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Mad Minute Enterprises, LLC d/b/a Delia's Gun Shop and Delia's Gun Shop, Inc.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

City of Philadelphia	:	CASE NO.: 230702394
Plaintiff	:	CIVIL DIVISION
v.	:	
Tanner Operations, LLC, *et. al.*	:	
Defendants	:	

DEFENDANT MAD MINUTE ENTERPRISES, LLC'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2 and Local Rule 1035.2(a), Defendant Mad Minute Enterprises, LLC d/b/a Delia's Gun Shop ("Defendant"), by and through their undersigned counsel Goldstein Law Partners, LLC, moves for summary judgment against Plaintiff City of Philadelphia ("City") for the reasons articulated below and in Defendant's accompanying memorandum of law:

1. The operative complaint in this matter—the City's First Amended Complaint ("Am. Compl."), attached hereto as Exhibit A—asserts five causes of action against Defendant: public nuisance, negligence, negligence *per se*, negligent entrustment, and a statutory claim under 18 Pa.C.S. § 6111(g)(6). Am. Compl. ¶¶ 96-145.

2. Each of these claims is based on the theory that Defendant is responsible for alleged harms resulting from criminal shootings and other unlawful conduct committed in Philadelphia by third parties using firearms that were sold, in whole or in part, by Defendant at some point in time.

3. This theory is not only fundamentally flawed—it is precluded by federal law, specifically, the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901–7903 ("PLCAA").

4. Therefore, under the undisputed material facts before this Court, Defendant is entitled to judgment as a matter of law.

MATERIAL FACTS ABOUT WHICH THERE IS NO GENUINE ISSUE

5. On October 31, 2023, the City filed its Amended Complaint against three federally licensed firearms dealers, including Defendant. Am. Compl. 59.

6. Defendant is a domestic limited liability company incorporated under the laws of the Commonwealth. Am Compl. ¶ 14.

7. Defendant is known as "Delia's Gun Shop," a fictitious name registered to Defendant. Am Compl. ¶ 14.

8. Defendant holds a Type 1 (dealer) federal firearms license and operates as a retail dealer in firearms. Am Compl. ¶ 14.

9. Defendant's principal place of business is 6104 Torresdale Avenue in Philadelphia. Am Compl. ¶ 14.

10. Straw purchasing is illegal under both federal and Pennsylvania law. Am Compl. ¶¶ 24-25.

11. The City does not allege that Defendant is a straw purchaser, that it used or misused any firearm, or that any firearm sold by Defendant was defective in design or manufacture. *See generally* Am. Compl.

12. Neither Defendant nor its owners have been federally or locally criminally convicted for or even criminally charged with violating any of the statutes invoked by the City. Am. Compl.

13. The City has not produced any federal or state court decision determining that Defendant knowingly falsified transaction records, knowingly assisted a straw purchase, or knowingly sold to a prohibited person in violation of those statutes. Am. Compl.

14. Instead, the City alleges that Defendant sold guns to straw purchasers who then transferred the guns to prohibited persons or the "illegal secondary market" and that some of those firearms were later recovered in Philadelphia in connection with various crimes. Am Compl. ¶¶ 27-29, 46.

15. The City alleges that, according to unidentified "criminal court records," Defendant "has a pattern of sales to obvious straw purchasers." Am Compl. ¶ 81.

16. The City's Amended Complaint identifies four (4) individuals who purchased from Defendant a total of seventeen (17) handguns, seven (7) of which were found in the possession of another individual at a later point. Am. Compl. ¶¶ 82-95. The City has placed no evidence in the record before this Court that Delia's had a role in or knowledge of the transfer of any of these handguns from the first purchaser to the subsequent possessor.

17. An individual named Anthony Cipriano purchased seven (7) handguns from Defendant between April 23, 2021, and May 26, 2021, including four (4) 9mm handguns. Am Compl. ¶ 82.

18. Two (2) handguns purchased by Anthony Cipriano from Defendant were later found by law enforcement in Philadelphia when conducting "narcotics busts" of other individuals. Am Compl. ¶ 85-86.

19. An individual named Charles Thompson purchased six (6) 9mm handguns from Defendant between September 7, 2019, and January 31, 2020. Am Compl. ¶ 87.

20. On January 28, 2020, Charles Thompson purchased two (2) boxes of ammunition from Defendant. Am Compl. ¶ 89.

21. Charles Thompson later told police that he was actually purchasing the guns for two other men in exchange for money and drugs. Am Compl. ¶ 88.

22. Law enforcement later found "a gun containing components from" two handguns purchased by Charles Thompson in another individual's home, a similar, "mirror image" handgun by the side of Tabor Avenue, and a third handgun during a traffic stop of other individuals. Am Compl. ¶ 91.

23. An individual named Emmitt M. Smith purchased one (1) handgun from Defendant on March 30, 2018. Am Compl. ¶ 92.

24. The City alleges that, in July 2019, law enforcement responding to reports of gunfire in the 2900 block of Janney Street found four "spent 9mm casings," and that "[f]orensic evidence" showed a "link[ ]" between the casings and the handgun purchased by Emmitt M. Smith in 2018. Am Compl. ¶ 93.

25. In September 2019, law enforcement found the handgun purchased by Emmitt M. Smith during execution of a search warrant and arrest of other individuals. Am Compl. ¶ 92.

26. An individual named Tyrone Gresham purchased three (3) handguns—two Glock handguns and one 9mm handgun—from Defendant between December 2019 and April 2021. Am Compl. ¶ 94.

27. In October 2022, police found one (1) handgun purchased by Tyrone Gresham during a traffic stop of other individuals. Am Compl. ¶ 95.

28. The City's Amended Complaint does not identify any homicides committed with handguns purchased from Defendant. Am. Compl. ¶¶ 82-95.

29. In discovery, the City identified other individuals "both known and unknown" to whom Defendant allegedly sold firearms and who the City alleges may have been straw purchasers. Pl.'s Am. Resps. & Objections to Def. Delia's Interrogs. #2, attached hereto as Exhibit B.

DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW

30. Congress passed the PLCAA in 2005 for the following reasons:

> (1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.
> (2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.
> (3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.
> (4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.
> (5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

> (6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.
> (7) To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

15 U.S.C. § 7901(b).

31. As recently as this year, the United States Supreme Court emphasized that the PLCAA's "core purpose" is "to halt a flurry of lawsuits attempting to make gun manufacturers [and sellers] pay for the downstream harms resulting from misuse of their products." *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 298 (2025).

32. The Supreme Court of Pennsylvania has recently held that the PLCAA is constitutional, is binding on Pennsylvania courts, and requires dismissal of actions that fall within this definition unless an enumerated exception applies. *Gustafson v. Springfield, Inc.*, 333 A.3d 651 (Pa. 2025).

33. The firearms and/or ammunition the City alleges were sold by Defendant are "qualified products" under the PLCAA because they were shipped or transported in interstate commerce and sold by Defendant, a federally licensed firearms dealer. *See* 15 U.S.C. § 7903(4), (6).

34. The City's suit against Defendant is a "qualified civil liability action" under the PLCAA because it is "a civil action or proceeding . . . brought by any person[1] against a manufacturer or seller of a qualified product . . . for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, *resulting from the criminal or unlawful misuse of a qualified product by the person or a third party*," 15 U.S.C. §

[1] The City is a "person" for purposes of the PLCAA because it is a "governmental entity." *See* 15 U.S.C. § 7903(3).

7903(5)(A), and does not fall within one of the six narrow exemptions enumerated by the PLCAA. *See Smith & Wesson Brands, Inc.*, 605 U.S. at 298.

35. The City's suit against Defendant is not permitted under the PLCAA as "an action brought against a transferor convicted under section 924(h) of title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted." 15 U.S.C. § 7903(5)(A)(i).

36. The City's suit against Defendant is not permitted under the PLCAA as "an action brought against a seller for negligent entrustment or negligence *per se*." 15 U.S.C. § 7903(5)(A)(ii).

37. The City's suit against Defendant is not permitted under the PLCAA as "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. § 7903(5)(A)(iii) (emphases added).

38. The City's suit against Defendant is not permitted under the PLCAA as "an action for breach of contract or warranty in connection with the purchase of the product." 15 U.S.C. § 7903(5)(A)(iv).

39. The City's suit against Defendant is not permitted under the PLCAA as "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." 15 U.S.C. § 7903(5)(A)(v).

40. The City's suit against Defendant is not permitted under the PLCAA as "an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26." 15 U.S.C. § 7903(5)(A)(vi).

WHEREFORE, Defendant respectfully urges this Court to enter summary judgment in Defendant's favor and against the City as to Defendant on all claims in the Amended Complaint.

Respectfully submitted,

GOLDSTEIN LAW PARTNERS, LLC

Dated: 12/01/2025

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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

City of Philadelphia	:	CASE NO.: 230702394
Plaintiff	:	CIVIL DIVISION
v.	:	
Tanner Operations, LLC, *et. al.*	:	
Defendants	:	

DEFENDANT MAD MINUTE ENTERPRISES, LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. MATTER BEFORE THE COURT

Before the Court is Defendant Mad Minute Enterprises, LLC d/b/a Delia's Gun Shop's ("Defendant's") Motion for Summary Judgment ("MSJ") against Plaintiff City of Philadelphia ("City").

II. STATEMENT OF THE QUESTIONS PRESENTED

1. Is Defendant entitled to judgment as a matter of law under the material facts about which there is no genuine issue?

   Suggested answer: **Yes**.

2. Is this Court required to dismiss this matter pursuant to federal law, namely, the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901–7903 ("PLCAA")?

   Suggested answer: **Yes**.

3. Do any of the statutory exceptions enumerated in the PLCAA operate to save this matter from dismissal?

Suggested answer: **No**.

III. FACTS

Defendant is a domestic limited liability company incorporated under the laws of the Commonwealth. Am Compl. ¶ 14. Defendant is known as "Delia's Gun Shop," a fictitious name registered to Defendant, and it holds a Type 1 (dealer) federal firearms license and operates as a retail dealer in firearms. Am Compl. ¶ 14. Defendant's principal place of business is 6104 Torresdale Avenue in Philadelphia. Am Compl. ¶ 14.

On October 31, 2023, the City filed its Amended Complaint against three federally licensed firearms dealers, including Defendant. Am. Compl. 59. Although straw purchasing is illegal under both federal and Pennsylvania law, Am Compl. ¶¶ 24-25, the City does not allege that Defendant is a straw purchaser, that it used or misused any firearm, or that any firearm sold by Defendant was defective in design or manufacture. *See generally* Am. Compl. Neither Defendant nor its owners have been federally or locally criminally convicted for or even criminally charged with violating any of the statutes invoked by the City. Am. Compl. Moreover, the City has not produced any federal or state court decision determining that Defendant knowingly falsified transaction records, knowingly assisted a straw purchase, or knowingly sold to a prohibited person in violation of those statutes. Am. Compl.

Instead, the City alleges that Defendant sold guns to straw purchasers who then transferred the guns to prohibited persons or the "illegal secondary market" and that some of those firearms were later recovered in Philadelphia in connection with various crimes. Am Compl. ¶¶ 27-29, 46. The City summarily alleges that, according to unidentified "criminal court records," Defendant "has a pattern of sales to obvious straw purchasers." Am Compl. ¶ 81.

The City's Amended Complaint identifies four (4) individuals who purchased from Defendant a total of seventeen (17) handguns, seven (7) of which were found in the possession of another individual at a later point. Am. Compl. ¶¶ 82-95. Critically, the City has placed no evidence in the record before this Court that Delia's had a role in or knowledge of the transfer of any of these handguns from the first purchaser to the subsequent possessor.

An individual named Anthony Cipriano purchased seven (7) handguns from Defendant between April 23, 2021, and May 26, 2021, including four (4) 9mm handguns. Am Compl. ¶ 82. Two (2) handguns purchased by Anthony Cipriano from Defendant were later found by law enforcement in Philadelphia when conducting "narcotics busts" of other individuals. Am Compl. ¶ 85-86. There is no evidence in the record showing that Defendant knew that these firearms made their way from Anthony Cipriano to these other individuals or that these firearms would make their way to these other individuals.

An individual named Charles Thompson purchased six (6) 9mm handguns from Defendant between September 7, 2019, and January 31, 2020. Am Compl. ¶ 87. On January 28, 2020, Charles Thompson purchased two (2) boxes of ammunition from Defendant. Am Compl. ¶ 89. Charles Thompson later told police that he was actually purchasing the guns for two other men in exchange for money and drugs. Am Compl. ¶ 88. Law enforcement later found "a gun containing components from" two handguns purchased by Charles Thompson in another individual's home, a similar, "mirror image" handgun by the side of Tabor Avenue, and a third handgun during a traffic stop of other individuals. Am Compl. ¶ 91. There is no evidence in the record showing that Defendant knew that these firearms made their way from Charles Thompson to these other individuals or that these firearms would make their way to these other individuals.

An individual named Emmitt M. Smith purchased one (1) handgun from Defendant on March 30, 2018. Am Compl. ¶ 92. The City alleges that, in July 2019, law enforcement responding to reports of gunfire in the 2900 block of Janney Street found four "spent 9mm casings," and that "[f]orensic evidence" showed a "link[ ]" between the casings and the handgun purchased by Emmitt M. Smith in 2018. Am Compl. ¶ 93. In September 2019, law enforcement found the handgun purchased by Emmitt M. Smith during execution of a search warrant and arrest of other individuals. Am Compl. ¶ 92. There is no evidence in the record showing that Defendant knew that this firearm made its way from Emmitt M. Smith to anyone else or that this firearm would make its way to anyone else.

An individual named Tyrone Gresham purchased three (3) handguns—two Glock handguns and one 9mm handgun—from Defendant between December 2019 and April 2021. Am Compl. ¶ 94. In October 2022, police found one (1) handgun purchased by Tyrone Gresham during a traffic stop of other individuals. Am Compl. ¶ 95. There is no evidence in the record showing that Defendant knew that these firearms made their way from Tyrone Gresham to these other individuals or that these firearms would make their way to these other individuals.

In discovery, the City identified other individuals "both known and unknown" to whom Defendant allegedly sold firearms and who the City alleges may have been straw purchasers. MSJ, at Ex. B. However, the City's Amended Complaint does not identify any homicides committed with handguns purchased from Defendant. Am. Compl. ¶¶ 82-95. The City's pleadings and the evidence in the record make no showing that Defendant knew that any firearms it sold would make their way to anyone other than the state and federally approved individuals to whom Defendant sold the firearms to from its duly licensed retail establishment.

IV. ARGUMENT

Under the undisputed facts of record, Defendant is entitled to judgment as a matter of law. Those facts establish that the City's claims—essentially, that Defendant is liable for the downstream effects of lawful firearm sales—are precluded by federal law: the PLCAA.

The PLCAA is not a pleading technicality. It is a federal tort reform that specifically grants substantive civil immunity for manufacturers and sellers of firearms against litigants seeking to hold such manufacturers and sellers liable for harms "resulting from the criminal or unlawful misuse" of their products by third parties. 15 U.S.C. §§ 7901–7903. Only cases that fit within one of six narrow statutory exceptions may proceed; all others "may not be brought" and must be dismissed. 15 U.S.C. § 7902(a), (b).

This case is exactly the sort of suit Congress sought to preclude when it passed the PLCAA: a municipality seeks to hold local firearms retailers responsible for "the societal harm caused by illegal gun trafficking and gun violence in Philadelphia," based on allegations that they sold firearms that were later criminally misused by others. Every claim against Defendant rests on the impermissible and overly attenuated assertion that Defendant sold firearms to someone who later transferred those firearms to others, who in turn contributed to the City's downstream harms and that those harms are somehow cognizable as damages against Delia's.

A. The PLCAA's Structure and Purpose

Congress enacted the PLCAA in 2005 in response to a wave of suits—many brought by municipalities like Philadelphia—seeking to hold firearms manufacturers and sellers liable for societal costs of gun violence. Congress found that such suits "constitute[ ] an unreasonable burden on interstate and foreign commerce" and were an "attempt[ ] to use the judicial branch to

circumvent the Legislative branch" in regulating firearms. 15 U.S.C. § 7901(a)(6), (8). Congress explained the purposes of the law as follows:

> (1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.
> (2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.
> (3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.
> (4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.
> (5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.
> (6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.
> (7) To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

15 U.S.C. § 7901(b).

In furtherance of Congress's aim, the PLCAA provides that a "qualified civil liability action may not be brought in any Federal or State court" and that any such action pending on the date of enactment "shall be immediately dismissed." 15 U.S.C. § 7902. Courts have recognized that this language creates a substantive rule of law, not a mere procedural defense, and that PLCAA therefore "bars the commencement or the prosecution of qualified civil liability actions." *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 398 (2d Cir. 2008); *see also Jeffries v. D.C.*, 916 F. Supp. 2d 42, 43 (D.D.C. 2013) ("The law is very clear: The Protection of Lawful Commerce in Arms Act ('PLCAA') explicitly bars this kind of suit.").

Earlier this year, the United States Supreme Court emphasized that the PLCAA's "core purpose" is "to halt a flurry of lawsuits attempting to make gun manufacturers [and sellers] pay for the downstream harms resulting from misuse of their products." *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 298 (2025). And the Supreme Court of Pennsylvania recently held that the PLCAA is constitutional, is binding on Pennsylvania courts, and requires dismissal of actions that fall within this definition unless an enumerated exception applies. *Gustafson v. Springfield, Inc.*, 333 A.3d 651 (Pa. 2025).

B. This Case is a "Qualified Civil Liability Action" Barred by the PLCAA

The PLCAA defines a "qualified civil liability action" as any civil action brought by any person—including a "governmental entity"—against a manufacturer or seller of a "qualified product"—including a firearm, ammunition, or component parts of firearms or ammunition—"for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief," where the relief sought results from "the criminal or unlawful misuse of [that] qualified product" by the plaintiff or a third party. 15 U.S.C. § 7903(3), (4), (5)(A), (9).

These elements are plainly satisfied here. This is a civil case brought by a governmental entity against a seller of firearms that have moved in interstate commerce, and the City seeks damages, abatement, and injunctions, among other relief, based on third parties' alleged criminal or unlawful use of those firearms.

The Pennsylvania Supreme Court's recent decision in *Gustafson* confirms that a suit like this—seeking to hold industry defendants liable for injuries inflicted when a third party criminally misuses a firearm—is a "qualified civil liability action" under the PLCAA. In *Gustafson*, the parents of a child who died after an accidental shooting were precluded from bringing a products liability claim against the manufacturer and seller of the handgun.

The Pennsylvania Supreme Court ultimately dismissed the *Gustafson* action under the PLCAA (as should this Court), but before disposing of the plaintiffs' arguments concerning the PLCAA's exceptions, the Pennsylvania Supreme Court addressed the obvious: the action met the general definition of a "qualified civil liability action." *Gustafson*, 333 A.3d at 664 ("Plaintiffs (1) brought a civil action against both a manufacturer and seller, (2) of a qualified product, (3) for damages, (4) resulting from the criminal or unlawful use of a qualified product by a person or third party, thus seemingly barring their claim under the PLCAA."). The same is true here.

C. The Predicate Exception Does Not Save the City's Claims

The PLCAA does allow certain suits to go forward, notwithstanding that they meet the general definition of a "qualified civil liability action." However, none of those exceptions apply here to allow the City's impermissible suit.

First, this matter does not qualify under the so-called "Predicate Exception" as "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." As the Supreme Court emphasized in *Smith & Wesson Brands, Inc.*, 605 U.S. at 298-99, (emphasis added), this exception is narrow; it cannot be read so broadly that it "would swallow most of the rule."

In *Smith & Wesson Brands Inc.*, the Supreme Court held that Mexico's attempt to sue American gun manufacturers for harms caused by cartel violence did not fall within the predicate exception because Mexico had not "plausibly allege[d] the kind of 'conscious . . . and culpable participation in another's wrongdoing' needed to make out an aiding-and-abetting charge." 605 U.S. at 291. "The merchant becomes liable only if, beyond providing the good on the open market, he takes steps to 'promote' the resulting crime and 'make it his own.'" *Smith & Wesson Brands,*

Inc., 605 U.S. at 292 (quoting *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir 1938)). The Court stressed that allowing generalized allegations to suffice would render PLCAA meaningless by converting the exception into a broad vehicle for exactly the sort of litigation Congress sought to prohibit—and that the City now tries, illegitimately, to bring.

Justice Clarence Thomas, concurring in *Smith & Wesson Brands Inc.*, wrote separately to address the meaning of the term "violated" or "violation" within the Predicate Exception, suggesting that a separate action must result in a finding of guilt or criminal liability:

> It seems to me that the PLCAA at least arguably requires not only a plausible *allegation* that a defendant has committed a predicate violation, but also an earlier *finding* of guilt or liability in an adjudication regarding the "violation." Allowing plaintiffs to proffer mere allegations of a predicate violation would force many defendants in PLCAA litigation to litigate their criminal guilt in a civil proceeding, without the full panoply of protections that we otherwise afford to criminal defendants. . . . Such collateral adjudication would be at best highly unusual, and would likely raise serious constitutional questions that would counsel in favor of a narrower interpretation.

Smith & Wesson Brands, Inc., 605 U.S. at 300 (Thomas, J., concurring).

Justice Thomas's reading is fully consistent with the PLCAA's structure and purpose. An arrangement under which a plaintiff could plead a bare "predicate violation" and proceed through extensive discovery—seeking effectively to prove criminal conduct in a civil forum—would defeat Congress's design, turning the PLCAA's immunity from suit into a mere defense to liability. *Cf. In re Academy, Ltd.*, 625 S.W.3d 19, 35 (Tex. 2021) (observing that PLCAA is intended to "weed out, expeditiously, claims the PLCAA bars" and that such intent "is not served by allowing an action barred by the PLCAA to proceed to trial only to be inevitably reversed on appeal" (quoting *Jeffries*, 916 F. Supp. 2d at 43)).

And to Justice Thomas's point, the City has not alleged that Defendant has been found guilty or liable of any criminal offense under any of the statutes cited in the Amended Complaint. Nor has the City alleged that Delia's conspired with or otherwise coordinated with any of the accused straw purchasers in a manner that would demonstrate Delia's took "steps to 'promote' the resulting crime and 'make it [Delia's] own." Indeed, Defendant has not even been criminally charged for any of the straw purchases it allegedly facilitated. The only prosecutions identified by the City involve alleged straw purchasers and traffickers—not Defendant or its employees. Surely if law enforcement had evidence that could plausibly show Delia's coordinated with these straw purchasers to "'promote' the resulting crime and 'make it [Delia's] own" Delia's would also have been criminally charged. Delia's was not criminally charged. The absence of criminal charges speaks volumes about the City's ability to prove Delia's criminal culpability and speaks directly to the Congressional findings in enacting PLCAA, namely, that such a suit constitutes "an unreasonable burden on interstate and foreign commerce" and is an "attempt[ ] to use the judicial branch to circumvent the Legislative branch" in regulating firearms. 15 U.S.C. § 7901(a)(6), (8). The City's suit therefore remains a barred "qualified civil liability action" and must be dismissed.

Yet, even under a more expansive reading under which a prior adjudication is not required under the Predicate Exception, the City cannot establish a "knowing violation" of a statute "applicable to the sale or marketing of firearms," each of which the United States Supreme Court has described as "demand[ing]." *Smith & Wesson Brands, Inc.*, 605 U.S. at 298.

Indeed, the City merely alleges that Defendant sold firearms to customers who may have been straw purchasers or traffickers, and that various "red flags" should have alerted Delia's employees to that possibility. Am. Compl. ¶ 47. Based on this allegation, the City nakedly asserts

that Defendant "knew, had reason to believe, or deliberately avoided knowing that these individuals were engaged in straw purchasing, and/or dealing in firearms without a license." Am. Compl. ¶ 141.

This is not what the Predicate Exception requires. Most obviously, it requires a *knowing* violation—not mere negligence ("should have known") or even recklessness. 15 U.S.C. § 7903(5)(A)(iii). Substituting negligence or recklessness standards for a much higher, more exacting "knowing" standard would impermissibly rewrite the PLCAA statute.

Additionally, many of the statutes cited by the City are statutes that criminalize conduct by purchasers, (e.g., making false statements on ATF Form 4473 or acting as an unlicensed dealer), not by dealers. *See, e.g.*, 18 U.S.C. § 924(a)(1)(A) (criminalizing "knowingly mak[ing] any false statement or representation" in required records). The Amended Complaint essentially alleges that purchasers lied to Defendant—and to the government—despite the store completing the required forms and government-approved background checks. That is not a sufficient basis for establishing a knowing state of mind to lay liability for the subsequent misuse by others of the firearms Defendant legitimately sold at retail and for which Defendant has never been criminally charged.

To the extent the City alleges that Defendant violated any of the statutes that *do* apply to dealers, 18 U.S.C. §§ 922(d), (m), 924(a)(1)(A) or 18 Pa.C.S. §§ 6111, 6113, the Predicate Exception would require that the violation be accompanied by intent and knowledge that the *actual transferee* is prohibited or otherwise disqualified. Straw purchasers, *by design*, are legally eligible to purchase firearms or credibly present themselves as such; they conceal the involvement of the true (prohibited) buyer. This is why the straw purchaser's conduct is illegal and why they are charged criminally when caught. They deceptively conceal their true intent from both the dealer selling the firearm and from the government authorities conducting background checks. And here,

the City alleges that the straw purchasers in question passed the required background checks and that the relevant forms and approvals were in order.

Finally, the Predicate Exception does not apply because it requires not only an intentional statutory violation but *also* that the violation serve as the proximate cause of the harm for which relief is sought. 15 U.S.C. § 7903(5)(A)(iii) (allowing "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") (emphasis added). But here, the City alleges a too complex chain of causation under which Defendant's alleged failure to detect a straw purchaser's intentional concealment results in a sale to the alleged straw purchaser, then an illegal transfer of the firearm to an unknown individual or the downstream market at some indeterminate time in the future, then to someone who decides to purchase or possess the firearm illegally. From there, the City abstractly alleges that one of the individuals possessing the weapon could eventually decide to commit a violent crime using the weapon, which finally leads the City to experience theoretically quantifiable fiscal and societal harms. Despite this, the Amended Complaint itself cannot name a single confirmed[1]

[1] The closest the City comes to naming a violent crime with some connection to a firearm sold by Defendant is found in paragraph 93 of the Amended Complaint, but the relative strength of the "link" between the gunshot wounds and the casings found four days later is unclear:

> 93. This firearm is also connected to a pair of shootings on Janney Street in the Port Richmond neighborhood just a few months earlier. On the evening of July 20, 2019, PPD officers responding to a shooting in the 3000 block of Janney Street found a 36-year-old man suffering from two gunshot wounds to the abdomen. Four nights later and just a block away, PPD officers responding to reports of gunfire in the 2900 block of Janney Street located four spent 9mm casings. Forensic evidence gathered from both crime scenes linked each shooting back to the Taurus PT111 that Delia's sold to Smith in March 2018.

Am. Compl. ¶ 93.

instance of a firearm sold by Defendant used in such a violent crime, let alone identify or quantify the precise harm to the City.

This theoretical chain of causation, even if true, is far too attenuated to establish proximate cause under the PLCAA. *See Gustafson*, 333 A.3d at 672 ("The volitional act at issue here, or the choice or determination the Juvenile made, was to pull the trigger. . . . Further, the Juvenile's choice to pull the trigger clearly caused the discharge of the Firearm."). If Defendant were held liable for selling a firearm to someone, who then transfers it to another, who then engages in some violent act using the gun at some indeterminate time in the future, it would wholly undermine the purpose of the PLCAA.

D. Other PLCAA Exceptions Do Not Apply

Likewise, no other exception is sufficient to allow this suit to go forward. First, the City's claims do not fit within the negligent entrustment exception because the PLCAA narrowly defines "negligent entrustment" as "supplying of a [firearm]" to "another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others." 15 U.S.C. § 7903(5)(B). But the City does not allege that Defendant sold firearms directly to known criminals or prohibited persons or that Defendant knew any recipient was likely to misuse the firearm. Instead, the City alleges that Defendant sold guns to alleged straw purchasers—and never alleges that these straw purchasers "use[d] the product" themselves as envisioned under this exception. *Id.* Here again, it is worth noting that Delia's was not criminally charged as having participated in any of these alleged straw purchases. With all the resources available to it and all the lawyer firepower the City has brought to bear in this civil suit against a small neighborhood retailer, it surely would have brought criminal charges against Delia's if the City could prove that

Delia's was in league with any of these alleged straw purchasers. That the City did not bring criminal charges against Delia's speaks volumes about the City's ability to succeed in making such a case.

Second, the City's claims do not fit within the negligence *per se* exception because the City cannot demonstrate proximate cause. Many courts have recognized that the PLCAA does not create a cause of action, meaning that an action for negligence *per se* must arise under state law. *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 633 F. Supp. 3d 425, 448 (D. Mass. 2022), *rev'd and remanded*, 91 F.4th 511 (1st Cir. 2024), *rev'd and remanded*, 605 U.S. 280 (2025) ("There is no federal common law, and the statute itself creates no cause of action; therefore, such a cause of action must arise under the law of one or more states."); *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1225 (D. Colo. 2015) ("[The PLCAA] does not create the cause of action. . . . Accordingly, the claim arises under state law."). Yet, under Pennsylvania law, "[t]he doctrine of negligence *per se* does no more than satisfy a plaintiff's burden of establishing a defendant's negligence. It does not end the inquiry. The plaintiff still bears the burden of establishing causation." *Cabiroy v. Scipione*, 767 A.2d 1078, 1079 (Pa. Super. 2001). And for the reasons stated above, any chain of causation from a legal sale to an unknown straw purchaser, followed by an unlawful transfer to another individual, followed by that individual's choice to use the weapon in a violent crime at an indeterminate time in the future, followed by broad fiscal and societal harm to the City, is far too attenuated. *See Gustafson*, 333 A.3d at 672.

Lastly, the City does not allege any design or manufacturing defect, and the remaining exceptions are facially inapplicable in this case. Accordingly, none of them can save the City's claims from dismissal.

V. CONCLUSION

The PLCAA embodies Congress's judgment that the firearms industry should not be subjected to litigation seeking to hold it responsible for harms caused by the criminal misuse by others of lawfully sold firearms, especially after an additional transfer to someone unknown to duly licensed firearms sellers. That federal policy choice is binding on this Court and on the City.

This lawsuit fits squarely within the PLCAA's definition of a "qualified civil liability action." The City's sole potential escape hatch—the Predicate Exception—fails twice over: there has been no prior criminal adjudication that Defendant violated any statute "applicable to the sale or marketing" of firearms, and even without such a requirement, the City does not and cannot establish any knowing statutory violation by Defendant, let alone proximate causation of the City's harms.

Because there is no genuine issue of material fact on these points, Defendant is entitled to judgment as a matter of law.

Respectfully submitted,

GOLDSTEIN LAW PARTNERS, LLC

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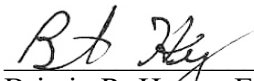

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