek* arose when the City of St. Louis brought a public nuisance suit against a large swath of the gun industry, including various dealers and manufacturers. St. Louis alleged that the defendants generally "knew or should have known" that their business practices diverted guns to juveniles, criminals, and other prohibited possessors, which led to those guns' use in crimes." *Cernicek*, 145 S.W.3d at 38-39. Two subsections of Mo. Rev. Stat. § 21.750 were at issue in that case, section 21.750.5, which CR Sales' relies on, and section 21.750.4, which CR Sales neglects to cite in its brief. Section 21.750.4 provides: "The lawful . . . sale of firearms or ammunition to the public . . . does not constitute a public or private nuisance." *Id.* (emphasis added).

As the appellate court explained, "[t]he City [of St. Louis] claim[ed[that it [wa]s suing Defendants for their 'tortious' conduct and that the terms 'tortious' and 'unlawful' are interchangeable." *Cernicek*, 145 S.W.3d at 42. The court disagreed reasoning that St. Louis' argument would render subsection 4 "mere idle verbiage." *Id*. at 43. That is because if firearm industry activities are not, as a matter of law, tortious or a nuisance under subsection 4, those activities cannot be *unlawful* for purposes of applying immunity under subsection 5. *Id.*. Looking at the statutory scheme, those words were intended to have different meanings. CR Sales' failure to address this reasoning—or even cite subsection 4—renders its analysis of this case wrong on its face.

Applied here, *Cernicek*'s reasoning supports the City's argument that its claims—premised on CR Sales' *illegal* conduct—are not prohibited under Mo. Rev. Stat. § 21.750.4-5. CR Sales' interpretation of subsection 5 reads the word "lawful" right out of the statute—it would render it "idle verbiage," which is exactly what the *Cernicek* court sought to avoid. *See Cernicek*, 145 S.W.3d at 43. Perhaps recognizing this fatal flaw, on page 6 of its brief, CR Sales drives an ellipsis through the word "lawful," choosing to erase the word from the statute rather than deal with it. CR Sales' Br. at 6 ("abatement or injunctive relief resulting from or relating to the . . . sale of firearms or ammunition to the public." (quoting Mo. Rev. Stat. § 21.750.5)).

C. CR Sales' reliance on out-of-state precedent is similarly misguided and does not support its arguments with respect to Mo. Rev. Stat. § 21.750.

CR Sales next turns to off-point, out-of-state statutes and precedent that do not support its arguments that Mo. Rev. Stat. § 21.750.5 bars the City's claims. A review of these statutes and the cases interpreting them shows that they are not analogous to Missouri law.

First, CR Sales cites a Nevada statute that it falsely claims is "near[ly] identical" to the Missouri statute. CR Sales Br. at 7. That statue reads: "[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. That statute does not limit its reach to "lawful*"* conduct like Mo. Rev. Stat. § 21.750.5 does. This is a crucial distinction that undercuts any attempts to analogize between the two statutes.

Indeed, the case interpreting the Nevada statute that CR Sales cites, *Parsons v. Colt's Mfg. Co. LLC*, 499 P.3d 602, 608 (Nev. 2021), *supports* the City's claim. CR Sales' Br. at 7-8. The primary question before the Nevada Supreme Court in *Parsons* was in fact similar to the claim raised by the City here: whether a plaintiff could assert a claim "premised on allegations that

firearms manufacturers and dealers knowingly violated federal and state machine gun prohibitions . . . under [Nev. Rev. Stat. § 41.131].” *Id.* at 605-06. The court noted that the plaintiffs asked the Court to limit the statute’s reach to lawful activities:

> This court would have to insert the word “legal” or “lawful” between “any” and “firearm” for the Parsonses’ allegation of fault to escape NRS 41.131’s reach, and this court does not read in implied terms that the Legislature omitted.

Id. at 608. In contrast to the Nevada law, the Missouri law *does* contain the word “lawful,” and the analysis in *Parsons* simply does not apply. Instead of reading a word into the statute, CR Sales asks the court to read the word lawful *out of the statute*. The Nevada law and precedent applying it thus only serve to buttress the City’s claim.

For this same reason, CR Sales’ reliance on the Indiana immunity statute misses the mark. The Indiana statute contains two separate provisions; the first contains the modifier “lawful” and the second does not:

> [A] a person may not bring or maintain an action against a firearms or ammunition manufacturer, trade association, or seller for:
> (1) recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the *lawful:*
> (A) design;
> (B) manufacture;
> (C) marketing; or
> (D) sale;
> of a firearm or ammunition for a firearm; or
> (2) recovery of damages resulting from the criminal or unlawful misuse of a firearm or ammunition for a firearm by a third party.

Ind. Code. § 34-12-3-3 (emphasis added).

The case CR Sales cites applying this statute, *KS&E Sports v. Runnels*, more forcefully illustrates the City’s argument here that the word “lawful” must be given effect in the statute. 72 N.E.3d 892, 899 (Ind. 2017). Contrasting the two provisions above, the *Runnels* court *permitted* a public nuisance claim based on *unlawful* conduct to proceed because it sought injunctive relief and

the provision applying to claims that seek injunctive relief (the first provision) applies "only to 'lawful' sales," by its plain terms. *Id.* at 899. By contrast, the Indiana Supreme Court threw out the plaintiff's damages-based claims because the second provision of the immunity statute applied to such claims, and that provision is not limited in applicability to only lawful conduct. *Id*. at 901-03. "[T]he legislature," the court wrote, "knows how to craft a statutory bar that applies only to sales made lawfully," which it did for injunctive relief claims, but not for damages claims. *Id.* at 899. In short, the *Runnels* decision highlights the importance of the word "lawful" in such immunity statutes, and supports the City's arguments.

The Court should heed the teaching of cases that CR Sales cites, and not read words out of the statute. That is to say, the Court should give effect to the word "*lawful"* in the statute and reject any argument that it applies to "unlawful" conduct as well.

III. The Protection of Lawful Commerce in Arms Act does not bar the City's claims.

CR Sales' lengthy discussion of PLCAA is littered with errors of law (and fact). This section first gives a brief, *corrected* overview of PLCAA's statutory scheme. It then delves into the predicate exception—the main exception upon which the City relies—and explains why this exception applies to the City's claims.

A. PLCAA precludes some, but certainly not all, claims by plaintiffs against licensed firearms dealers.

1. Statutory background to PLCAA and its exceptions

PLCAA provides that "[a] qualified civil liability action may not be brought in any Federal or State court." 15 U.S.C. § 7902(a). A "qualified civil liability action" is defined as:

> [A] civil action . . . brought by any person against a manufacturer or **seller of a qualified product** . . . for damages . . . or other 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) (emphasis added). A "qualified product" is a firearm or ammunition, or component thereof, "that has been shipped or transported in interstate or foreign commerce." 15 U.S.C. § 7903(4). A seller of firearms is "a dealer [as defined by the Gun Control Act]. . . 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 . . ." U.S.C. § 7903(6)(B).

There are six exceptions that bring a case outside of PLCAA's protection. Three of those exceptions are relevant here: (i) the so-called "predicate exception," (ii) the negligent entrustment exception, and (iii) the negligence per se exception. *See Corporan*, 2016 WL 3881341 at *2.

First, PLCAA allows a plaintiff to bring a case against an FFL that has knowingly violated gun laws:

> The term 'qualified civil liability action' . . . shall not include 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 . . . .

15 U.S.C. at § 7903(5)(A)(iii) (emphasis added). "This exception 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.'" *Corporan*, 2016 WL 2881341 at *2 (quoting *Ileto v. Glock, Inc*., 565 F.3d 1126, 1132 (9th Cir. 2009)); *see also Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422, 429-30 (Ind. Ct. App. 2007). Relying on the predicate exception, courts have universally held that public nuisance and negligence claims are not barred by PLCAA when they are predicated on knowing violations of law applicable to the sale of firearms and ammunition. *See, e.g., King v. Klocek*, 133 N.Y.S.3d 356, 359 (N.Y. App. Div. 2020); *Smith & Wesson*, 875 N.E.2d at 434-35 (permitting negligence and public nuisance claims to go forward under the predicate exception); *Corporan*, 2016 WL 2881341, at *2 ("[P]laintiff's state law

negligence claims must fall into one [of] the exceptions enumerated in the PLCAA before plaintiff will be permitted to proceed with her claims.").

Because the City has sufficiently alleged a knowing violation of law applicable to the sale and marketing of firearms, the predicate exception brings the **entire case** outside the scope of PLCAA's protection and the Court does not need to analyze PLCAA on a claim-by-claim basis. *See* 15 U.S.C. § 7903(5)(A)(iii) (exempting "**an action** in which a manufacturer or seller . . . knowingly violated state" or federal gun laws) (emphasis added); *see also Corporan*, 2016 WL 3881341, at *4 n.4 (declining to engaged in a "claim-by-claim analysis" to determine whether each claim fit into PLCAA's enumerated exceptions because the predicate exception applied); *Englund v. World Pawn Exch.*, 2017 Ore. Cir. LEXIS 3, at *12 (Multnomah County, Or., June 30, 2017) (same); *Chiapperini v Gander Mountain Co.*, 13 N.Y.S.3d 777, 787 (N.Y. Sup. Ct. 2014) (same).

However, even if the Court chose to engage in a claim-by-claim analysis, PLCAA has two other exceptions that are relevant here: "an action against a seller for [1] negligent entrustment or [2] negligence per se." 15 U.S.C. § 7903(5)(A)(ii). The law of the forum state governs claims brought under those exceptions. *Corporan,* 2016 WL 3881341 at *4-6, at *19. The negligent entrustment and negligence per se claims in this case are discussed *infra* Sections IV-V.

2. The Court should reject CR Sales' attempts to read PLCAA beyond its text.

At various points in its brief CR Sales argues—incorrectly—that the Court should take a broad view of PLCAA because of Congress's presumed intent. *See, e.g.*, Cr. Sales Br. at 14 ("Common law actions . . . that are under the guise of judicial modification are preempted by the PLCAA."); 13 ("Congress made clear it was intensely concerned with common law actions against gun manufacturers and sellers . . ."). This form of argument has already been considered and

rejected by the Missouri Supreme Court in *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 322 (Mo. 2016).

In *Delana*, the Missouri Supreme Court applied standard principles of statutory interpretation and held that "[t]he general statement of purpose of the PLCAA does not redefine the plain language of a statute." *Id.* at 322 (citing *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 245 (1989)). And because of this, "the statement of purpose does not overcome . . . the specific substantive provisions of the PLCAA" and the Court should hew to the text. *Id*.

"When the words are clear, there is nothing to construe beyond applying the plain meaning of the law." *State v. Rowe*, 63 S.W.3d 647, 649 (Mo. 2002). This Court does not need to look beyond the text here when applying PLCAA. The text is clear: PLCAA prohibits certain cases against firearms dealers and allows others to proceed. Indeed, CR Sales does not appear to argue that the text of the PLCAA is unclear, rather it scatters citations to extra-textual sources throughout its brief to insinuate that PLCAA was passed to prevent cases like the present one. That is wrong, for the reasons explained below.

B. PLCAA does not bar any of the City's claims.

Each of the City's claims fall into one of the three exceptions listed above. Indeed, CR Sales concedes that the City's negligent entrustment and negligence per se claims are not foreclosed by PLCAA. *See* CR Sales Br. at 3 (chart of claims); 9 ("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 . . . PLCAA."). All of the City's claims, including the remaining claims of negligence, public nuisance, and civil conspiracy fit within the predicate exception. Put simply, CR Sales broke the law. And PLCAA does not apply under these circumstances.

1. The statutes that CR Sales violated are "applicable to the sale or marketing of" firearms, as is required by PLCAA.

The heart of the City's claim is that CR Sales violated federal gun laws. *See supra* Section I. There can be no serious dispute that federal gun laws are predicate statutes that are "applicable to the sale" of firearms. 15 U.S.C. at § 7903(5)(A)(iii); *see also Corporan*, WL 3881341 at *3-*4 (permitting amendment to the complaint for claims to proceed based on violations of record-keeping provisions of the Gun Control Act). Instead, CR Sales throws two red-herring arguments out that distract from the actual issues in the case.

i. PLCAA permits cases where the predicate statute is paired with the federal aiding and abetting and conspiracy statutes.

CR Sales delves into a complicated, contested—and completely irrelevant—dispute over whether statutes of "general applicability" that are "applicable to the sale" of firearms count as predicate statutes within the meaning of PLCAA. CR Sales' Br. at 14-17. This argument is limited to only three of the statutes that the City alleges CR Sales violated: 18 U.S.C. §§ 2, 4,[5] 371. CR Sales Br. at 18 ("[T]he following statutes. . . cannot serve as predicate statutes because these statues are not applicable to the sale or marketing of firearms: 18 U.S.C. §§ 2, 4, 371."). The plain text of PLCAA directly contradicts CR Sales' argument.

Two of these statutes, 18 U.S.C. § 2, codifying aiding and abetting liability and § 371, which creates the crime of conspiracy, are *expressly mentioned* by PLCAA in the text of the predicate exception:

> (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, United States Code . . . .

[5] The City is no longer relying on 18 U.S.C. § 4 in this case.

15 U.S.C. at § 7903(5)(A)(iii)(II). As CR Sales admits, "[t]he second given example [in the predicate exception] 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." CR Sales Br. at 19. The text is clear as day: when a seller aids and abets or conspires with another to violate a firearms law, it cannot hide behind PLCAA. *See Smith & Wesson*, 875 N.E.2d at 432-33 (holding that violations of 18 U.S.C. § 2 and 18 U.S.C. § 371 could be predicate violations if the underlying legal violation was that of a firearms law); *Chiapperini, Inc*., 13 N.Y.S.3d at 786 (holding that a PLCAA claim based in part on 18 U.S.C. § 2 and 18 U.S.C. § 371 survived a motion to dismiss).

ii. A violation of a federal regulation related to FFL record keeping is also a violation of 18 U.S.C. § 922(m), a federal statute that makes it illegal to violate ATF record keeping regulations.

CR Sales misstates applicable federal law when it argues that a violation of a federal regulation cannot form the basis of a predicate violation for the purposes of PLCAA because PLCAA only applies to violations of "statutes." CR Sales' Br. at 20-21. Federal firearms law statutorily delegates broad authority to the Attorney General and ATF to promulgate FFL record keeping regulations. *See* 18 U.S.C. § 926; 18 U.S.C. § 923 (g)(1); 28 C.F.R. § 0.130. And in turn, Congress—by statute—makes it a crime to violate these record keeping regulations promulgated by the ATF: "It *shall be unlawful* for any . . . licensed dealer . . . knowingly to 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 pursuant to section 923 of this chapter [18 U.S.C. § 923] *or regulations promulgated thereunder*."18 U.S.C.S. § 922(m). Thus, a violation of the federal record keeping regulations that the City cites in its petition is a violation of a federal statute.

Courts have recognized this principle. In particular, one of the violations that the City maintains CR Sales committed was knowingly accepting false information in an ATF Form 4473

in violation of 27 C.F.R. § 478.124; *see Supra* Section I(B). "A dealer violates the [Gun Control Act] if the dealer transfers a firearm based upon information in ATF Form 4473 that he knows or has reason to believe is false." *Shawano Gun & Loan*, 650 F.3d at 1073 (citing *See* 18 U.S.C. §§ 922(m), 924(a)(1)(A), and 27 C.F.R. § 478.124(c)); *see also Corporan*, 2016 WL 3881341, at *3 (D. Kan. July 18, 2016) ("A dealer violates the Gun Control Act," including 18 U.S.C. §§ 922(m) and 924(a)(1)(A), "if the dealer transfers a firearm based upon information in Form 4473 that he knows or has reason to believe is false."). This principle has been applied in the context of the predicate exception, where the courts have found a violation of predicate statute Section 922(m) "when a seller knows, or has reason to believe, that the information entered on the ATF Form 4473 is false." *Chiapperini*, 13 N.Y.S.3d at 787; *see also Williams*, 952 N.Y.S.2d at 339 (reversing trial courts dismissal of the complaint where there were allegations sufficient to show known false statements on Form 4473).

2. CR Sales misstates the standard for a "knowing" violation of law.

CR Sales' brief also overstates the culpability requirement for a PLCAA predicate violation. To fall into the predicate exception, one must "knowingly violate[] a State or Federal statute." 15 U.S.C. § 7903(5)(A)(iii). "Knowingly," contrary to CR Sales' assertion, is a straightforward concept that "merely requires proof of knowledge of the facts that constitute the offense." *Bryan v. United States*, 524 U.S. 184, 193 (1998). "'[K]nowingly' does not necessarily have any reference to a culpable state of mind or to knowledge of the law." *Id.* at 192.[6]

CR Sales correctly cites *Bryan* as controlling precedent defining the term "knowingly" under federal law. But then, CR Sales goes one (wrong) step further and cites a Missouri state

[6] Although as the facts here show, *see supra* Section I, CR Sales *did* have a knowledge of the law and of Samuels' illegal scheme, and still proceeded with the November 2, 2016 transactions.

statute to suggest that "knowingly" in PLCAA—a federal statute—requires a heightened, subjective showing of culpability. CR Sales' Br. at 21-22 (Citing Mo. Rev. Stat. § 562.016.3 and *Wright v. City of Salisbury*, No. 2:07CV00056 AGF, 2010 WL 2947709, at *5 n.3 (E.D. Mo. July 22, 2010) (interpreting state law)). When interpreting a *federal statute*, of course, *federal law* controls. "Decisions of the United States Supreme Court interpreting federal statutes are binding on Missouri courts." *Hatfield v. Cristopher*, 841 S.W.2d 761, 767 (W.D. Mo. Ct. App. 1992); *see also Wimberly v. Labor & Indus. Relations Com*., 688 S.W.2d 344, 347 (Mo. 1985) ("[T]he courts of this state [Missouri] are bound to follow only our Supreme Court's decisions interpreting the federal Constitution and federal statutes.").[7]

CR Sales' mistake of law—i.e., arguing that "knowingly" creates a "heightened standard of subjective culpability"—infects its analysis of whether there is sufficient evidence to prove it violated predicate statutes. *See* CR Sales' Br. at 22. To support its argument that CR Sales did not commit a knowing violation of law, CR Sales cites at length excerpts from transcripts where an individual denies that a particular act was suspicious or disclaims personal knowledge of wrongdoing. CR Sales' Br. at 22-41. These lengthy excerpts are largely irrelevant because "knowing" does not mean that one must specifically admit to wrongdoing. And in any event, the

[7] CR Sales also cites a concurring and dissenting opinion in *Ileto v. Glock* for the proposition that "the phrase 'knowingly violated' . . . impos[es] a heightened *pleading* requirement for litigants who seek to come within the predicate exception." 565 F.3d at 1158 (Berzon, J., concurring and dissenting in part) (emphasis added). As an initial matter, the discussion of the meaning of the term "knowingly" is in accord with the City's position. Citing *Bryan*, Judge Berzon explains: "Knowing conduct thus stands in contrast to negligent conduct, which typically requires only that the defendant knew *or should have known* each of the facts that made his act or omission unlawful and/ or the harm that was likely to occur." *Id*. at 1155. The City's case is based on CR Sales' knowledge that Samuels was a trafficker and decision to transfer guns to and from him, breaking numerous laws along the way. Additionally, the *Ileto* concurrence and dissent was focused on federal pleading standards, which are irrelevant to a Missouri summary judgment motion.

record is filled with evidence on which a fact finder could conclude that CR Sales did in fact know what James Samuels was doing.[8]

As an initial matter, FFLs, such as CR Sales, are required to know federal gun laws. The ATF came to CR Sales for compliance inspections on numerous occasions, and each time, Charles Rice signed forms acknowledging that he had gone over federal firearms regulations with an ATF agent, such as what it means to engage in the business and the mechanics of straw purchasing. SODF ¶ 62. Thus, CR Sales was well aware of its obligations under federal law.

And, to briefly recap from Section I *supra*, two pieces of evidence on this point foreclose CR Sales' claim to summary judgment that they were not knowing violations. First, Samuels testified that he told CR Sales that he was "buying guns and then transferring them for money," and that he never made any efforts to hide what he was doing. SODF ¶ 68. Undoubtedly, CR Sales will argue that Samuels' testimony is not credible, but this is a disputed material fact, and summary judgment is therefore inappropriate.

Second, two CR Sales employees *admit* that they knew that Samuels was dealing in firearms without a license. Don Basso, the clerk on many of the transactions, testified that "when it became obvious I told Charlie [Rice, the owner of CR Sales], 'you know, hey this is not cool, I think he's doing business without a license, we probably need to call the ATF. . . . " SODF ¶ 80(a)-(b). Charles Rice told a reporter that he had warned Samuels that he was engaging in illegal conduct, and also testified that he "formed [the] opinion on November 2, 2016" that Samuels was

[8] Several of the statutes that CR Sales discusses in its brief were in the petition because they were applicable to other defendants only. These include: 18 U.S.C. § 922(a)(2); 18 U.S.C. § 922(b)(3); 18 U.S.C. § 922(t)(1); 27 C.F.R. § 478.29; 27 C.F.R. § 478.99; 27 C.F.R. § 478.102.

engaged in wrongdoing. SODF ¶ 80(c)-(e). Yet, on November 2, 2016, he transferred three guns to him anyway. SODF ¶¶ 59, 83.

All of this is evidence that CR Sales knew that it was violating federal gun laws. Summary judgment is thus inappropriate on the question of whether CR Sales knowingly violated the predicate statutes in the above chart.

IV. The City has stated a viable negligent entrustment claim.

CR Sales' argument that the City's negligent entrustment claim "fails as a matter of law" depends on a misreading of PLCAA and Missouri's negligent entrustment case law. This case is about a gun store that had reason to know—and in fact, did know—that James Samuels was a gun trafficker. Despite this knowledge, CR Sales supplied 15 guns to Samuels and his buyers. SODF ¶ 59. As a result of these transfers, the City was injured. This set of facts is enough for a negligent entrustment claim to go to a jury. CR Sales' argument that it did not "supply" guns to an "incompetent entrustee," *see* CR Sales' Br. at 41-55, has no support in the facts of this case or in the relevant legal authority.

Missouri's law of negligent entrustment is based on Restatement (Second) of Torts § 390, which defines negligent entrustment as follows:

> One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

Delana, 486 S.W.3d at 324–25 (quoting Restatement (Second) of Torts § 390). Broken down, negligent entrustment under Missouri law consists of the following elements: "(1) the entrustee was incompetent by reason of age, inexperience, habitual recklessness or otherwise; (2) the entrustor knew or had reason to know 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." *Matysyuk*, 595 S.W.3d at 549 (quoting *Lockhart v. Carlyle*, 585 S.W.3d 310, 313 (W.D. Mo. Ct. App. 2019)).

It is indisputable that "PLCAA provides that negligent entrustment actions are not preempted." *Delana*, 486 S.W.3d at 324 (citing 15 U.S.C. § 7903(5)(A)(ii)); *see also* CR Sales' Br. at 41 (acknowledging that PLCAA does not preempt "civil suits alleging negligent entrustment."). While PLCAA provides a statutory definition of negligent entrustment, *see* 15 U.S.C. § 7903(5)(B), this statutory definition is "similar[ ]" to Missouri's common law definition, "[t]hus a properly pleaded negligent entrustment claim against a seller of firearms . . . is recognized in Missouri common law and falls within the exceptions to PLCAA preemption." *Elkins*, 633 S.W.3d at 534; *see also Estate of Kim v. Coxe,* 295 P.3d 380, 394 (Alaska 2013) (concluding the PLCAA's definition of negligent entrustment is "substantially the same" as the Restatement). In any case, as explained above, *see supra* Section III(A)(1), since this entire case bypasses PLCAA due to the applicability of the predicate exception, the Court need not separately analyze whether this claim meets the negligent entrustment exception as well, although it plainly does.

Here, each of the elements of a negligent entrustment claim is met. First, the "entrustees" of the guns were incompetent possessors because (1) Samuels was a gun trafficker and (2) his buyers were inherently suspect because they were purchasing guns from a gun trafficker rather than legal channels for purchasing firearms. SODF ¶ 59. Put simply, gun trafficking is dangerous and illegal and a gun dealer should know full well that transferring guns as part of such a scheme is likely to lead to crime. Cases that have considered a negligent entrustment claim in the context of a sale to a trafficker and/or straw purchaser regularly allow the claim to go forward. *See e.g., Williams*, 952 N.Y.S.2d at 340-42 (finding motion to dismiss inappropriate for a negligent

entrustment claim where gun dealer sold firearms to a trafficker and straw purchaser); *Corporan*, 2016 WL 3881341, at *5-6 (permitting negligent entrustment claim to go forward against gun store if plaintiff amended complaint to clarify that her theory of negligent entrustment was based on store's sale of firearm to a straw purchaser); *Chiapperini*, 13 N.Y.S.3d at 790 (denying motion to dismiss negligent entrustment claim where store sold two firearms to straw purchaser).

Second, for the reasons laid out in *supra* Section I, CR Sales "knew or had reason to know" of the entrustees' incompetence, i.e. that Samuels was a gun trafficker. Third, there was an entrustment of the chattel, i.e., CR Sales had control over the guns and transferred them to Samuels and his buyers. *See Lockhart*, 585 S.W.3d at 314 (explaining that for entrustment to occur, the entrustor must have some "dominion" over the object "either through an ownership interest . . . or by her authority to control its use."). And finally, CR Sales' negligence with respect to these gun sales contributed to the injury to the Plaintiff, including the damages associated with the police officer and bus driver shot on July 2, 2020. SODF ¶¶ 85-88.

CR Sales bizarrely argues that Plaintiff cannot make out a claim for negligent entrustment because "Samuels cannot be the entrustee because he was not the party that was supplied with a firearm." CR Sales' Br. at 42. ("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.").[9] These assertions fly in the face of the evidence, and is contradicted by CR Sales' own brief. CR Sales transferred firearms directly to Samuels on numerous occasions, including July 3, 2015, November 14, 2015, and November 2, 2016. CR Sales' Br. at 44, 50, 54-55. As demonstrated *supra* Section I(A), there is direct evidence that in advance of each of these

[9] To the extent that CR Sales argues that the City's petition failed to state a claim for purportedly failing to identify incompetent entrustees, CR Sales is mistaken. CR Sales' Br. at 42; Pet. ¶ 98-101.

transactions CR Sales knew or had reason to know that Samuels was trafficking in firearms. At the very least, there is a genuine question of fact of whether Samuels was an incompetent entrustee.

Even CR Sales appears to recognize the weakness of its argument with regard to the November 2, 2016 transfer of three firearms directly to Samuels, as it tries to argue that this transaction should not count because CR Sales purportedly reported Samuels to the ATF. *See* CR Sales' Br. at 54-55. But, as discussed *supra* Section I(A)(2), the question of whether CR Sales called the ATF is a factual dispute for the jury, and in any case, even if the phone call did take place, it does not negate any of the elements of negligent entrustment.

Although it is not entirely clear from the Defendant's brief, the Defendant appears to be suggesting that Samuels cannot be the entrustee because he did not "use" the firearms "in [a] manner involving risk of injury" to himself or others. *See* CR Sales' Br. at 42 (citing the statutory definition of "negligent entrustment" under PLCAA). But the case law is clear, that in the context of firearms, the word "use" is much broader than "shoot" or "discharge." *See e.g., Smith v. United States*, 508 U.S. 223, 227 (1993) (concluding, in the context of a federal statute that "use of a firearm during . . . . a drug trafficking offense" includes bartering or exchanging a gun for drugs.) (quotation marks omitted). The legislative history of PLCAA also makes clear that a plaintiff could "maintain a lawsuit [based on] . . . a straw purchase." Statement of Sponsor Senator J. Sessions, 151 Cong. Rec. S8909-01, at *S8917 (2005) (describing a viable claim for negligent entrustment). Thus, to the extent that PLCAA's definition of negligent entrustment matter at all in this case, *see supra* III(A)(1), it is clear that Samuels "used" the firearms transferred by CR Sales in a manner involving unreasonable risk of injury to others by illegal trafficking them.

In its final attempt to argue that Samuels and his buyers were not "incompetent entrustees, CR Sales points to their completion of background checks and federal transaction forms ("Form

4473s"), *see* CR Sales' Br. at 43-54, to argue that somehow these immunize CR Sales' actions or cancel out the countervailing evidence of the entrustees' incompetence. But there is no support in the case law for this premise. In fact, in *Delana*, the Missouri Supreme Court held that the gun store *could* be held liable for negligent entrustment despite the fact that the purchaser passed a background check. *See Delana*, 486 S.W.3d at 319, 324-26; *see also Corporan*, 2016 WL 3881341, at *1, 5-6 (permitting negligent entrustment claim to go forward if plaintiff amended her complaint to make clear that the straw purchaser was the negligent entrustee, even though the straw purchaser had completed a Form 4473).

Lastly, CR Sales insists on a cramped view of who may be said to have "supplied" a firearm in a negligent entrustment claim. In CR Sales' view, the store needed to have had formal ownership of the firearms it transferred to Samuels or Samuels' customers. CR Sales' Br. at 55. This view is mistaken even under the reasoning of the single authority CR Sales' cites: entrustment of an item can be shown by **either** an "ownership interest" in the item or by the entrustor's "authority to control its use." *Lockhart*, 585 S.W.3d at 314. Simply put, "[t]he plain language of § 390 does not make ownership a material element." *Tissino v. Peterson*, 121 P.3d 1286, 1289 (Mo. Ct. App. 2005). The specific legal terminology describing how an item is "supplied" is immaterial because "supplied" encompasses a broad range of transactions in which the entrustor's legal relationship to the dangerous item may vary: "the relationship between a purported entrustor and the subject chattel" requires only a showing that the entrustor "exercised control of the chattel or at a minimum has had the capacity to exercise control over the chattel either before and/or after the purported 'entrustment.'" *Lockhart*, 585 S.W.3d at 316; *see also Delana,* 486 S.W.3d at 325 ("[N]egligent entrustment liability is not premised on the legal status of the transaction as a lease, sale, bailment or otherwise. Instead, negligent entrustment occurs when the defendant "supplies" a chattel to

another . . ."). As the court in *Lockhart* explained, "the words 'under the control of the actor' are used to indicate that the [entrustee] is entitled to possess or use the thing . . . only by the consent of the actor and that the actor has reason to believe that by withholding consent he can prevent the [entrustee] from using the thing[.]" 585 S.W.3d at 313-14 (citing Restatement (Second) of Torts § 308(a), cmt. A). This is *precisely* the role that CR Sales played when transferring the firearms to Samuels and his buyers.

In an attempt to disclaim the control that CR Sales had over the firearms it transferred to participants in an illegal gun dealing scheme, CR Sales minimizes and distorts the role the store played in those transactions, insisting incorrectly that its "role was to merely finalize the requisite background checks and paperwork to ensure the private transfer was being conducted lawfully." CR Sales' Br. at 55. The role of CR Sales is not to rubber-stamp the transaction. The Gun Control Act and federal regulations make clear that this is not the case, and in fact, demand that a dealer exercise control over a firearm it transfers by, among other things, taking the firearm into its own inventory and entering it into its "acquisition and disposition book." 27 C.F.R. § 478.125(e) (mandating that a dealer completing a third-party transfer enter the acquisition and disposition of the firearm into its records in the same manner as if the dealer had purchased the firearm from a wholesaler and sold that firearm to a customer.); s*ee also* ATF, Open Letter to All Federal Firearms Licensees (Jan. 16, 2013), https://www.atf.gov/file/23751/download ("Facilitated transfers are subject to the same rules and regulations as other firearms sales conducted by FFLs, including compliance with state and local law."). And CR Sales testified that it can decline to process transactions for an individual, SODF ¶ 62, making clear that it has the requisite control over the firearm. CR Sales was no passive party in its facilitation of Samuels' gun trafficking. In each

transaction, CR Sales took possession of the firearm and supplied it to a customer brought to the store by Samuels or to Samuels himself. SODF ¶ 59; Ex. 1 (customer profile).

For all these reasons, Plaintiff's negligent entrustment claim should proceed to a jury.

V. The City is within the class to be protected by federal firearms law and thus those laws can set the standard of care under a negligence per se theory.

CR Sales also incorrectly argues that the City's negligence per se claim fails as a matter of law, arguing that Missouri law and PLCAA foreclose a negligence per se cause of action premised on a violation of federal firearms laws. CR Sales' Br. at 39-41. CR Sales is mistaken. The City is differently situated than individual private litigants who base a negligence per se claim on provisions of the Gun Control Act and, moreover, the City's claim is not foreclosed by PLCAA.[10]

In Missouri, a negligence per se claim has four elements: "(1) the defendant violated a statute or regulation; (2) the injured plaintiff was a member of the class of persons intended to be protected by the statute or regulation; (3) the injury complained of was the kind the statute or regulation was designed to prevent; and (4) the violation of the statute or regulation was the proximate cause of the injury." *Williams v. Bayer Corp.*, 541 S.W.3d 594, 605 (Mo. Ct. App. 2017) (quotation marks omitted). Here, the City brings its negligence per se claim based on violations of the Gun Control Act.

As shown above *supra* Sections I, CR Sales violated the Gun Control Act in several instances. CR Sales does not challenge that its violations of federal law and regulations proximately caused injury to the City. At issue here are the second and third elements of negligence per se.

[10] PLCAA allows negligence per se actions as an exception to immunity, as CR Sales concedes. CR Sales' Br. at 39. The predicate exception also removes this claim from the operation of PLCAA. *See supra* Section III(A)(1).

CR Sales argues that the City's negligence per se action "fails as a matter of law" under Missouri law, asserting that the Missouri Court of Appeals, Southern District, "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." CR Sales' Br. at 39-40 (emphasis added). But the decision CR Sales refers to, *Elkins v. Acad. I, LP*, 633 S.W.3d 529 (Mo. Ct. App. 2021), is distinguishable. In *Elkins*, a murder victim's family premised its negligence per se claim on a violation of 18 U.S.C. § 922(d)(5), which, in relevant part, prohibits the sale of ammunition to a non-U.S. citizen present in the U.S. without authorization or on a non-immigrant visa. *Id.* at 532-33. *Elkins* involved individual *private* plaintiffs who premised their negligence per se cause of action on a different provision than the provisions the City has shown that CR Sales violated.

CR Sales overstates the applicability of *Elkins* to this case. The *Elkins* court held that the murder victim's family could not pursue their negligence per se claim under 18 U.S.C. § 922(d) because, in enacting the Gun Control Act "Congress's focus was on protecting the public *in general* from gun crime and violence at the hands of felons and irresponsible persons." *Elkins* at 538 (emphasis in original) (citing *Estate of Pemberton v. Johns' Sports, Ctr., Inc.*, 35 Kan App. 2d 809, 135 P.3d 174, 181 (Kan. Ct. App. 2006) ("[N]othing in § 922 reflects that it was designed to protect a specific group of people. Instead, it clearly was enacted to protect the general public.")).[11] But neither *Elkins* nor *Estate of Pemberton* considered whether provisions of federal firearms laws were intended to protect the interests of a municipality, as opposed to individual private citizens.

[11] It is the City's position that *Elkins* was wrongly decided as to this point of law. *See Corporan v. Wal-Mart Stores E., LP*, No. 16-2305-JWL, 2016 WL 3881341, at *4 (D. Kan. July 18, 2016) (predicting that the Missouri Supreme Court would find that the Gun Control Act could form the basis of a negligence per se action for an individual). But as noted in this section, *Elkins* is also distinguishable.

The touchstone inquiry for whether a class is protected by a statute is "legislative intent." *J.J.'s Bar and Grill, Inc. v. Time Warner Cable Midwest, LLC,* 539 S.W.3d 849, 869 (Mo. Ct. App. 2017) (quoting *Lowdermilk v. Vescovo Building and Realty Co., Inc.*, 91 S.W.3d 617, 629 (Mo. Ct. App. 2002)). Congress placed support to "local law enforcement officials" at the center of the Gun Control Act's purpose. Pub. L. No. 90-618, § 101, 82 Stat 1213 (1968) ("The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and *local* law enforcement officials in their fight against crime and violence . . . .") (emphasis added). The Gun Control Act was drafted to address the shortcomings of existing controls over firearms commerce because, as the Senate Judiciary Committee noted, "[o]nly through adequate Federal control over interstate and foreign commerce in firearms, and over all persons engaging in the business of importing, manufacturing, or dealing in firearms, can this problem be dealt with, and effective State and local regulation of the firearms traffic be made possible." S. Rep. No. 90-1097, at 2198 (1968). Moreover, it is no stretch for the City to premise its negligence per se claims on CR Sales' violations of the Gun Control Act and ATF regulations, thereby imposing a standard of care on CR Sales as a federally licensed gun dealer, given that "the focus of the federal scheme is the federally licensed firearms dealer, at least insofar as the Act directly controls access to weapons by users." *Huddleston v. U.S.*, 415 U.S. 814, 825 (1974). Thus, the City is within the class protected by intended to be protected by these federal statutes and regulations, and the complained-of injuries are precisely those the statutes and regulations were enacted to prevent.

In its argument that the City's negligence per se claim is foreclosed by PLCAA, CR Sales confusingly argues that PLCAA's "'express negation of a private right or remedy is dispositive'" of the City's negligence per se claim. CR Sales' Br. at 40 (quoting, *Elkins*, 633 S.W.3d at 539). This misreads both the plain text of PLCAA and *Elkins*. PLCAA provides an express exception to

gun seller immunity for "an action brought against a seller for . . . negligence per se." 15 U.S.C. 7903(5)(A)(ii). Congress' meaning was clear: negligence per se claims against dealers like CR Sales are not within PLCAA's prohibitions. As for *Elkins,* the quoted language does nothing more than summarize the meaning of 15 U.S.C. § 7903(5)(C), which provides that "no provision of [PLCAA] shall be construed to create a public or private cause of action or remedy." Of course, the City agrees that its right of action must be based on a Missouri negligence per se cause of action. *See Delana*, 486 S.W.3d at 324 (finding that PLCAA does not establish a cause of action for negligent entrustment but that a state-law claim for negligent entrustment may be brought).

Here, the Gun Control Act and ATF regulations establish not only criminal penalties for violations, but also a regulatory structure under which licensed firearms dealers face non-criminal penalties such as fines and license suspensions or revocations for violations. *See*, *e.g,* 27 C.F.R. § 478.72(a); 18 U.S.C. § 924(a)(3). Because these provisions establish a standard of care for gun dealers like CR Sales, the fact that the Gun Control Act and the regulations do not provide an express right of action to a litigant does not preclude a negligence per se claim under Missouri law. *J.J.'s Bar & Grill*, 539 S.W.3d at 866 n.13 ("There is a difference between whether a statute creates a private right of action permitting an individual to initiate a lawsuit seeking relief based on a violation of the statute, and whether a statute establishes a standard of care supporting recovery on a theory of negligence per se because violation of the statute relieves the jury of the obligation to find negligence.").

In short, CR Sales violated firearms laws. The City is within the class protected by those laws and regulations, and those violations facilitated illegal dealing in firearms from which led to a shooting on a public bus, among other injuries to the City. Neither Missouri law nor PLCAA preclude the City's negligence per se claim from being resolved by a jury.

CONCLUSION

For the reasons explained above, the City respectfully requests that this court denies CR Sales' motion for summary judgment.

Dated: June 17, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of June 2022, the foregoing document was filed with the Clerk of the Court using the Court's E-Filing system which electronically sends notice to all counsel of record.

It was also served on Defendant Herb William Butzbach III via email.

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