IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

KEELY ROBERTS, individually and as parent and next friend of C.R. and L.R., and JASON ROBERTS, individually and as parent and next friend of C.R. and L.R., *Plaintiffs*, v. SMITH & WESSON BRANDS, INC., SMITH & WESSON SALES COMPANY, SMITH & WESSON, INC., BUDSGUNSHOP.COM, LLC, RED DOT ARMS, INC., ROBERT CRIMO, JR., and ROBERT CRIMO, III, *Defendants*.	Lead Case No. 1:22-cv-06169 Related Case Nos. 1:22-cv-06171 1:22-cv-06178 1:22-cv-06181 1:22-cv-06183 1:22-cv-06185 1:22-cv-06186 1:22-cv-06190 1:22-cv-06191 1:22-cv-06193 1:22-cv-06359 1:22-cv-06361 Hon. Steven C. Seeger

REPLY BRIEF IN FURTHER SUPPORT OF
ROBERTS PLAINTIFFS' MOTION TO REMAND

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Plaintiffs[1] respectfully submit this reply brief in further support of their motion to remand and for fees and costs associated with Smith & Wesson's removal pursuant to 28 U.S.C. § 1447(c).

PRELIMINARY STATEMENT

Smith & Wesson's opposition (the "Opposition") confirms—as Plaintiffs demonstrated in their Motion to Remand (the "Motion")—that there is no federal jurisdiction here and therefore no basis for Smith & Wesson's removal petition. The Complaint asserts purely state-law claims against Smith & Wesson. (Mot. 3.) Those claims do not require the resolution of any federal-law issue that would give rise to federal-question jurisdiction under *Grable & Sons Metal Prods., Inc.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308 (2005)—a basis for removal that is rarely applied, particularly in the Seventh Circuit. And there is no support in law or fact for Smith & Wesson's extraordinary contention that the activities described in the Complaint were directed by or carried out at the behest of the federal government, such that Smith & Wesson, a for-profit company, may invoke the removal statute limited to the federal government and its officers.

Unable to meet its burden to establish federal jurisdiction, Smith & Wesson directs its arguments at a complaint of its own making that bears no resemblance to the Complaint Plaintiffs filed. The Opposition begins with a false statement—that "Plaintiffs' counsel have publicly proclaimed that the purpose of this case is to 'stop' the 'sale' of 'assault rifles' like the M&P rifle" (Opp. 1)—that is belied by the allegations of the Complaint and the text of the deceptively quoted source.[2] Effectively conceding that the Complaint does not give rise to federal jurisdiction, Smith

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[1] Counsel represents plaintiffs in the *Roberts* action (Lead Case No. 1:22-cv-06169) and nine other related actions (Nos. 1:22-cv-06171, 1:22-cv-06178, 1:22-cv-06181, 1:22-cv-06183, 1:22-cv-06185, 1:22-cv-06186, 1:22-cv-06190, 1:22-cv-06191, and 1:22-cv-06193) (collectively, "Plaintiffs"). Per the Court's January 4, 2023 Minute Entry (ECF No. 39), Plaintiffs file this consolidated reply. References to the Complaint are to the *Roberts* Complaint (ECF No. 1-2); however, the complaints filed in the other nine actions are substantially similar, and Plaintiffs' arguments apply equally to all complaints.

[2] The quoted source is a press release from counsel for the *Turnipseed* plaintiffs, which states: "The complaint seeks to hold Smith & Wesson liable for unlawful marketing and advertising of its M&P 15

& Wesson instead asks this Court to find a federal issue by "stripping" the Complaint of all of its claims and the vast majority of its allegations, which Smith & Wesson wrongly asserts are "insubstantial, implausible or foreclosed." And, incredibly, it asks this Court to resolve the merits of Plaintiffs' state-law claims at this nascent stage of the litigation. But a defendant is not permitted to rewrite a complaint to manufacture federal jurisdiction; and it cannot short circuit state-court litigation by having a federal court preemptively rule on state-law claims properly filed in state court. These cases should be remanded to Plaintiffs' chosen forum, and fees and costs should be assessed against Smith & Wesson for its improper removal.

ARGUMENT

I. SMITH & WESSON IS NOT ENTITLED TO FEDERAL-OFFICER REMOVAL.

No court has ever granted federal-officer removal to a for-profit gun manufacturer, and Smith & Wesson's argument that purported compliance with federal law renders a corporation a federal officer has been repeatedly rejected. (Mot. 4–6.)

Smith & Wesson cannot show, as it must, that it was "acting under" the direction of the ATF in "carrying out the 'acts' that are the subject of the [Complaint]."[3] *Watson* v. *Philip Morris Co., Inc*., 551 U.S. 142, 147 (2007); *see also Brokaw* v. *Boeing Co.*, 137 F. Supp. 3d 1082, 1096 (N.D. Ill. 2015); *Mesa* v. *California*, 489 U.S. 121, 132 (1989). The "acts" that form the core of Plaintiffs' Complaint concern Smith & Wesson's marketing and advertising practices: (1) its intentional targeting of young men prone to risk-taking behavior, including by modeling its

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assault rifle — the rifle used by the gunman who opened fire at Highland Park's Independence Day Parade . . . These plaintiffs are seeking to **stop** the irresponsible and unlawful **sale** and marketing of weapons of war like the ones used in the Highland Park attack." (ECF No. 48-2 at 3 (bolding words quoted in Smith & Wesson's Opposition).)

[3] Smith & Wesson also relies on a purported "unique, symbiotic manufacturer-ATF partnership created by the federal firearms laws," but it fails to show that any of its marketing was done at the behest of the federal government pursuant to this supposed "partnership." (Opp. 4; *see also* Mot. 4–5.)

marketing after first-person shooting games and touting the use of its M&P rifle in combat-like situations; (2) its deceptive association of the M&P rifle with U.S. military personnel to create the false impression that its products were utilized and/or endorsed by the military; and (3) its breach of a duty not to expose others to a reasonably foreseeable risk of injury by misleadingly and unfairly marketing firearms to teenagers and young civilian adults who are foreseeably likely to handle these weapons irresponsibly (*see, e.g.*, Compl. ¶¶ 7–9, 13, 65–105, 150–248). None of this conduct is "rooted in the ATF's administrative judgment that M&P rifles are not 'machineguns,'" as the Opposition disingenuously contends. (Opp. 3.)[4]

Moreover, Smith & Wesson does not cite a single case supporting the unprecedented application of federal-officer jurisdiction it urges here. Instead, it relies on cases that have nothing to do with removal and that stand for the unremarkable proposition that licensed firearm dealers are subject to federal regulations. *See Huddleston* v. *United States*, 415 U.S. 814 (1974); *Abramski* v. *United States*, 573 U.S. 169 (2014). Nor is *Baker* v. *Atl. Richfield Co*., 962 F.3d 937 (7th Cir. 2020), on point, as Plaintiffs' allegations are not directed at Smith & Wesson's relationship with the federal government and do not arise out of a wartime directive from the federal government. Smith & Wesson does not—and cannot—contend that the federal government directed the unlawful and deceptive marketing practices that are the subject of the Complaint. The fact that Smith & Wesson operates in a regulated industry does not make it a federal officer. (Mot. 5–6.)

[4] There has been no ATF determination that Smith & Wesson's M&P rifles are not machineguns. The only support Smith & Wesson offers for its contrary assertion is a 1963 ATF letter discussing whether a *different* firearm from a *different* manufacturer with *different* features qualified as a machinegun 60 years ago—before passage of the Gun Control Act, modification of the definition of "machinegun" under the NFA, and ATF's promulgation of relevant regulations. *See* Opp. Ex. 6. That classification letter is inapplicable to the M&P rifles at issue here. *See generally* ATF Handbook § 7.2.4.1 (stating that ATF determination letters can be relied upon by recipient only), *at* https://www.atf.gov/firearms/docs/undefined/atf-national-firearms-act-handbook-chapter-7/download. And surely Smith & Wesson's *failure* to pay NFA taxes and comply with registration requirements for machineguns cannot be characterized as Smith & Wesson "acting under" the direction of the federal government.

Smith & Wesson's reliance on *Suncor* further undercuts its argument. The *Suncor* court declined to exercise jurisdiction because energy companies performed the at-issue acts—extraction of fossil fuels in the outer continental shelf pursuant to leases from the Department of the Interior—in service of a private commercial objective. *Bd. of Cnty. Comm'rs of Boulder Cnty.* v. *Suncor Energy (U.S.A.) Inc.*, 245 F.4th 1238, 1253 (10th Cir. 2022). Smith & Wesson attempts to distinguish itself from the *Suncor* defendants by suggesting that "the at-issue acts" here—marketing and advertising its firearms to consumers (*see, e.g.*, Compl. ¶¶ 69–71)—did not merely serve a "private objective" but "were performed to advance distinctly federal objectives embodied in the federal firearms partnership." (Opp. 5.) This argument again rests on a mischaracterization of Plaintiffs' allegations, which focus on Smith & Wesson's marketing and advertising of firearms to consumers, not actions taken on behalf of ATF. The company was not "obligate[d]" to advertise or manufacture firearms "by the government," or pursuant to "detailed government specifications aimed at satisfying pressing federal needs." *Suncor*, 24 F.4th at 1253. Make no mistake: Smith & Wesson is not manufacturing and selling firearms for any reason other than its commercial interest and pursuit of profits.[5] Under these circumstances, federal-officer removal is unavailable.

Smith & Wesson argues that federal-officer removal is proper because its marketing activities are "intertwined with the ATF's judgments about [the] firearms" Smith & Wesson advertises. (Opp. 5–6.) But courts have uniformly rejected similar arguments. *See, e.g.*, *Graves* v. *3M Company*, 17 F.4th 764, 770 (8th Cir. 2021); *Suncor*, 245 F.4th at 1254; *Watson*, 551 U.S. at 145; *Brokaw*, 137 F. Supp. 3d at 1096. For instance, in *Graves*, the Eighth Circuit affirmed a district court ruling that 3M failed to establish that it was "acting under" the federal government's

[5] Smith & Wesson's recent 10-K touted the skills of its "sales and marketing teams" and noted that the company "once again . . . proved that no matter what—Smith & Wesson delivers profitability in any environment." Smith & Wesson 2022 Annual Report at 3, *at* https://ir.smith-wesson.com/static-files/dbf6f110-6dd3-44a9-bdea-f0b95d8f243f.

direction in disseminating and developing warnings and instructions for its commercial earplugs because 3M did not demonstrate that the government had any control over 3M's marketing. 17 F.4th at 770 ("[T]he Court would be hard-pressed to find that 3M could reasonably say 'the government made me do it'" as to marketing its product.). By contrast, the sole case on which Smith & Wesson relies is plainly inapplicable, for it addressed *a motion to dismiss* and did not consider a motion to remand at all. *Estados Unidos Mexicanos* v. *Smith & Wesson Brands, Inc.*, 2022 WL 497526 at *20–23 (D. Mass. Sept. 30, 2022).

II. THERE IS NO FEDERAL-QUESTION JURISDICTION OVER PLAINTIFFS' PURELY STATE-LAW CLAIMS.

To remove these actions under *Grable & Sons Metal Prods., Inc.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005), Smith & Wesson must satisfy all four *Grable* factors. But it fails on every one (Mot. 8), and its arguments to the contrary are meritless.[6]

1. The Complaint Does Not "Necessarily Raise" Federal Issues.

Smith & Wesson does not (and cannot) dispute that Plaintiffs bring only state-law claims (Mot. 9; *see also* Compl. ¶¶ 158–245) or that a state court could resolve those claims without reaching *any* issue of federal law. *See, e.g.*, *Caterpillar, Inc.* v. *Williams*, 482 U.S. 386, 392 (1987) (stating that plaintiff "may avoid federal jurisdiction by exclusive reliance on state law").

[6] Removal also was defective because Smith & Wesson failed to obtain consent from its co-defendants, and no exception to that "rule of unanimity" applies. (Mot. 7.) *First*, Smith & Wesson cannot remove under Section 1441(c) because Plaintiffs do not assert any federal claims, and thus there are no "federal-claim defendants." (Opp. 7.) Moreover, if, contrary to fact, Plaintiffs *did* assert a federal claim, this Court would have supplemental jurisdiction over the remaining state-law claims because all claims arise out of the same harm and events, of which Smith & Wesson's conduct was one part. (Mot. 7.) Removal under Section 1441(c) is not available where a court may exercise supplemental jurisdiction. (*Id.*) *Second*, Smith & Wesson should not be permitted to end-run the consent requirements of Section 1446(b)(2)(A) through a baseless invocation of Section 1442. Accordingly, unlike in *Bureau* v. *BASF Corp.*, 2022 WL 807372 (M.D. La. Jan. 3, 2022) (Opp. 7), this Court *should* find that Smith & Wesson removed this action "solely" under the general removal statute because removal under the federal-officer statute is contrary to established case law. *See supra* Section I.

Instead, Smith & Wesson misleadingly asserts that "Plaintiffs' core claim [is] that Smith & Wesson violated the NFA" and oversimplifies the remedy sought by asserting that Plaintiffs "seek an order requiring Smith & Wesson to disclose that the M&P rifle is an NFA weapon." (Opp. 12, 13.) Contrary to the Opposition, Plaintiffs' 336-paragraph Complaint includes only 14 paragraphs—nine unique—that allege, as an *alternative* theory of liability, that Smith & Wesson deceptively marketed its M&P rifles without disclosing that they are "NFA weapons." (Mot. 4.) These allegations do not amount to a "claim," let alone a "core" one, and instead lend further support for Plaintiffs' state-law claims. (*See* Compl. ¶¶ 168, 174 (one of multiple theories under Count I); 189–91 (same under Count II); 212–14 (same under Count III); 238, 240–41 (same under Count IV).) Thus, the allegations do not provide a sufficient basis for federal-question jurisdiction. *See Christianson* v. *Colt Indus. Operating Corp.*, 486 U.S. 800, 810 (1988); *see also Broder* v. *Cablevision Sys. Corp.*, 418 F.3d 187, 194–95 (2d Cir. 2005) ("The question is whether at least one federal aspect of [plaintiff's] complaint is a logically separate claim, rather than merely a separate theory that is part of the same claim as a state-law theory.").

Smith & Wesson's reliance on the artful pleading doctrine fares no better. That doctrine does not apply here because none of Plaintiffs' state-law claims is a "disguised" federal claim. *See City of Gary, Ind. ex rel. King* v. *Smith & Wesson Corp.*, 94 F. Supp. 2d 947, 952 (N.D. Ind. 2000). Plaintiffs' statutory and common-law claims under Illinois law do not raise any federal question necessary for recovery, and Plaintiffs did not fail to plead any facts indicating federal jurisdiction. *See Empress River Casino Corp.* v. *Loc. Unions No. 9 & 176, Int'l Bhd. of Elec. Workers*, 1994 WL 262075, at *2, 3 (N.D. Ill. June 10, 1994) ("[T]he Complaint relies exclusively on the Illinois Uniform Deceptive Trade Practices Act. Thus, there is no federal issue on the face of the Complaint, and apparently, no removal jurisdiction."). Smith & Wesson admits as much by asking

this Court to "cast aside" Plaintiffs' state-law claims so that "[a]ll that is left is strict liability conditioned on a finding that Smith & Wesson violated the NFA." (Opp. 10.) But that amounts to a request to "cast aside" the Complaint in its entirety and replace it with a fictional one.

Pointing to the well-established doctrine that a federal court must consider whether a plaintiff's *federal* claim is "insubstantial, implausible, or foreclosed" if the plaintiff seeks to assert *federal* jurisdiction over related state-law claims, Smith & Wesson argues that the inverse applies—a federal court must also consider whether a plaintiff's *state-law* claims *filed in state court* are insubstantial, implausible, or foreclosed when a defendant removes a case based on purported federal-question jurisdiction. (Opp. 8.) Not only would this turn the law on its head, it is completely unprecedented. The case on which Smith & Wesson relies, *Illinois Public Risk Fund* v. *Purdue Pharma L.P.*, 2019 WL 3080929 (N.D. Ill. July 15, 2019), actually *declined* to assess the merits of plaintiffs' state-law claims. 2019 WL 3080929, at *1, 3. The court held that plaintiff's complaint did not necessarily raise a federal issue under *Grable* because mere "reference to federal law does not suggest that a federal issue will inevitably arise," and it credited plaintiff's argument that "Illinois law imposes duties independent of the defendants' obligations to comply with federal law." *Id.*, at *2. The court also did not consider, let alone resolve, whether the state-law claims were frivolous; its only discussion of that topic was dicta. *Id*. *Purdue Pharma* in no way suggests that *Grable* requires this Court to review the merits of Plaintiffs' state-law claims.

In any event, Plaintiffs' state-law claims are valid, as demonstrated by cases filed across the country in which analogous claims have survived motions to dismiss. (Mot. 11.) Accordingly, Smith & Wesson's reliance on *Young* v. *Bryco Arms*, 213 Ill. 2d 433 (2004), is misplaced. (Opp. 8.) In *Young*, the Illinois Supreme Court found that there was no causation due to "numerous unforeseeable intervening criminal acts by third parties" (Opp. 8), including the fact that a gun that

killed one of the plaintiffs "passed through at least eight sets of hands before it reached [the shooter]." 213 Ill. at 455. Here, the chain of causation is clear. Plaintiffs specifically allege that Crimo III purchased the firearm at the point of sale; Smith & Wesson sought out this sale through its marketing and advertising of the firearm, which has become the weapon of choice for mass shooters; and Crimo III was exposed to Smith & Wesson's marketing on the website of Bud's Gun Shop (and, on information and belief, through other means), which influenced him to buy the firearm and select it to use on July 4.[7] (Compl. ¶¶ 16, 130–31.) Regardless, Smith & Wesson's causation arguments (based on Illinois case law), while erroneous, should be addressed by state courts with jurisdiction after the parties have had a full opportunity to brief the relevant issues, not resolved on a misguided removal petition.

2. No Issue of Federal Law Is "Actually Disputed" in the Complaint.

Smith & Wesson fails to show that the Complaint includes any actually disputed federal issue. To be "actually disputed," the issue must present "a nearly pure issue of law" and not be "fact-bound." *Empire Healthchoice Assurance Inc.* v. *McVeigh*, 547 U.S. 677, 681 (2006). Here, whether Smith & Wesson deceptively marketed its products by omitting references to their status under the NFA is necessarily "fact-bound" because the question involves issues regarding weapon design and operation. *See Bennett* v. *Southwest Airlines Co.*, 484 F.3d 907, 910 (7th Cir. 2007) (remanding to state court where there was "a fact-specific application of rules that come from both federal and state law rather than a context-free inquiry into the meaning of a federal law").

[7] *City of Chicago* v. *Beretta U.S.A. Corp.*, 213 Ill. 2d 351 (2004), is inapposite. (Opp. 8–9.) There, the City of Chicago asserted a public nuisance claim and was one step further removed in the causal chain than Plaintiffs here, because it sought compensation for *the City's* costs to treat individuals harmed by gun violence, not compensation for those individuals. *Beretta*, 213 Ill. 2d 351, 394–414.

3. The Complaint Does Not Raise a "Substantial" Federal Issue.

Smith & Wesson also suggests that there is a substantial federal issue because "Plaintiffs seek to have a state court re-define 'machinegun' contrary to federal regulations." (Opp. 13.) This assertion, too, is manifestly incorrect. Plaintiffs allege only that the Smith & Wesson M&P assault rifle falls under the existing definition of a machinegun. (Compl. ¶¶ 241, 264.) In any event, this allegation is not "substantial," as it is one of multiple theories advanced in Plaintiffs' state-law claims; and it has no "significance for the federal system" that would confer federal jurisdiction, as evidenced by the fact that Congress has provided no federal remedy to victims of gun violence under the NFA.[8] *See Merrell Dow Pharm. Inc.* v. *Thompson*, 478 U.S. 804, 810 (1986).

4. Exercising Federal Jurisdiction Would Disrupt the Federal-State Balance.

Where, as here, Plaintiffs bring classic state-law consumer protection claims that fall within the state's traditional police power, removal to federal court would disrupt the federal-state balance. *Soto* v. *Bushmaster Firearms Int'l, LLC*, 202 A.3d 262, 313 (Conn. 2019). Smith & Wesson urges this Court to exercise federal jurisdiction to "resolve whether the M&P rifle is a 'machinegun' and whether Smith & Wesson violated the NFA." (Opp. 14.) But the exercise of federal jurisdiction over these state-law claims would fundamentally undermine the division of labor between state and federal courts. And state-law issues that may implicate whether a firearm product is covered by the NFA or the Gun Control Act are regularly litigated in state courts. *See, e.g.*, *Goldstein* v. *Earnest*, No. 37-2020-00016638, slip op. at *3–5 (Cal. Super. Ct. San Diego

[8] Smith & Wesson's reliance on *New York* v. *Arm or Ally, LLC*, 2022 WL 17496413 (S.D.N.Y. Dec. 8, 2022), is misplaced. (Opp. 11.) That case involved a substantial and threshold federal question—whether "ghost guns" met the federal statutory definition of "qualified product" under 15 U.S.C. § 7903(4). If the firearms did not meet the definition, then the plaintiff could not bring the asserted claim. No analogous determination is required here. The claims in the Complaint allege a violation of federal law as an alternative theory in support of state-law causes of action. The federal law issue is not a substantial and threshold one; it may never need to be settled to resolve the cases. (Mot. 8–13.)

Cnty. July 2, 2021) (holding that plaintiffs sufficiently alleged that Smith & Wesson's M&P rifle was a machinegun under the NFA).[9]

III. SMITH & WESSON'S PREEMPTION ARGUMENT IS MERITLESS.

Plaintiffs' state-law claims are not preempted by the NFA and APA because (1) false, misleading, unlawful, and deceptive marketing practices are outside the scope of the NFA; and (2) the NFA does not supply a private right of action. (Mot. 13–14.) Smith & Wesson tries to concoct, from disparate strands of the APA and NFA, a federal private right of action that would preempt state-law claims, but it does not cite a single case in support. (Opp. 14–15.) Moreover, Smith & Wesson continues to ignore case law directly holding that the NFA does not provide a private right of action. *Jefferson* v. *Amadeo Rossi, S.A.*, 2002 WL 32154285, at *5 (E.D. Pa. Jan. 22, 2002).

IV. PLAINTIFFS SHOULD BE AWARDED ATTORNEYS' FEES AND EXPENSES.

Smith & Wesson disregarded controlling and clear case law, misrepresented the claims pled and relief sought in the Complaint (including through misleading quotations), and advanced arguments that courts have routinely rejected. (Mot. 15.) There was no "objectively reasonable basis for removing the case to federal court," *Blanco* v. *Bath & Body Works, LLC*, 2022 WL 1908980, at *4 (N.D. Ill. June 3, 2022), and an award of attorneys' fees and expenses pursuant to 28 U.S.C. § 1447(c) is warranted. *Lott* v. *Pfizer Inc.*, 492 F.3d 789, 793 (7th Cir. 2009).

CONCLUSION

For the foregoing reasons, the Roberts Plaintiffs respectfully request that the Court grant Plaintiffs' Motion to Remand and award fees and costs.

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[9] *Available at* https://brady-static.s3.amazonaws.com/Minute-Order-7-2-21-S0499865.PDF. *See also Tisdale* v. *Pagourtzis*, 2020 WL 7170491, at *5 (S.D. Tex. 2020) (holding that neither "substantiality" nor "federal-state balance" prong of *Grable* test was met in case concerning regulation of ammunition under Gun Control Act); *Apolinar* v. *Polymer80, Inc.*, 2022 Cal. Super. LEXIS 2591, at *3–4 (Cal. Super. Ct. L.A. Cnty. Feb. 2, 2022) (denying Nevada ghost gun manufacturer's motion-to-dismiss argument that its weapons did not qualify as firearms under Gun Control Act.).

Dated: February 3, 2022

Respectfully Submitted,

/s/ *H. Christopher Boehning*

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 32

21STCV29196 February 2, 2022
CLAUDIA APOLINAR, et al. vs POLYMER80, INC., A NEVADA CORPORATION 8:30 AM

Judge: Honorable Daniel S. Murphy
Judicial Assistant: S. Luqueno
Courtroom Assistant: N. Avalos

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Eric Tirschwell appearing for Claudia Apolinar (Telephonic); MICHAEL MARRON; JAMES J. McGUIRE

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Hearing on Demurrer - with Motion to Strike (CCP 430.10)

The matter is called for hearing.

After hearing oral argument from counsel, the Court adopts its tentative ruling as the Order of the Court, which is signed and filed this date and incorporated herein as follows:

The Demurrer - with Motion to Strike (CCP 430.10) filed by Polymer80, Inc., a Nevada corporation on 01/10/2022 is Overruled.

BACKGROUND

On August 20, 2021, Claudia Apolinar and Emmanuel Perez-Perez ("Plaintiffs") filed the operative First Amended Complaint ("FAC") against Polymer80, Inc. ("Defendant"), alleging negligence and public nuisance. The lawsuit arises from an incident where Plaintiffs, two police officers, were shot using a gun made from parts manufactured and distributed by Defendant.

The FAC alleges that Defendant "manufactured, advertised, and sold firearm kits that included some or all the components necessary to quickly and easily build complete and fully functional frames and weapons, including Glock-style semiautomatic handguns like the one used to ambush Plaintiffs." (FAC ¶ 10.) The alleged danger of these "ghost guns" is that "they lack serial numbers and are therefore extremely difficult, if not impossible, for law enforcement to trace when recovered in connection with criminal investigations." (Id., ¶ 11.) The FAC alleges that "the unserialized Polymer80 firearm used in the ambush attack of Sheriff's Deputies Apolinar and Perez was originally purchased as a kit in California from either Polymer80 or one of Polymer80's third party distributors, who sold it without performing a background check." (Id., ¶

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
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Judge: Honorable Daniel S. Murphy CSR: None
Judicial Assistant: S. Luqueno ERM: None
Courtroom Assistant: N. Avalos Deputy Sheriff: None

13.) "Defendants sold Polymer80 ghost gun kits without serial numbers and without taking reasonable steps to ensure that purchasers are legally allowed to purchase or possess firearms, despite knowing that their deadly products are especially attractive to criminals and would likely and foreseeably end up in the hands of dangerous persons prohibited from legally owning firearms under federal and state law." (Id., ¶ 14.)

Defendant presently demurs to the FAC on the grounds that it is statutorily immune from civil liability and that its actions were not the proximate cause of Plaintiffs' injuries. Alternatively, Defendant moves to strike certain "scandalous" allegations from the FAC.

LEGAL STANDARD

A demurrer for sufficiency tests whether the complaint states a cause of action. (Hahn v. Mirda (2007) 147 Cal. App. 4th 740, 747.) When considering demurrers, courts read the allegations liberally and in context. (Taylor v. City of Los Angeles Dept. of Water and Power (2006) 144 Cal. App. 4th 1216, 1228.) In a demurrer proceeding, the defects must be apparent on the face of the pleading or by proper judicial notice. (Code Civ. Proc. § 430.30(a).) A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. (SKF Farms v. Superior Court (1984) 153 Cal. App. 3d 902, 905.) Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed. (Id.) The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action. (Hahn, 147 Cal.App.4th at 747.)

Any party, within the time allowed to respond to a pleading, may serve and file a notice of motion to strike the whole or any part of that pleading. (Code Civ. Proc., § 435, subd. (b).) The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike (1) any irrelevant, false, or improper matter inserted in any pleading and (2) all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Id., § 436.) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (Id., § 437.)

MEET AND CONFER

Before filing a demurrer or a motion to strike, the demurring or moving party is required to meet and confer with the party who filed the pleading demurred to or the pleading that is subject to the motion to strike for the purposes of determining whether an agreement can be reached through a filing of an amended pleading that would resolve the objections to be raised in the demurrer.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
Civil Division
Central District, Stanley Mosk Courthouse, Department 32

21STCV29196 February 2, 2022
CLAUDIA APOLINAR, et al. vs POLYMER80, INC., A NEVADA CORPORATION 8:30 AM

Judge: Honorable Daniel S. Murphy CSR: None
Judicial Assistant: S. Luqueno ERM: None
Courtroom Assistant: N. Avalos Deputy Sheriff: None

(Code Civ. Proc. §§ 430.41, 435.5.) The Court notes that the Moving Party has complied with the meet and confer requirement. (Labat Decl. ¶ 6.)

DISCUSSION

a. Statutory Immunity

The federal Protection of Lawful Commerce in Arms Act ("PLCAA") precludes liability for businesses engaged in the lawful manufacture and distribution of firearms where the harm is caused by the criminal acts of others. (15 U.S.C. § 7901(a)(5).) However, the PLCAA does not apply to "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 . . . ." (Id., § 7903(5)(A)(iii).) This is known as the "predicate exception" because the plaintiff predicates their claim on a violation of statute.

Here, the FAC alleges that Defendant's actions violate the federal Gun Control Act ("GCA"), California Unsafe Handgun Act ("CUHA"), California Assembly of Firearms Law ("CAFL"), and the California Unfair Competition Law ("UCL"). Defendant argues that the predicate exception does not apply because the FAC fails to allege sufficient facts amounting to a violation of any of these statutes. Specifically, Defendant contends that the handgun parts and unfinished frames that it is alleged to have distributed are not covered by these statutes.

I. GCA

The GCA defines "firearm" as, inter alia, "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon . . . ." (18 U.S.C. § 921(a)(3).) Here, the FAC alleges that "Polymer80 sold Buy Build Shoot kits consisting of all component parts of a firearm, including unfinished handgun frames, which are 'designed to' be and 'may readily be converted' into an operable weapon." (FAC ¶ 73.)

Defendant argues that "kits containing PF940C 'unfinished' frames do not qualify as 'firearms' under the GCA." (Dem. 8:13-15.) However, Defendant cites no authority for the proposition that the frames fall outside the GCA as a matter of law. Defendant relies on a Texas state case, In re Academy, Ltd. 625 S.W.3d 19, 28 (Tex. 2021), where the court held that a magazine is not a "firearm" merely because it is packaged with one. The instant case is distinguishable because

Plaintiff alleges that Defendant sold kits which could be readily converted into firearms, and that those kits contained frames and receivers, which are expressly listed in the GCA. Any factual contention on convertibility or the actual nature of the kits is unsuitable for consideration on demurrer. The allegations are sufficient at the pleading stage.

II. CUHA

Notwithstanding the federal definition of "firearm," the FAC also predicates its claims on multiple California laws, beginning with CUHA. CUHA defines an "unsafe handgun" as "any pistol, revolver, or other firearm capable of being concealed upon the person" that does not have certain safety devices, meet firing requirements, or satisfy drop safety requirements. (Pen. Code, § 31910.) Defendant makes a similar argument that "'unfinished' frames or receivers do not constitute 'firearms' under the statutory provisions that Polymer80 supposedly violated." (Dem. 12:5-6.)

However, Plaintiff alleges that "Defendants knowingly aided and abetted the manufacture of handguns that do not meet the safety requirements of CUHA by marketing, selling, and transferring all of the components, parts, materials, tools, instructions and instructional videos needed to build an unsafe handgun in the state." (FAC ¶ 84.) Defendant argues that this allegation is a bare recitation devoid of facts showing how Defendant aided and abetted. (Dem. 12:8-14.) However, the allegation is not conclusory, as it explains that Defendant aided and abetted the manufacture of illegal handguns by providing the requisite parts and instructions. Plaintiffs allege that this led to the assembly of the handgun that was used to shoot Plaintiffs. (FAC ¶ 85.) This is adequate to survive a demurrer.

III. CAFL

CAFL imposes requirements for placing serial numbers on firearms, including ones manufactured from plastic. (Pen. Code, § 29180.) Defendant makes the same argument that only a finished frame, as opposed to an unfinished one, constitutes a "firearm" under CUHA. (Dem. 12:17-27.) Defendant also takes issue with the conclusory nature of the aiding and abetting allegations. (Ibid.) However, the FAC alleges that Defendant intentionally sold PF940 kits that it knew could not be converted into firearms capable of satisfying the serial number requirements. (FAC ¶¶ 90-94.) This establishes that Defendant aided and abetted individual purchasers in the assembly of completed firearms that do not comply with CAFL, including the one used to shoot Plaintiffs. The allegations are sufficient at the pleading stage.

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Judge: Honorable Daniel S. Murphy CSR: None
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Courtroom Assistant: N. Avalos Deputy Sheriff: None

IV. UCL

Business and Professions Code section 17200 prohibits unlawful, unfair, or fraudulent business acts or practices. Each of the three prongs is an independent basis for relief. (Smith v. State Farm Mutual Automobile Insurance Co. (2001) 93 Cal.App.4th 700, 718.) Unlawful conduct is defined as any practice forbidden by law. (Farmers Ins. Exchange v. Superior Court (1992) 2 Cal.4th 377, 383.) UCL actions alleging unlawful conduct "borrow" from other statutes or common law causes of action outside Section 17200. (Klein v. Chevron U.S.A., Inc. (2012) 202 Cal.App.4th 1342, 1383.)

As discussed above, the FAC sufficiently alleges violations of various gun laws, thus establishing unlawfulness for purposes of the UCL. Defendant argues that Plaintiffs have no standing to pursue an action under the UCL because they are not consumers or competitors, the intended targets of UCL protection. (Dem. 13:5-8 [citing Kwikset Corp. v. Superior Court (2011) 51 Cal.4th 310, 319-26].) However, Plaintiffs do not assert a cause of action under the UCL. Rather, the UCL is a predicate statute to support Plaintiffs' contention that Defendant is not immune from liability under the PLCAA. Defendant can violate the UCL even if Plaintiffs cannot personally sue under the law. As long as Defendant's violation of the UCL proximately caused the Plaintiffs' harm, the case falls outside the PLCAA. (See 15 U.S.C. § 7903(5)(A)(iii).) As discussed above, the FAC adequately alleges a violation of various gun laws and how those violations proximately caused Plaintiffs' injuries. Because violations of those gun laws constitute violations of the UCL, the FAC also sufficiently alleges a predicate violation of the UCL and establishes that the violation proximately caused Plaintiffs' harm.

Because Plaintiffs have alleged that Defendant's actions violate multiple federal and state statutes, they sufficiently establish the predicate exception to the PLCAA, and Defendant is not immune from this lawsuit. The PLCAA is thus not a grounds for demurrer.

b. Proximate Causation

The elements of negligence are: (1) a duty to exercise ordinary care; (2) breach of that duty; (3) causation; and (4) damages. (Ladd v. County of San Mateo (1996) 12 Cal.4th 913, 917.) "A public nuisance cause of action is established by proof that a defendant knowingly created or assisted in the creation of a substantial and unreasonable interference with a public right." (People v. ConAgra Grocery Products Co. (2017) 17 Cal.App.5th 51, 79.) "Causation is an essential element of a public nuisance claim. A plaintiff must establish a 'connecting element' or a 'causative link' between the defendant's conduct and the threatened harm." (Citizens for Odor

Nuisance Abatement v. City of San Diego (2017) 8 Cal.App.5th 350, 359.)

Defendant argues that Plaintiffs' injuries were caused by the independent intervening acts of others. (Dem. 13:25-14:25.) However, the allegations sufficiently establish that "Defendant supplied the instrumentality necessary to commit such a crime, in a form (no serialization) suited to the commission of such a crime, and a manner (no background checks) that enabled purchase by and attracted the group of people most likely to commit such a crime (criminals ineligible to purchase or possess guns)." (Opp. 17:26-18:2.) The harm to Plaintiffs was not "of a kind and degree so far beyond the risk the original tortfeasor should have foreseen that the law deems it unfair to hold him responsible." (See Lawson v. Safeway Inc. (2010) 191 Cal.App.4th 400, 417.) In re Firearms Cases (2005) 126 Cal. App. 4th 959, 986-89 is distinguishable because in that case, the defendant "manufacture[d] guns according to federal law and guidelines." By contrast, the FAC here alleges violations of multiple federal and state laws. Thus, the FAC sufficiently alleges causation.

c. Motion to Strike

Defendant alternatively moves to strike a portion of paragraph 56 of the FAC, which recounts two shootings conducted with ghost guns not manufactured by Defendant. (See FAC ¶ 56 [November 2019 Santa Clarita school shooting; May 2020 murder at an Oakland courthouse].) As these incidents are not alleged to have been committed with Defendant's product, they bear no relationship to the claims set forth in the FAC. The FAC contains numerous other allegations outlining the general threat of ghost guns, as well as other incidents involving Defendant's guns. (See FAC ¶¶ 15-16, 46-57.) The facts surrounding the school and courthouse shootings are unnecessary to establishing context or Defendant's knowledge of the danger of ghost guns. Thus, those allegations should be stricken.

CONCLUSION

Defendant's demurrer is OVERRULED. Defendant's motion to strike is GRANTED as to the portions of paragraph 56 of the FAC describing the November 2019 Santa Clarita shooting and May 2020 Oakland shooting.

Answer shall be filed within ten days.

On the Court's own motion, the Case Management Conference scheduled for 02/18/2022 is advanced to this date and heard .

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Judge: Honorable Daniel S. Murphy CSR: None
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Courtroom Assistant: N. Avalos Deputy Sheriff: None

Plaintiff and defendant have demanded jury and shall post fees within ten days of today.

Final Status Conference is scheduled for 01/26/2023 at 08:30 AM in Department 32 at Stanley Mosk Courthouse.

Jury Trial is scheduled for 02/07/2023 at 08:30 AM in Department 32 at Stanley Mosk Courthouse. Estimated time for trial is 10 days.

Case Management Order is signed and filed.

Notice is waived.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 07/02/2021 TIME: 04:48:00 PM DEPT: C-66

JUDICIAL OFFICER PRESIDING: Kenneth J Medel
CLERK: Bernice Orihuela
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2020-00016638-CU-PO-CTL** CASE INIT.DATE: 05/26/2020
CASE TITLE: **Goldstein vs Earnest [EFILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 6/8/2021 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Background:
This case stems from a shooting at the Chabad of Poway synagogue on the last day of Passover in April, 2019. Using a firearm, the shooter shot and killed one person and injured others.
Plaintiffs allege that Smith & Wesson marketed, manufactured, distributed, and ultimately sold (through a retailer, San Diego Guns, LLC) a Rifle that was made to be easily modified into a military-style assault rifle prohibited under California law and which constituted an automatic-fire "machinegun" prohibited under federal law. The gun was marketed to a 19-year-old Shooter who did not have a valid hunting license that would have allowed him to buy the gun. See First Amended Complaint at ¶¶31–33.
As to San Diego Guns, plaintiffs allege San Diego Guns violated its duty as "a principal agent of federal law enforcement" in "restricting criminals' access to firearms. The First Amended Complaint specifically alleges that San Diego Guns violated this duty by (1) choosing to sell the weapon that was used to the Shooter, despite having actual or constructive knowledge that the hunting license the Shooter presented was not valid for the purchase of any firearms in April 2019, months before the license going into effect in July 2020. (Id. at ¶ 130-132); and (2) by transferring a firearm and ammunition to an individual under the age of 21 who had not presented and did not possess a valid hunting license, San Diego Guns knowingly and directly violated Cal. Pen. Code § 27510. (Id. at ¶ 124-125,137)
Also, San Diego Guns, as the seller and distributor engaged in sales of firearms in State of California, knew or should have known that Smith & Wesson included design features in its M&P 15 series of AR-15 style guns that enabled them to be easily modified, including to fire automatically and to constitute a prohibited assault weapon under California law. San Diego Guns, could have and should refused to distribute or sell weapons susceptible to such modifications (as other companies have chosen to do). (Id. at ¶ 52-53).
Notice of Withdrawal of Certain Allegations
On or about June 4, 2021, the Court received from Attorneys for Plaintiff a "Notice of Withdrawal of Certain Allegations from the First Amended Complaint." Attached to the Notice is a letter addressed to the Judge indicating that plaintiffs are no longer making allegations that the Rifle was modified in

violation of California's prohibition on assault weapons. Specifically, plaintiffs state the following allegation in the FAC are being withdrawn: p.9, paragraph 50, p. 10, paragraph 54, p.23, paragraph 106. Based upon this notice and statements made at oral argument, the Court STRIKES these allegations from the First Amended Complaint.

Demurrers and Motions to Strike by LISA C. EARNEST and JOHN A. EARNEST and the State of California, Dept. of Fish and Wildlife

At the hearing, Lisa and John Earnest took their Demurrer and Motion to Strike OFF CALENDAR. Prior to the hearing, Plaintiffs dismissed the State of California, Dept. of Fish and Wildlife. The State of California, Dept. of Fish and Wildlife took their Demurrer and Motion to Strike OFF CALENDAR.

Demurrer by Smith & Wesson Brands, Inc. [S&W]

The following causes of action have been alleged against S&W: (1) Products Liability – Defective Design; (2) UCL; (3) Common Law Negligence; (4) Public Nuisance

S&W first argues it is immune under the federal Protection of Lawful Commerce in Arms Act [PLCAA], which provides manufacturers and sellers with immunity against "civil action[s] ... for damages ... injunctive relief ... or other relief, resulting from the criminal or unlawful misuse" of firearms. 15 U.S.C. § 7903(5)(A).

Federal Preemption

Federal preemption is a question of Congressional intent. The PLCAA, both in its operative provisions and statements of purpose, clearly reveals congressional intent to prohibit state common law causes of action that meet the definition of a qualified civil liability action. Ileto v. Glock, Inc., 421 F. Supp. 2d 1274 (C.D. Cal. 2006) ("[C]ongressional intent to [preempt state tort claims] is clear from the text and purpose of the [PLCAA].")

Is this case a "qualified civil liability action"?

Under the PLCAA, a cause of action that meets the definition of a "qualified civil liability action" shall not be brought in any federal or state court. 15 U.S.C. § 7902(a).

Congress defined a "qualified civil liability action" as follows:

...a civil action...brought by any person against a manufacturer or seller of a qualified product...for 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*. 15 U.S.C. § 7903(5)(A).

Plaintiffs argue this case does not fall within the scope of the general definition of "qualified civil liability action" within § 7903(5)(A), particularly when the section is read in conjunction with the preamble to the statute that indicates the Act's purpose is to prohibit actions for harm "solely caused" by the misuse or criminal use of guns. Plaintiffs argue that the First Amended Complaint alleges independent liability on behalf of the manufacturer and seller and thus, the action is not "resulting from" the [solely caused] criminal or unlawful use of the shooter.

First, as a matter of statutory construction, language stating the purpose for which a statute is enacted cannot be used to limit the clear terms used in the statute's operative provisions. H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 245. Here, the plain language of Section 7903(5)(A) requires the action to be "resulting from" the criminal or misuse. There is no requirement that it be "solely caused".

Based on the facts alleged in the FAC, the alleged liability here "results from" the criminal use.

The First Amended Complaint alleges the following:

1. On April 27, 2019, worshippers were gathered at the Chabad of Poway synagogue to attend services on the last day of the Jewish holiday, Passover, which commemorates the survival and liberation of the Jewish people.
2. Outside the synagogue was a teenager...who was bent on waging war on the worshippers and exterminating the Jewish people. His hateful views could not, on their own, cause a fraction of the

physical and emotional harm he would soon render on the Chabad community of worshippers.
3. As a result of Defendants' actions and/or inaction, the Shooter used a SMITH & WESSON M&P 15, AR-15 style rifle to engage in a mass shooting on April 27, 2019-a military-style assault on the worshippers at the Chabad of Poway synagogue (the "Incident").
There is no dispute that rifle used here is a "qualified product". Paragraph 3 alleges this action results from the misuse of that product. As alleged, this action is a "qualified civil action" within the purview of the PLCAA.
Exceptions
The immunity for firearm manufacturers and sellers is subject to certain exceptions set forth in 15 U.S.C. §§ 7903(5)(A)(i)-(vi). A viable state law action that fits within one of six enumerated exceptions is not prohibited. The following exceptions are relevant to this case.
...
(ii) an action brought against a seller for negligent entrustment or negligence per se;
(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 an 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 entry 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 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 under subsection (g) or (n) of section 922 of title 18;
...
(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that when the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.
...
15 U.S.C. §§ 7903(5)(A)(i) - (vi).
"Predicate exception" [15 U.S.C. §§ 7903(5)(A)(iii)]
The "predicate exception" permits "[a]ctions where a manufacturer or seller knowingly violated a State or Federal Statute applicable to the sale or marketing of the product, *where violation proximately caused the harm sued upon*[.]" 15 U.S.C. § 7903(5)(A)(iii) [emphasis added].
After the "Notice of Withdrawal" (discussed above), the First Amended Complaint alleges that that Smith & Wesson knowingly violated, either directly or as an accomplice/conspirator: (1) the federal law's prohibition on the sale of automatic fire "machinegun[s]" to the general public (18 U.S.C. 922(b)(4)) and (2) California's prohibition on "deceptive, untrue or misleading advertising" under the Unlawful Competition Law.
(1) Federal Statute prohibiting sale of automatic fire machine guns.
Paragraph 56 of the First Amended Complaint alleges: "The NFA defines a "machinegun" as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. § 5845(b). The definition also includes "the frame or receiver of any such weapon," as well as "any part" or "combination of parts designed and intended, for use in converting a weapon into a machinegun," and "any combination off parts from which a machinegun can be assembled" as long as those "parts are in the

possession of under the control of a person." Id.
Paragraph 57 alleges: "18 U.S.C. § 922(b)(4) prohibits the sale of "machinegun[s]" to members of the general public who have not undergone the required registration process."
Paragraph 58 alleges: "In 1982, the Bureau of Alcohol, Tobacco Firearms and Explosives (ATF) underscored that the NFA definition of "machinegun[s]" includes "those weapons which have not previously functioned as machineguns but possess design features which facilitate full automatic fire by simple modification or elimination of existing component parts."
Paragraph 64 alleges: "SMITH & WESSON chose to design the Rifle in a manner that made it able to be easily modified or degraded to fire automatically." Paragraph 65 alleges that methods for easy modification of the Rifle at issue.
Based on these paragraphs, plaintiffs have alleged a federal statute applicable to the sale or marketing of the product: 18 U.S.C. § 922(b)(4)).
S&M argues that "predicate exception" is still not applicable because in order to qualify for the "predicate exception", the violation must have "proximately caused the harm sued upon." 15 U.S.C. § 7903(5)(A)(iii). According to S&M, plaintiffs have not pleaded, nor do they now argue, that the rifle used in the shooting had actually been so modified to fire fully automatic as allegedly proscribed by the federal law. Thus, any violation of federal law did not "proximately cause" the harm sued upon.
Proximate cause is "that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produced the injury [or damage complained of] and without which such result would not have occurred..." (State of California v. Superior Court (1984) 150 Cal.App.3d 848, 857)
Paragraph 111 alleges: "Upon information and belief, the Shooter would not have acquired the Rifle or used it in the Incident but for his exposure to the reckless, deceptive and illegal marketing campaign disseminated by SMITH & WESSON and SMITH & WESSON's associated design decisions." Plaintiffs have alleged causation – the Shooter would not have acquired the Rifle or used it but for S&M's design decisions, which were allegedly in violation of federal law. Thus, for purposes of pleading, the First Amended Complaint alleges causation.
(2) California's prohibition on "deceptive, untrue or misleading advertising" under the Unlawful Competition Law
The question is whether the UCL is a "State or Federal statute applicable to the sale or marketing" of a firearm.
According to S&W, "Congress had in mind only ... 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." Ileto v. Glock, Inc., 565 F.3d 1126, 1135-36 (2009), cert denied 560 U.S. 924 (2010).
Plaintiffs argue that because Congress chose not to limit the predicate exception to firearms-specific laws, but intended to exempt actions alleging a violation of any law that is capable of being applied to the sale and marketing of firearms, "then there is little doubt that state consumer protection statutes ...would qualify as predicate statutes." See Soto v. Bushmaster Firearms International, LLC, 331 Conn. 53, 119 (2019).
Accordingly, California's UCL-which forbids "unlawful, unfair or fraudulent" conduct with virtually any type of business activity-is clearly capable of being applied to the sale and marketing of firearms and qualifies as a "predicate." Cal. Bus. & Prof. Code §§ 17200 et seq.
There is a split of authority on the broad issue of whether consumer protection statutes such as California's UCL fall within statutes "applicable to the sale or marketing" of a firearm.
In statutory interpretation, the Court is to begin with plain language. See, e.g., Maslenjak v. United States, —— U.S. ——, 137 S.Ct. 1918, 1924, 198 L.Ed.2d 460 (2017). As stated by the Soto court, "applicable" means "capable of being applied." Under this understanding, the UCL is applicable to sale and marketing of a firearm. See Smith & Wesson Corp. v. Gary, 875 N.E.2d 422, 431, 434–35 and n.12 (Ind. App. 2007) (predicate exception unambiguously applies to any state law capable of being applied

to sale or marketing of firearms), transfer denied, 915 N.E.2d 978 (Ind. 2009). The UCL would also, by its terms, be a statute involving sale or marketing of any product, including firearms.

Nothing in the statute indicates that that the predicate statutes have to exclusively apply to firearms. The Soto Court also insightfully found that "if Congress had intended to limit the scope of the predicate exception to violations of statutes that are directly, expressly, or exclusively applicable to firearms, however, it easily could have used such language, as it has on other occasions." Soto, supra, 331 Conn. at 119–20, 202 A.3d at 302–03.

The Court in Soto also recognized a significant point implying intent: at the time PLCAA was enacted, no federal statutes directly or specifically regulated the marketing or advertising of firearms. In addition, only a handful of states have enacted firearm specific laws that address in any way the marketing function, and none of those purports to comprehensively regulate the advertising of firearms. "It would have made little sense for the drafters of the legislation to carve out an exception for violations of laws applicable to the marketing of firearms if no such laws existed. Ibid. at 121-22.

Thus, the Court finds that the UCL qualifies as a "predicate statute." (Whether or not the First Amended Complaint meets the necessary elements for a UCL claim is discussed in depth below.)

Scope of the "Predicate Exception"

The question becomes what is the scope of the "predicate exception." Does the action as a whole, that is,"all" causes of action, survive if the "predicate exception" applies or should the court look at each cause of action on a claims-by-claim basis?

Plaintiffs argue that since this action fits into the "predicate exception" of the PLCAA for alleged violation of a statute relating to the sale of guns, their entire action survives. They make the following statement in Opposition: "Courts across the country have held that PLCAA's "predicate exception" permits the entire "action in which" a predicate statutory violation is alleged to proceed, meaning that all claims survive-including simple negligence or nuisance claims which do not otherwise fall within an enumerated exception. Hence, Smith & Wesson is incorrect that Plaintiffs' negligence and public nuisance claims are automatically barred because there is no express exception for them under PLCAA, and that Plaintiffs' product liability claim is barred if it does not satisfy PLCAA's exception for products liability claims in § 7903(5)(A)(v)." (p.17)

There is a split of authority on this issue as summarized in the case of Ramos v. Wall-Mart Stores Unlimited 202 F.Supp.3d 457, 465-466 (Penn. 2016). (That decision is cited in the Reply Brief of San Diego Guns, LLC to its Demurrer. The issue was left unresolved in the decision, but the cases supporting the split are acknowledged.)

This Court interprets the PLCAA to apply on a claim-by-claim basis, requiring every claim within a case to find its own exception to avoid being blocked by the Act. The express purpose of the Act was 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," see 15 U.S.C. § 7901(b)(1) (emphasis added). Further, the Act's exceptions appear to pertain to individual claims, including negligent entrustment or negligence per se as well as products liability.

Constitutionality

Plaintiffs raise a variety of challenges to the constitutionality of the PLCAA, including that the PLCAA exceeds Congress' commerce clause authority, violates the Tenth Amendment, and deprives them of the due process clause and equal protection rights.

At this juncture, the Court does not need to reach these constitutionality issues in ruling on the demurrer given the analysis above that the statute is not a bar to all allegations in the case. In other words, the constitutionality would only be an issue if the Court were to determine that there was no liability under the statute. These issues are preserved for any future dispositive rulings.

First Cause of Action for Products Liability

SUSTAINED WITHOUT LEAVE TO AMEND

The basis for this cause of action is the following alleged design defect: "The Rifle was designed to be

easily modified to fire automatically, prohibited under federal law unless sold in compliance with the federal National Firearms Act ("NFA")."

In the demurrer, defendants contend that this cause of action is squarely covered by the PLCAA. Products liability for defects in design or manufacture are exempt under subdivision 7903(5)(A)(v), "*except* that when the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage."

According to defendant, plaintiffs have pleaded that the shooter deliberately discharged the firearm. (FAC ¶¶ 160-165). The shooter's volitional act was undeniably criminal, and was as a matter of law, the sole proximate cause of the shooting and plaintiff's damages under § 7903(5)(A)(v).

As discussed above, Plaintiffs argue that since this matter fits into the "predicate exception" of the PLCAA for alleged violation of a statute relating to the sale of guns, their entire action survives, including products liability. However, the statute specifically addresses products liability claims. Thus, even if there is a predicate statutory basis for other causes of action, products liability is allowed *except when the discharge of the product was caused by a volitional act that constituted a criminal offense.* As indicated above, the pleading indicates the discharge of the product was caused by a volitional act that constituted a criminal offense. Thus, the products liability claim is barred under the PLCAA.

Second Cause of Action for UCL Violation

SUSTAINED WITH 20 DAYS LEAVE TO AMEND

As stated above, this Court finds that California's UCL qualifies as a statute applicable to the sale or marketing of firearms under the predicate exception to PLCAA immunity. 15 U.S.C. § 7903(5)(A)(iii). Defendant S&W make additional arguments as to the viability of this claim.

(1) No deceptive marketing claim under the UCL fraudulent prong.

The FAC alleges that SMITH & WESSON engaged in a marketing campaign targeting youth with advertisements over social media and through videogame-like commercials despite the known risks that young people in that demographic are highly susceptible to that type of advertising and have disproportionately perpetrated mass shootings using similar firearms. SMITH & WESSON's marketing violated California's prohibition on "deceptive, untrue or misleading advertising" (see Cal. Bus. & Prof. Code § 17200)

S&W argues that, as a matter of fact, the Court will not be able to make findings that support deceptive, untrue or misleading advertising. However, the Court cannot make this determination on demurrer.

(2) Standing

Under cases such as Kwikset Corp. v. Superior Court, 51 Cal.4th 310, 322 (2011) ("[A] party must ... (1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e. economic injury, and (2) show that the economic injury was the result of, i.e., caused by the unfair business practice ... that is the gravamen of the claim." The Court in Kwikset summarized the types of injuries in which economic injury from unfair competition may be shown. A plaintiff may (1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he or she has a cognizable claim; or (4) be required to enter into a transaction, costing money or property, that would otherwise have been unnecessary. Ibid. citing Hall v. Time Inc., supra, 158 Cal.App.4th at pp. 854–855.

The pleading does not allege any injury in fact under any of the categories defined above. Leave to amend is granted in order for plaintiffs to allege an "injury in fact."

Third Cause of Action for Ordinary Negligence and Sixth Cause of Action for Public Nuisance

OVERRULED

Plaintiffs allege that S&W was negligent in designing the firearm, advertising the firearm, and failing to monitor and supervise the downstream retail sale of the firearm by San Diego Guns. (FAC ¶ 197). Plaintiffs also allege that S&W's design of the firearm, its advertisements for the firearm, and its failure to

monitor and supervise the downstream retail sale of the firearm by San Diego Guns was a public nuisance under California Civil Code § 3480. (FAC ¶¶ 228-242).
S&W argues General Negligence and Public Nuisance are not enumerated as exceptions under the PLCAA. The PLCAA preempts common law claims like general negligence and public nuisance. Congress did not provide an enumerated exception for general negligence or public nuisance. "Congress consciously considered how to treat tort claims" and it "chose generally to preempt all common law claims" except negligent entrustment and negligence per se. (Illeto v. Glock 565 F.3d 1126, 1135 n.6 (9th Cir. 2009)).
Plaintiffs argue this claim would survive under the "predicate exception." Paragraph 197 generally alleges that S&W "design[ed] a firearm that could be easily modified, including to become an assault weapon prohibited under California law, and to fire automatically, effectively prohibited to sell to the general public under federal law (unless the NFA's requirements were followed).
As pled, these causes of action are based upon an alleged violation of a federal statute and would thus fall within the predicate exception. It is an "action" where a manufacturer or seller [allegedly] knowingly violated a State or Federal Statute applicable to the sale or marketing of the product."

First Amendment Argument
The Second Cause of Action for Negligence, the Third Cause of Action for UCL and the Sixth Cause of Action for Public Nuisance are based, in part, on S&W's advertisements. S&W argue alternatively that Plaintiffs' claims that S&W advertisements caused the shooter to commit his crimes should be dismissed because the claims violate the First Amendment of the United States Constitution.
Commercial speech that proposes an illegal transaction or that promotes or encourages an unlawful activity does not enjoy the protection of the First Amendment. See, e.g., Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 496, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982); Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations, 413 U.S. 376, 388–89, 93 S.Ct. 2553, 37 L.Ed.2d 669 (1973); see also Thompson v. Western States Medical Center, 535 U.S. 357, 367, 122 S.Ct. 1497, 152 L.Ed.2d 563 (2002); Lamar Outdoor Advertising, Inc. v. Mississippi State Tax Commission, 701 F.2d 314, 321–22 (5th Cir. 1983). Plaintiffs' First Amended Complaint alleges that the marketing in question promoted unlawful activity.
Duty to monitor, supervise or control conduct of San Diego Guns
S&W also argue that the Complaint also alleges that S&W is responsible for San Diego Guns' alleged conduct based on a claimed common law duty on the part of S&W to "monitor sales by downstream ... sellers." (FAC ¶¶ 154-157). Plaintiffs assert that S&W's alleged failure to supervise San Diego Guns' sale of the firearm was negligent (Third Cause of Action) and a public nuisance (Sixth Cause of Action).
According to S&W, there is no principal-agent relationship between S&W and San Diego Guns that would lead to vicarious liability.
This argument does not dispose of the negligence cause of action and is thus inappropriate for demurrer.

Motion to Strike by S&W

The Motion to Strike is DENIED.
Punitive damages are properly pled by identifying a cause of action for which punitive damages are recoverable and describing the acts or omissions that constitute fraud, oppression or malice as those terms are defined in California Civil Code section 3294(c). "Malice" is defined as either: (1) conduct which is intended by the defendant to cause injury to the plaintiff, or (2) "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) And "fraud" is "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or

legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).)
A claim for punitive damages is a serious accusation of wrongful conduct, which requires proof by "clear and convincing evidence" that a defendant has been guilty of oppression, fraud, or malice to justify a claim for punitive damages. (Mock v. Michigan Millers Mut. Ins. Co. (1992) 4 Cal.App.4th 306, 327-28; Tomaselli v. Transamerica Ins. Co. (1994) 25 Cal.App.4th 1269, 1287.) "Clear and convincing" means evidence "so clear as to leave no substantial doubt . . . [i]t must be sufficiently strong to command the unhesitating assent of every reasonable mind." (In re David C.
To support a punitive damages claim, "ultimate facts" of the defendant's oppression, fraud, or malice must be pled. (Cyrus v. Haveson (1976) 65 Cal.App.3d 306, 316-317.) Sparse claims of malice, oppression or fraud, absent specific factual allegations, are nothing more than insufficient, "patently conclusory language." (Brousseau v. Jarret (1977) 73 Cal.App.3d 864, 872.) Simply inserting buzzwords like "oppression," "fraud," or "malice," without factual support, does not create a legitimate punitive damages claim. (See id.; Grieves v. Sup. Ct. (1984) 157 Cal.App.3d 159, 166); Spinks v. Equity Res. Briarwood Apts. (2009) 171 Cal.App.4th 1004, 1055.)
As to S&W, plaintiffs specifically allege that in 2000, Smith & Wesson entered into a settlement with the federal government and several cities, and vowed to reform its business practices to prevent criminal misuse of its guns, including agreeing to not "sell . . . a weapon designed in a manner so that with a few additional parts and/or minimal modifications an owner can convert the firearms into an illegal fully automatic weapon. Complaint ¶62. Twenty years later, Smith & Wesson has continued selling firearms that it knew could be easily modified to turn into fully automatic assault weapons – even when its modified guns have been used in other mass shootings. It also fraudulently and deceptively marketed its Rifle with known intent to put them in the hands of persons in a demographic particularly likely to cause extreme harm--and indeed, harm that is the epitomy of "cruel and unjust hardship in conscious disregard" of the rights and safety of others.
S&W relies on Civil Code section 3294(b) for the proposition that when suing a corporation, plaintiffs are required to plead authorization by an S&W officer, director or managing agent in order to state a claim for punitive damages against a corporation like S&W. However, this argument misapplies Section 3294(b). That section applies when a plaintiff is suing a corporate employer for the actions of a corporate employee. The section provides in full:
An employer shall not be liable for (exemplary damages) based upon the acts of the employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct...or was personally guilty of oppression, fraud or malice.
With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.
In this case, the alleged allegations are the policies of the corporation itself and not a specific employee of the corporation. Civil Code 3294(b) simply does not apply.

Demurrer by San Diego Guns

The following causes of action are alleged against SD Guns: (1) Products Liability – Defective Design; (2) Common Law Negligence; (3) Negligence Per Se; (4) Negligent Entrustment (NOT challenged by demurrer); (5) Public Nuisance

Whether this is a "qualified civil action"

See discussion above with respect to S&W's Demurrer. A "qualified civil liability action" is defined, in relevant part, as seeking redress for harm "resulting from the criminal or unlawful misuse of a qualified product by the person or a third party." As stated with respect to the analysis of S&W's demurrer, the action does not need to be "solely caused" by the criminal actions.

"Predicate Exception"

See discussion above with respect to S&W's Demurrer.

First Cause of Action for Product Liability
SUSTAINED WITHOUT LEAVE TO AMEND
See discussion above with respect to S&W's Demurrer.
Fourth Cause of Action for Negligence Per Se
OVERRULED.
As Defendant concedes in its moving papers, "negligence per se" is already enumerated as an exception to immunity from causes of action against sellers of firearms under PLCAA. Demurrer 9: 12-13. Defendant however argues negligence per se is not a separate cause of action in California, so Plaintiffs cannot use this doctrine to prove San Diego Guns' negligence in this case.
However, the cause of action for negligence per se presumes negligence upon a violation of statute. Negligence per se creates an evidentiary presumption that affects the standard of care in a cause of action for negligence. Millard v. Biosources, Inc., 156 Cal. App. 4th 1338, 1353 (2007).
As alleged in the complaint, San Diego Guns violated laws applicable to the sale or marketing of firearms including but not limited to Cal. Pen. Code § 27510 by selling the Rifle to the Shooter with actual and/or constructive knowledge that the Shooter was under the age of 21 and lacked a valid hunting license. FAC ¶¶212-213. The complaint further alleges that Cal. Pen. Code § 27510 and other potentially applicable state and/or federal firearms laws are designed to protect all members of the general public from the foreseeable harm that results when dangerous possessors like the Shooter gain access to lethal weapons, and as such Plaintiffs were within the class of people Cal. Pen. Code § 27510 and/or other potentially applicable state and/or federal firearms laws are designed to protect. FAC ¶¶ 214-215. And finally, as a direct and foreseeable result of San Diego Guns' actions, Plaintiffs Goldstein and N.D. were seriously injured, and all Plaintiffs have suffered, and continue to suffer, great pain of mind and body, shock, and further severe and persistent emotional distress, physical manifestations of emotional distress, loss of enjoyment of life, loss of earnings and earning capacity, and incurred substantial expenses for medical and psychological treatment, therapy and counseling and other economic and/or noneconomic damages. FAC ¶¶ 217-218.
Third Cause of Action for Negligence; Sixth Cause of Action for Public Nuisance
OVERRULED.
See analysis with respect to S&W's Demurrer.
San Diego Guns' Motion to Strike
DENIED
In their Prayer for Relief, Plaintiffs generally claim entitlement to punitive damages against all defendants. (FAC, p. 51:1.)
Punitive damages are properly pled by identifying a cause of action for which punitive damages are recoverable and describing the acts or omissions that constitute fraud, oppression or malice as those terms are defined in California Civil Code section 3294(c). "Malice" is defined as either: (1) conduct which is intended by the defendant to cause injury to the plaintiff, or (2) "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) And "fraud" is "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).)
A claim for punitive damages is a serious accusation of wrongful conduct, which requires proof by "clear and convincing evidence" that a defendant has been guilty of oppression, fraud, or malice to justify a claim for punitive damages. (Mock v. Michigan Millers Mut. Ins. Co. (1992) 4 Cal.App.4th 306, 327-28; Tomaselli v. Transamerica Ins. Co. (1994) 25 Cal.App.4th 1269, 1287.) "Clear and convincing" means evidence "so clear as to leave no substantial doubt . . . [i]t must be sufficiently strong to command the unhesitating assent of every reasonable mind." (In re David C.

To support a punitive damages claim, "ultimate facts" of the defendant's oppression, fraud, or malice must be pled. (Cyrus v. Haveson (1976) 65 Cal.App.3d 306, 316-317.) Sparse claims of malice, oppression or fraud, absent specific factual allegations, are nothing more than insufficient, "patently conclusory language." (Brouseau v. Jarret (1977) 73 Cal.App.3d 864, 872.) Simply inserting buzzwords like "oppression," "fraud," or "malice," without factual support, does not create a legitimate punitive damages claim. (See id.; Grieves v. Sup. Ct. (1984) 157 Cal.App.3d 159, 166); Spinks v. Equity Res. Briarwood Apts. (2009) 171 Cal.App.4th 1004, 1055.)

As to San Diego Guns, plaintiffs allege it chose to violate Cal. Pen. Code § 27510 by selling the Rifle, a weapon that could have been easily modified to become an assault weapon, and multiple rounds of ammunition to the Shooter. They made the sale despite knowing that the Shooter was under the age of 21 and with the knowledge that the hunting license the Shooter presented was not valid for the purchase of any firearms in April 2019, months before the license going into effect in July 2020. (Id. at ¶ 124-137).

Attorney Fees (SD Guns)

DENIED.

SD Guns seeks to strike the request for attorney fees.

There is at least a potential for attorney fees under the "private attorney general doctrine" under CCP 1021.5, which provides, in part: "[u]pon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if:

(a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons.

Injunctive Relief

DENIED.

Injunctive relief is a remedy for the nuisance cause of action.

IT IS SO ORDERED.

Kenneth J. Medel

Judge Kenneth J Medel

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Goldstein vs Earnest [EFILE]

CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: **37-2020-00016638-CU-PO-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 07/02/2021.

Clerk of the Court, by: B. Orihuela, Deputy

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

KEELY ROBERTS, individually and as parent and next friend of C.R. and L.R., and JASON ROBERTS, individually and as parent and next friend of C.R. and L.R., *Plaintiffs*, v. SMITH & WESSON BRANDS, INC., SMITH & WESSON SALES COMPANY, SMITH & WESSON, INC., BUDSGUNSHOP.COM, LLC, RED DOT ARMS, INC., ROBERT CRIMO, JR., and ROBERT CRIMO, III, *Defendants*.	Lead Case No. 1:22-cv-06169 Related Case Nos. 1:22-cv-06171 1:22-cv-06178 1:22-cv-06181 1:22-cv-06183 1:22-cv-06185 1:22-cv-06186 1:22-cv-06190 1:22-cv-06191 1:22-cv-06193 1:22-cv-06359 1:22-cv-06361 Hon. Steven C. Seeger

INDEX OF UNPUBLISHED OPINIONS CITED IN REPLY BRIEF
IN FURTHER SUPPORT OF
ROBERTS PLAINTIFFS' MOTION TO REMAND

Number	Case Name	Ruling Date	Court	Case No.
1.	Claudia Apolinar, et al. v. Polymer80, Inc.	02/02/2022	Superior Court of California, County of Los Angeles	21STCV29196
2.	Goldstein v. Earnest	07/02/2021	Superior Court of California, County of San Diego Central	37-2020-00016638-CU-PO-CTL