

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

CITY OF PHILADELPHIA, a municipal corporation,

Plaintiff,

v.

WRT MANAGEMENT, INC. f/k/a
TANNER’S SPORT CENTER INC.,
FRANK’S GUN SHOP & SHOOTING
RANGE LLC, MAD MINUTE
ENTERPRISES, LLC d/b/a DELIA’S GUN
SHOP, and DELIA’S GUN SHOP, INC.,

Defendants.

CIVIL DIVISION

Case No. 230702394

**MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT MAD MINUTE ENTERPRISES, LLC’S
MOTION FOR SUMMARY JUDGMENT**

In 2023, the City of Philadelphia (“the City”) filed suit against Defendant Mad Minute Enterprises, LLC d/b/a Delia’s Gun Shop (“Delia’s”) and two other local gun stores, alleging that they created a public nuisance by knowingly and unlawfully selling firearms to straw purchasers who funnel these guns to the criminal market. Delia’s now moves for summary judgment, relying exclusively on the allegations in the City’s Amended Complaint and the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-7903 (“PLCAA”), a federal law that bars certain cases against gun companies unless an exception applies. Here, two statutory exceptions apply, allowing the City’s claims to go forward. Most notably, as the United States Supreme Court explained just last year, PLCAA does not protect a gun industry defendant that knowingly violates a state or federal statute applicable to the sales of firearms, where that violation proximately harms the plaintiff. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025).

This is known as the “predicate exception” and “[i]f a plaintiff can show that provision is satisfied [] then a suit can proceed, even though it arises from a third party’s later misuse of a gun.” *Id.*

This is precisely what the City alleges—and now, what the evidentiary record firmly establishes. That record shows that Delia’s sold at least 33 firearms to 8 different people who were illegally buying them for others—and critically, that *Delia’s knew these transactions were unlawful* because of telltale red flags of illicit conduct. For example, Delia’s sold one straw purchaser five identical handguns, even though he initially indicated on the required paperwork that he was not purchasing for himself. And Delia’s sold another customer seven guns even though he presented stolen identification he didn’t resemble and repeatedly misspelled the name he gave on transaction forms. Despite these and other obvious signs of illegal straw purchasing, Delia’s repeatedly consummated these types of transactions. When the City deposed Delia’s employees about these transactions, they all invoked the Fifth Amendment privilege against self-incrimination, meaning that a fact-finder can—and should—draw an adverse inference corroborating that these violations of law were knowing. Finally, the record also shows that these illegal sales have harmed the City: at least eight straw-purchased guns have been recovered by police and are associated with at least two murders and more than a half dozen other shootings.

As more fully described below, cases just like this have been repeatedly allowed to proceed under PLCAA’s predicate exception. *See infra* at pp. 14-15. And Delia’s efforts to set aside PLCAA’s other relevant exceptions—which allow negligence per se and negligent entrustment claims to proceed—are likewise without merit. These arguments ignore the record, which shows that Delia’s knew selling firearms to straw purchasers would lead to those guns being used in crimes. While Delia’s appears to contest this point, this simply raises a factual dispute unsuitable for summary judgment. Indeed, Delia’s motion is premised almost entirely on an argument that it

did not knowingly break the law, raising disputed issues of material fact—its culpable state of mind—that must be decided by a jury at trial. Delia’s motion should be denied.

I. MATTER BEFORE THE COURT

Delia’s Motion for Summary Judgment.

II. STATEMENT OF THE QUESTIONS INVOLVED

- 1. Should the Court deny Delia’s Motion for Summary Judgment because there are disputed issues of material fact as to the applicability of the defenses raised in the Motion?**

Suggested Answer: Yes.

- 2. Does the Protection of Lawful Commerce in Arms Act require dismissal of the City’s claims, where the City has adduced evidence that Delia’s knowingly violated federal and Commonwealth law and that those violations proximately caused harm to the City?**

Suggested Answer: No.

- 3. Does the Protection of Lawful Commerce in Arms Act require dismissal of the City’s negligence per se and negligent entrustment claims, where these claims fall within statutory exceptions allowing them to proceed?**

Suggested Answer: No.

III. PROCEDURAL AND FACTUAL BACKGROUND

Defendant Delia’s is a federally licensed retail firearms dealer located in Philadelphia’s Wissinoming neighborhood. The City alleges that Delia’s engaged in a series of unlawful “straw” transactions that diverted firearms to criminals and other prohibited purchasers. *See* Amended Complaint. These claims against the store revolve around 33 specific firearm sales to 8 different customers between January 2018 and December 2023. These customers are Anthony Cipriano (impersonating a person named W.M.), Charles Thompson, Gregg Dreghorn, Akeira Harcum, Emmitt Smith, Robert Cooper III, Tyrone Gresham, and Anthony Figueroa-Marko (collectively, the “Straw Purchasers”). Transaction records obtained from Delia’s in discovery as well as the

store's own admissions establish beyond dispute that these 33 gun sales took place. *See* Exs. 1-8 (compiled transaction records); *see also* Ex. 9 (Delia's RFA responses Nos. 11, 13, & 15).¹

The record also shows that each of these transactions was an unlawful "straw" purchase, meaning that the above-named customer was really buying the gun for someone else, and each of the Straw Purchasers has pled guilty to criminal conduct at the store, Ex. 10 (compiled conviction records). In addition, the City's expert—a former Special Agent with the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") who spent more than 25 years investigating firearms trafficking—analyzed these 33 transactions and determined that they bore numerous hallmarks of straw purchasing. *See* Ex. 11 (Traver Report) ¶¶ 23, 29, 31, 36, 39, 46, 50, 52, 56, 60, 64.

The City's trafficking expert also determined that Delia's employees knew or should have recognized that the transactions were unlawful straw sales, which appears to be the primary disputed issue of fact raised by Delia's motion, Mem. 10-11. *See* Ex. 11 (Traver report) ¶¶ 24-25, 32, 37, 40, 47, 53, 57, 62. The City's expert based this conclusion on the numerous red flags of illegal activity that are evident on the face of Delia's transaction records. *See id.* ¶¶ 21-67 (itemizing red flags). As the City's expert explains in his report, there are several well-established "red flags" commonly associated with straw purchasing and illegal firearms trafficking, including (but not limited to):

1. purchasing multiple firearms at once, or within a short period of time;
2. purchasing firearms of the same or similar make, model, and caliber;
3. large cash payments, particularly for purchasers who indicate unemployment;

¹ With some exceptions, Delia's records of each sale comprise (1) a federal ATF Form 4473, (2) a corresponding Pennsylvania State Police Form SP4-113, as well as (3) receipts from the store's point of sale system. These records are compiled by customer and then chronologically, and they are attached as Exhibits 1-8. To assist the Court, these voluminous records are summarized in table form in Appendix A to the Declaration of James Miller, Esq., filed herewith.

4. errors, inconsistencies, or changes on required federal or state firearms forms, including responses that would disqualify the purchaser; and
5. coordination between the purchaser and others while selecting and purchasing firearms, either in person at the store or via mobile telephone.

See id. ¶11. Discovery has revealed ample evidence of red flags like these, which constitute evidence that Delia's knew, reasonably should have known, or deliberately avoided knowing that the 33 transactions at issue were straw purchases.

A. Red Flags of Straw Purchasing

Delia's proceeded with gun sales despite numerous indicators that its customers were really buying guns to supply to the criminal market. Several of the identified Straw Purchasers bought a large number of guns in a short period of time, often in multiple-gun transactions that are closely associated with illicit diversion. *See generally*, App'x A (summarizing transactions); *see also* Ex. 11 (Traver Report) ¶ 11(e) (identifying multiple-sale transactions as a red flag). Delia's sold seven handguns to Anthony Cipriano within just over a month, six of which were part of multiple-handgun transactions. *See* App'x A; *see also* Ex. 1 (Cipriano records). It sold five guns to Charles Thompson in three and a half months, with three sales in just a four-day span. *See id.*; *see also* Ex. 2 (Thompson records). Delia's sold Gregg Dreghorn four handguns in just two weeks, sold Robert Otis Cooper III three handguns in eleven days, and sold Akeira Harcum four handguns in just nine days. *See id.*; *see also* Ex. 3 (Dreghorn records); Ex. 6 (Cooper records) Ex. 4 (Harcum records).

On top of this, many of Delia's sales to the Straw Purchasers involved duplicate or near-duplicate guns, *see* App'x A (summarizing transactions), another clear indicator that these customers were buying not for themselves but for others, *see* Ex. 11 (Traver Report) ¶ 11(a). Delia's sold Harcum three identical Glock 26 handguns just nine days apart. *See id.*; *see also* Ex. 4. It sold Dreghorn three identical Glock 19 Gen 5 handguns. *See id.*; *see also* Ex. 3. It sold Thompson an astonishing *five* identical Taurus G2C handguns and tried to sell him a sixth. *See id.*;

see also Ex. 2. Several of the handguns sold to Emmitt Smith, Cipriano, and Anthony Figueroa-Marko were also the same or similar make and caliber. See *id.*; see also Ex. 5 (Smith records); Ex. 1 (Cipriano records); Ex. 8 (Figueroa-Marko records); Ex. 11 (Traver report) ¶¶ 31, 46, 55-56 (describing similarity of purchases).

In many cases, just one or two Delia’s salespeople handled several transactions for a given customer, meaning that they were well positioned to identify suspicious buying patterns like high-volume and duplicative gun purchases. [REDACTED]

[REDACTED]

[REDACTED] And in any event, store employees had access to a computerized summary of each customer’s purchase history at the point-of-sale terminal and thus could easily have determined that these customers were buying large volumes or duplicative guns. See Ex. 12 (screenshot from AXIS database showing Dreghorn purchase history).

Many of the store’s transactions with the Straw Purchasers involved large cash payments as well, often despite no disclosed source of income. See Ex. 11 (Traver Report) ¶ 11(d). [REDACTED]

[REDACTED]

[REDACTED] Harcum’s four purchases

[REDACTED] as did Dreghorn’s. [REDACTED]

[REDACTED] Thompson [REDACTED] for his five guns, [REDACTED]

[REDACTED]

Delia’s also processed numerous transactions involving glaring errors or suspicious responses by the Straw Purchaser [REDACTED]. See Ex. 11 (Traver Report) ¶ 11(h).

Perhaps the most egregious was Anthony Cipriano, who presented stolen identification belonging to Someone with the initials W.M. Ex. 9 (Delia’s RFA responses No. 16). On top of the other red flags described above, Cipriano twice [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He also twice

[REDACTED]

[REDACTED] Beyond this—and

more fundamentally— [REDACTED]

[REDACTED]

[REDACTED]

Finally, at least two customers exhibited clear efforts to coordinate their purchases with others. *See* Ex. 11 (Traver Report) ¶ 11(f)&(g). [REDACTED]

[REDACTED] was accompanied by three accomplices while selecting guns on at least one occasion—a clear indicator of straw purchasing.

See id. ¶ 25. Tyrone Gresham was observed accessing his mobile phone on at least two occasions in December 2019—a similarly strong indicator that he was buying guns for someone else. *See id.*

¶ 61. Indeed, Delia’s corporate representative testified that the store supposedly prohibits mobile

[REDACTED]

phone use because the devices are “an easy tool for people to commit straw purchases.” Ex. 15 (Delia’s Corp. Rep. Tr.) 43:10-17.

B. Testimony of Delia’s Salespeople

The deposition testimony of Delia’s employees further corroborates that store had actual or constructive knowledge that these 33 transactions were unlawful straw purchases. The City asked employees who handled many of these transactions whether they knew that the transactions were straw sales, and these witnesses repeatedly invoked the Fifth Amendment to avoid giving self-incriminating testimony. To give just one example, salesperson Tom Hazell was asked the following series of questions about Anthony Cipriano’s purchases:

Q. At any point in this series of seven transactions with [W.M.] over the course of a month, were store employees suspicious about why he was buying so many handguns?

MR. HENRY: Advise to invoke the Fifth.

THE WITNESS: Invoking the Fifth.

BY MR. MILLER: Q. Should store employees have been suspicious that [W.M.] was a straw purchaser at any point in this period?

MR. HENRY: Advise to invoke the Fifth.

THE WITNESS: Invoking the Fifth.

BY MR. MILLER: Q. Did you yourself, in the transactions you handled, suspect that [W.M.] was a straw purchaser?

MR. HENRY: Advise to invoke the Fifth.

THE WITNESS: Invoking the Fifth.

Ex. 16 (Hazell Tr.) 129:3-23. Mr. Hazell was also asked if he knew whether other customers were straw purchasers, and again invoked the Fifth Amendment.³ So did other Delia’s employees.⁴

Based on these refusals to testify, the Court should infer that truthful responses would have been

³ See *id.* at 118:21-119:22, 121:2-13, 146:15-150:23, 169:1-14, 172:16-173:17, 175:7-19, 177:1-13.

⁴ See Ex. 17 (Evans Dep. Tr.) 61:15-21, 64:3-19, 65:23-67:16, 68:12-69:23; Ex. 18 (Rastetter Dep. Tr.) 45:10-46:5, 47:4-51:4, 52:7-55:3; Ex. 19 (Winston Dep. Tr.) 63:22-64:21, 75:3-11; Ex. 20 (Keys Dep. Tr.) 86:23-89:14.

inculpatory to these witnesses—and by extension their employer Delia’s—and would have corroborated that the employees knew that the transactions were straw sales. *See City of Phila. v. Kenny*, 369 A.2d 1343, 1349 (Pa. Commw. Ct. 1977) (In civil case, court “may draw any adverse inference which is reasonable from the assertion of the privilege”); *see also Summers v. Certaineed Corp.*, 997 A.2d 1152, 1159 (Pa. 2010) (On summary judgment, “the trial court must take all facts of record and reasonable inferences therefrom in a light most favorable to the non-moving party.”).

C. Delia’s Compliance History and Sales Practices

Delia’s is no stranger to straw purchasing. In fact, even before the allegations in this lawsuit, the store was well aware of its obligation to detect and prevent straw purchasing, and that the above-described red flags indicate illegal behavior. This is because, in 2016, the ATF suspended the store’s license and levied a \$3000 fine for making an obvious unlawful straw sale. *See* Ex. 21 at PHL003134-36 (ATF Notice to Revoke or Suspend License correspondence); *see also* Ex. 11 (Traver report) ¶ 15. Delia’s informed ATF that it accepted full responsibility, pledged that it would do its best to prevent future straw purchases, and stated that it would provide remedial training to its employees. *See* Ex. 21 at PHL003142-43.

Despite this serious violation and Delia’s promise to undertake remedial measures, the store to this day lacks any policies or procedures to detect or prevent straw purchasing.⁵ Nor does it give employees any formalized training on this topic.⁶ And although Delia’s salespeople had the means to check a customer’s purchase history when making a sale, they were not trained to do so.⁷

⁵ *See* Ex. 15 (Delia’s Corp. Rep. Tr.) 84:13-85:14, 87:1-15; 89:2-5, 153:21-154:15.

⁶ *See* Ex. 16 (Hazell Tr.) 78:11-16, 92:4-9; Ex. 18 (Rastetter Tr.) 16:8-21, 17:5-13, 33:7-14; Ex. 19 (Winston Tr.) 18:22-21:7, 33:18-24; Ex. 17 (Evans Tr.) 18:18-19:7, 33:20-34:2.

⁷ *See* Ex. 15 (Corp. Rep. Tr.) 100:2-101:2.

D. Delia's Illegal Straw Transactions Caused Harm to the City

Delia's illegal straw transactions caused real and measurable harm to the City. Firearms sold by Delia's to straw purchasers have been recovered by law enforcement and used in violent criminal activity. *See* Ex. 22 (Miller Report) App'x 2 (summarizing recovery of straw purchased firearms); *see also* Ex. 11 (Traver Report) ¶¶ 27-28, 34, 49, 64-65 (same). The City's experts have quantified both the past and anticipated future costs to the City of the gun violence that is a direct and proximate result of Delia's unlawful gun sales. *See* Ex. 22 (Miller Report) p. 5.

In total, at least 8 of the 33 firearms that Delia's sold to the identified Straw Purchasers have been recovered by the Philadelphia Police Department ("PPD") and forensically linked to shootings, including homicides. These recoveries are documented in Appendix 2 to the expert report of Ted Miller, a Ph.D. economist with more than 35 years' experience estimating the costs of gun violence. *See* Ex. 22 (Miller report) at App'x 2. To take just one example, the Taurus handgun that Delia's sold to Charles Thompson on November 30, 2019 was recovered in connection with a burglary on April 27, 2021. *See* Ex. 23 at PHL001075 (arrest report documenting recovery of Taurus firearm serial no. TMU93285). After test firing, forensic analysis by PPD's Firearms Investigation Unit ("FIU") connected this firearm to four previous shootings. *See id.* at PHL1703, 1788, 1799, 1801, 1803. These shootings include a homicide, a 1-year-old child shot in the buttocks, a 22-year-old female shot in the leg, and a 28-year-old male with multiple gunshot wounds. *See id.* at PHL001952-54, 1960, 1963-64 (police reports documenting prior shootings). Similar (and voluminous) records document the recovery, testing, and forensic connection of other firearms that Delia's sold to the Straw Purchasers to other violent crimes. *See, e.g.,* Ex. 22 (Miller report) at App'x 2.

IV. STANDARD OF REVIEW

Pennsylvania Rule of Civil Procedure 1035.2 provides that “any party may move for summary judgment ... whenever there is no genuine issue of any material fact as to a necessary element” of a claim or defense, or when the “party who will bear the burden of proof at trial has failed to produce evidence of facts essential to” the claim or defense by the close of discovery. Pa. R. Civ. P. 1035.2. Summary judgment is “appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” *Summers*, 997 A.2d at 1159. The Court “must take all facts of record and reasonable inferences therefrom in a light most favorable to the non-moving party” and “resolve all doubts as to the existence of a genuine issue of material fact against the moving party.” *Id.* In short, a court can grant summary judgment “only ... where the right to such judgment is clear and free from all doubt.” *Id.* (citation modified).

V. ARGUMENT

The Protection of Lawful Commerce in Arms Act (“PLCAA”) does not bar this case. Contrary to what Delia’s suggests, Mem. 5, Congress expressly provided in PLCAA that cases like this one—where a firearm dealer is alleged to have knowingly participated in illegal straw sales—should be allowed to proceed, notwithstanding the statute’s general bar on litigation against gun sellers. Indeed, the City’s claims all fall within PLCAA’s statutory exceptions. First, and most significantly, this case is covered by PLCAA’s “predicate exception,” 15 U.S.C. § 7903(5)(A)(iii), because the City has adduced evidence that Delia’s knowingly violated numerous Pennsylvania and federal gun laws and that those violations proximately caused the City’s harm. To be sure, Delia’s denies these allegations, but these are factual disputes to be resolved at trial. Additionally, the City has adduced evidence for its claims of negligent entrustment and negligence per se, and

those claims are expressly permitted by PLCAA as well, § 7903(5)(A)(ii). The City’s claims should be allowed to proceed to trial.

A. PLCAA was intended to permit litigation against dealers who knowingly sell to straw purchasers

As Delia’s notes, Mem. 6, PLCAA requires the dismissal of “qualified civil liability action[s],” 15 U.S.C. § 7902, which include civil actions brought against sellers of firearms “resulting from the criminal or unlawful misuse” of those firearms by a third party, §§ 7903(4), (5)(A). The City does not dispute that this action falls within that general definition. But PLCAA—the Protection of *Lawful* Commerce in Arms Act—does not stop there. As Delia’s also recognizes, Mem. 5, PLCAA contains six exceptions for types of cases that Congress wanted to remain viable, *see* § 7903(5)(A)(i)-(vi).

One of those exceptions is the predicate exception, which denies PLCAA protection to *unlawful* commerce in firearms. Under the predicate exception, plaintiffs are not prevented from bringing “an action in which a . . . seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm], and the violation was a proximate cause of the harm for which relief is sought.” § 7903(5)(A)(iii). As the Supreme Court recently explained, “[i]f a plaintiff can show that provision is satisfied—that, say, a manufacturer committed a gun-sale violation proximately causing the harm at issue—then a suit can proceed, even though it arises from a third party’s later misuse of a gun. Or otherwise said, the predicate violation opens a path to making a gun manufacturer civilly liable for the way a third party has used the weapon it made.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025).

Congress provided explicit examples of the types of cases that it wished to permit under this exception, including “any case in which the . . . seller knowingly made a false entry in . . . any record required to be kept under Federal or State law” and “any case in which the . . . seller aided,

abetted, or conspired with any other person to sell or otherwise dispose of a [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited from possessing or receiving a firearm ... under [18 U.S.C. § 922(g)].” § 7903(5)(A)(iii)(I)-(II).

Those examples describe this case. When a licensed gun store like Delia’s sells a firearm to someone that it knows, reasonably should know, or deliberately avoids knowing is a straw purchaser, the store violates several federal and Commonwealth laws. For one, the store cannot truthfully certify on the federal firearms transaction record (ATF Form 4473) its “belief that it is not unlawful” to complete the transaction. *See, e.g.*, Ex. 1 at DGS000136 (licensee certification, boxes 34-36). A seller that makes this certification despite actual or constructive knowledge that the customer is a straw purchaser falsifies this record in violation of 18 U.S.C. §§ 922(a)(6), 922(m), and 924(a)(3), as well as Pennsylvania Uniform Firearms Act (“UFA”) 18 Pa. Cons. Stat. § 6111(g)(4)(ii). It also aids and abets the straw purchaser’s own false statement violations by accepting the misrepresentation that the straw purchaser is the “actual buyer” despite actual or constructive knowledge that they are not.⁸ *See* 18 U.S.C. § 2(a). The store further violates UFA Section 6111(g)(3) when it conducts a background check on someone that it knows or has reason to believe is not the actual buyer, and when it fails to complete a background check on the actual buyer as the law requires. *See* 18 Pa. Cons. Stat. § 6111(b)(3); 18 U.S.C. § 922(t). In addition, the store knowingly falsifies additional records (again violating 18 U.S.C. § 922(m)) when it misrepresents the straw purchaser as the actual buyer in its required logbook or on reports of handgun sales to law enforcement.

⁸ ATF Form 4473 and Pennsylvania Form SP4-113 both require the customer to make similar certifications that they are the “actual transferee/buyer” or “actual buyer” of the gun. *See, e.g.*, Ex. 1 at DGS000134 (box 21.a) & DGS000459 (box 33). Both forms also explain that the customer is not the actual buyer if they are acquiring the firearm for someone else in circumstances other than as a bona fide gift.

In this case, the City alleged, Am. Compl. ¶¶ 95, 109, 117, and record evidence supports, *supra* pp. 4-9 (summarizing evidence), that Delia’s knowingly falsified their required books and records by falsely certifying their belief in the lawfulness of transactions that they knew to be straw purchases and by falsely recording the straw purchaser’s name as the actual purchaser on required forms. This violated both federal law, 18 U.S.C. §§ 922(a)(6), 922(m), and 924(a)(3), and state law, 18 Pa. Cons. Stat. §§ 6111, 6113. Additionally, the City alleged, Am. Compl. ¶¶ 97, 108, and this same record evidence supports, that Delia’s knowingly conspired with, or aided and abetted, straw purchasers like Anthony Cipriano, Charles L. Thompson, Gregg Dreghorn, and others—individuals whom Delia’s had reasonable cause to believe were obtaining the firearms on behalf of criminals and prohibited possessors, *see* Am. Compl. ¶ 23; Ex. 11 (Traver report) ¶ 6 (describing retailer awareness that straw purchasing diverts firearms to criminals and other prohibited possessors). Congress could not have been clearer that PLCAA allows lawsuits like this one, brought against gun dealers who knowingly violate their legal obligations and allow guns to flow into the black market via straw purchasers and gun traffickers. *See Chiapperini v. Gander Mountain Co.*, 13 N.Y.S.3d 777, 786-88 (Sup. Ct. 2014) (allowing case against gun dealer accused of selling to straw purchaser to proceed under PLCAA predicate exception); *Williams v. Beemiller, Inc.*, 952 N.Y.S.2d 333, 335-38 (App. Div 2012) (same); *Corporan v. Wal-Mart Stores E., LP*, No. 16-2305-JWL, 2016 WL 3881341, at *4 (D. Kan. July 18, 2016) (same). Thus, Delia’s claim that “[t]his case is exactly the sort of suit Congress sought to preclude,” Mem. 5, is exactly wrong.⁹

⁹ Delia’s cites to *Jeffries v. District of Columbia*, 916 F. Supp. 2d 42, 43 (D.D.C. 2013), *see* Mem. 6, but the qualified civil liability action in *Jeffries* did not involve any alleged knowing violations of law, and thus it did not satisfy PLCAA’s predicate exception, *see* 916 F. Supp. 2d at 45. It has no applicability here.

Although Delia’s invokes the dismissal of the complaint in *Smith & Wesson*, see Mem. at 8-9, the facts of that case are nothing like this one. In *Smith & Wesson*, the country of Mexico brought generalized claims against seven gun manufacturers, arguing that they had aided and abetted violations of federal law by supplying firearms to rogue gun dealers, who in turn sold those guns to individuals supplying Mexican cartels. 605 U.S. at 287-89. The Supreme Court dismissed Mexico’s complaint because it did not identify “any specific criminal transactions that the defendants (allegedly) assisted,” and because it primarily alleged “nonfeasance,” as opposed to misfeasance, which the Court held was insufficient for aiding-and-abetting liability. *Id.* at 294, 296-97. Here, by contrast, the City has sued retail gun dealers directly, including for their own primary violations of law, and the City has identified with specificity the illegal transactions that Delia’s engaged in. As such, *Smith & Wesson* does not save Delia’s from liability here. See, e.g., *Wiley ex rel. Wiley v. Fleet Farm LLC*, 799 F. Supp. 3d 860, 893-94 (D. Minn. 2025) (explaining that specific allegations that gun dealer knowingly sold firearms to straw purchaser satisfied predicate exception, distinguishing *Smith & Wesson*); see also *Salter v. Meta Platforms, Inc.*, 240 N.Y.S.3d 610, 619 (App. Div. 2025) (holding that “aiding and abetting allegations” that are “stronger and more direct than those found wanting in *Smith & Wesson*” satisfy predicate exception).

B. This case falls within PLCAA’s predicate exception

i. Delia’s knowingly violated federal and commonwealth firearm statutes

As noted above, under the predicate exception, PLCAA does not require dismissal of lawsuits in which a gun store is alleged to have “knowingly violated” a predicate state or federal statute and that violation proximately caused the plaintiff’s injury. 15 U.S.C. § 7903(5)(A)(iii). The City’s lawsuit may thus proceed, because the City has adduced evidence that Delia’s knowingly violated a host of Pennsylvania and federal statutes applicable to the sale of firearms.

As described above in more detail, *supra* pp. 4-9, Delia's sold 33 firearms despite obvious signs that these transactions were unlawful straw sales, like high-volume purchases in short periods of time, purchases of identical handguns, large cash purchases by customers with no disclosed source of income, coordination between buyer and principal, and numerous irregularities on transaction forms. On their own, these red flags are more than sufficient evidence of Delia's culpable state of mind to take this disputed issue to a jury. On top of this, the City's trafficking expert also concluded that Delia's either knew or should have recognized that these transactions were unlawful straw sales. *See* Ex. 11 (Traver report) ¶¶ 24-25, 32, 37, 40, 47, 53, 57, 62. And when asked directly about their knowledge, the Delia's employees involved in these transactions took the Fifth Amendment and refused to answer, further corroborating that these violations were knowing, *supra* pp. 8-9 (collecting citations to employee testimony). *See City of Phila.*, 369 A.2d at 1349 (allowing adverse inference in civil case based on invocation of privilege).

Delia's attempts to downplay these violations of law by observing that it has not "been found guilty or liable of any criminal offense under any of the[se] statutes." Mem. 10. Relying exclusively on a solo concurrence by Justice Thomas, Delia's asserts that a defendant must *already* have been found guilty or liable for violating a gun law *before* a plaintiff can bring a claim under the predicate exception. *See* Mem. 9 (citing *Smith & Wesson*, 605 U.S. at 300 (Thomas, J., concurring)). But not a single case—including, notably, the majority opinion in *Smith & Wesson*—has ever required this as part of PLCAA's predicate exception. Nor is there any basis for such a requirement in the predicate exception's text, where Congress specifically chose the word "violated" instead of "convicted."

Indeed, in a separate exception, PLCAA permits "an action brought against a transferor *convicted* under [18 U.S.C. § 924(h)] or a comparable or identical State felony law."

§ 7903(5)(A)(i) (emphasis added). By contrast, in the predicate exception, PLCAA speaks only of “an action in which a manufacturer or seller ... knowingly violated a State or Federal statute.” § 7903(5)(A)(iii). If Congress had meant for the predicate exception to apply only after a conviction or finding of liability, as Delia’s suggests, Congress presumably would have used the same unambiguous language that it employed in § 7903(5)(A)(i). That Congress instead used different words is a strong indication that it meant something different. *Cf. Gustafson v. Springfield, Inc.*, 333 A.3d 651, 669 (Pa. 2025) (“[B]ecause Congress specifically included language requiring a conviction in [S]ection 7903(5)(A)(i), but did not include such language in [S]ection 7903(5)(A), we presume that Congress did not intend criminal misuse to require proof of a criminal conviction.” (alterations in original) (quoting *Adames v. Sheahan*, 909 N.E.2d 742, 762 (Ill. 2009), *cert. denied*, 2025 WL 3620464 (U.S. Dec. 15, 2025))).

On the contrary, Delia’s argument about a prior conviction has been expressly rejected. *See City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp. 2d 244, 268-69 (E.D.N.Y. 2005) (“To sufficiently plead the predicate exception, the pleader need only allege a knowing violation of a predicate statute, and need not offer evidence of a judgment or completed prosecution.”), *rev’d in part on other grounds*, 524 F.3d 384 (2d Cir. 2008). And in the decades that PLCAA has been on the books, there have been an abundance of cases successfully pleaded under the predicate exception where the defendant had not previously been convicted or found liable. *See, e.g., Williams*, 952 N.Y.S.2d at 338-39 (holding that allegation that defendant gun seller knowingly assisted in straw purchases satisfied predicate exception, where complaint did not even “specify the statutes allegedly violated,” much less allege that defendant had been convicted of anything); *Soto v. Bushmaster Firearms Int’l, LLC*, 202 A.3d 262, 272 (Conn. 2019) (holding that allegation

that defendants' conduct "would be illegal" under state law satisfied predicate exception, without any allegation that defendants had previously been found guilty or liable for such conduct).

Delia's asserts that the absence of criminal charges against it demonstrates that the City lacks proof it violated the law. Mem. 10; *see also* Mem. 13-14 (same). But it has long been established that, when seeking to abate a public nuisance that also constitutes criminal conduct, public officials have discretion to seek equitable relief rather than proceeding via criminal prosecution. *See Pa. Soc'y for Prevention of Cruelty to Animals v. Bravo Enters., Inc.*, 237 A.2d 342, 348 (Pa. 1968); *Commonwealth v. James J. Cochran Post No. 251 of V.F.W. of U.S.*, 38 A.2d 250, 252 (Pa. 1944). There is nothing improper about the City's decision here to seek relief that is tailored to protect public safety rather than simply seeking to punish the defendants with criminal sanctions. *See* Am. Compl. ¶¶ 51-52.

ii. Delia's constructive knowledge and deliberate indifference also satisfy PLCAA's predicate exception

Delia's also argues that it is insufficient for the City to prove Delia's merely "had reason to believe, or deliberately avoided knowing" it was engaging in transactions with straw purchasers. *See* Mem. 10-11. But this question is beside the point. The record in this case—in which Delia's employees repeatedly invoked their right against self-incrimination when asked whether they knew they were selling firearms to straw purchasers, *e.g.*, Ex. 16 (Hazell Tr.) 129:3-23; *see also supra* pp. 8-9 (collecting testimony)—clearly raises a disputed question of material fact as to whether Delia's *knew* that it was engaging in unlawful transactions. *See United States v. Stelmokas*, 100 F.3d 302, 311 (3d Cir. 1996) ("[I]n civil cases, 'the Fifth Amendment does not forbid adverse inferences against parties ... when they refuse to testify in response to probative evidence offered against them.'" (quoting *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976))). That is a sufficient basis

on its own for this Court to deny summary judgment without having to reach the question of the legal sufficiency of constructive knowledge or deliberate indifference.¹⁰

But in any event, Delia's is wrong that the "reason to believe" and willful ignorance standards do not satisfy the predicate exception. The first clue is right in PLCAA's text. As noted earlier, Congress wrote into the statute two examples of types of litigation that would be subject to the predicate exception, including cases where the seller participated in a straw purchase while "knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited from possessing or receiving a firearm." 15 U.S.C. § 7903(5)(A)(iii)(II) (emphasis added). That is unambiguous evidence that Congress considered a defendant who had "reasonable cause to believe" it was selling to a straw purchaser to be "knowingly violat[ing]" the law, 15 U.S.C. § 7903(5)(A)(iii).

Courts have construed PLCAA accordingly. In *Williams*, for example, the appellate court held that the plaintiffs' claims fit the predicate exception where they alleged that a firearm dealer "knew or had reasonable cause to believe" that guns were being straw-purchased on behalf of a prohibited possessor, and where the dealer "knew or should have known" that the guns were destined for the criminal market. 952 N.Y.S.2d at 338-39; *see also Brady v. Walmart Inc.*, No. 21-CV-1412, 2024 WL 2273382, at *11 (D. Md. May 20, 2024) (denying defendants' motion for summary judgment because, to satisfy predicate exception, "Plaintiffs need only show that Defendants knew or had reasonable cause to believe that [the firearm purchaser] was prohibited from possessing a firearm" (emphasis added)). That matches how courts construe the underlying

¹⁰ In two places, Delia's asserts that the City must prove that Delia's had "intent" to sell firearms to prohibited possessors, Mem. 11; *see also* Mem. 12 ("the Predicate Exception ... requires ... an intentional statutory violation"). Delia's offers no authority to support the notion that PLCAA requires proof of intentional conduct, and indeed that supposed rule appears nowhere in the statutory text. *See* § 15 U.S.C. 7903(5)(A)(iii).

statutes the City contends Delia’s violated: “[a] dealer violates the [Gun Control Act] if the dealer transfers a firearm based upon information in ATF Form 4473 that he knows or has reason to believe is false.” *Shawano Gun & Loan, LLC v. Hughes*, 650 F.3d 1070, 1073 (7th Cir. 2011).¹¹

It would also be enough to show deliberate ignorance—also known as willful blindness. *See United States v. Caraballo-Rodriguez*, 726 F.3d 418, 425 (3d Cir. 2013) (en banc) (“‘[K]nowledge’ can be demonstrated by actual knowledge or willful blindness.”). That’s because “willful blindness ... ‘is deemed to satisfy a scienter requirement of knowledge.’” *Id.* at 420 n.2 (citation omitted). Under a willful-blindness theory, juries are permitted to “infer knowledge” where the evidence shows that that the defendant “was subjectively aware of the high probability of the fact in question.” *Id.* at 434 (citation omitted). Because the record here would support a finding that Delia’s was willfully blind to the fact that it was selling firearms to straw purchasers, *supra* pp. 4-9, there is at least a disputed question of material fact as to whether its violations of firearm laws were knowing.

iii. There are disputed issues of fact as to whether Delia’s proximately caused the City’s harm

The City has also adduced evidence of the final element of the predicate exception—that the violations of law described above proximately caused the City’s harm. *See* § 7903(5)(A)(iii). Using each firearm’s unique serial number, the City identified eight firearms sold by Delia’s in an unlawful straw sale and later recovered by the Philadelphia Police; forensic analysis links these recovered firearms to a number of serious violent crimes. *See, e.g.* Ex. 23 (documenting recovery

¹¹ ATF Form 4473 states that if the purchaser is not the “actual transferee/buyer,” the dealer may not complete the transaction. Ex. 1 at DGS000134. The form also warns the dealer that it “must stop the transaction if there is *reasonable cause to believe* that the transferee/buyer is prohibited from receiving or possessing a firearm.” *Id.* at DGS000139 (instruction for Question 27).

of Taurus G2C sold to Charles Thompson, linked to 4 shootings); *see also* Ex. 22 (Miller report) at App'x 2 (collecting evidence of gun recoveries).

This is an entirely predictable outcome: as the City's trafficking expert explained based on his years of investigating firearms trafficking and working with gun stores, "licensed firearms dealers understand that straw purchases are one method by which criminals and prohibited possessors obtain firearms, and that straw purchased firearms are often used in criminal activity." Ex. 11 (Traver Report) ¶ 6. Delia's salesperson Tom Hazell agreed with this under oath at his deposition, conceding based on his own prior experience in law enforcement that criminals obtain firearms through straw purchases, and that people who did so "were criminals and they were using them [the guns] in crime." *See* Ex. 16 (Hazell Tr.) 42:8-44:11.

Delia's argues that the movement of a firearm from straw purchaser to criminal to violent crime is "a too complex chain of causation, ... far too attenuated to establish proximate cause." Mem. 12-13; *see also* Mem. 14 (same). But saying it does not make it so.¹² It is black-letter law that, in evaluating proximate cause, "the court must determine whether the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of." *Reilly v. Tiergarten Inc.*, 663 A.2d 208, 210 (Pa. Super. Ct. 1993). Here, the natural and probable

¹² The only authority cited by Delia's on this point is *Gustafson*, which involved a different PLCAA exception—the product-liability exception, 15 U.S.C. § 7903(5)(A)(v)—which has its own particular proximate-cause rules. *See Gustafson*, 333 A.3d at 672 (reciting that, under product-liability exception, "where 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"). By contrast, the predicate exception, which refers to "a proximate cause," does not disturb background common-law proximate-cause principles, § 7903(5)(A)(iii) (emphasis added). *See, e.g., Straw v. Fair*, 187 A.3d 966, 995 (Pa. Super. Ct. 2018) ("Two or more causes may contribute to and thus be the legal or proximate cause of an injury." (citation omitted)); *In re Frescati Shipping Co.*, 718 F.3d 184, 212 (3d Cir. 2013) ("It is clear ... 'that there may be more than one proximate cause of an injury.'" (citation omitted)).

outcome of selling firearms to straw purchasers is gun violence. As Delia’s own store manager observed when testifying for the store, “we’re not selling candy.” Ex. 15 (Delia’s Corp. Rep. Tr.) 68:3. Delia’s now objects that it should not be “held liable for selling a firearm to someone, who then transfers it to another, who then engages in some violent act using the gun,” Mem. 13, but that chain of causation is hardly far-fetched:

[It is] reasonably foreseeable that [a firearm sold to a straw purchaser] would end up in somebody else’s hands; indeed, that is the very definition of a straw purchaser. And, given that firearms purchased by a straw purchaser often end up involved in violent crime, it would be reasonably foreseeable to [a dealer] that [a] firearm it sold to [a straw purchaser] would end up in a violent crime like a shooting.

Wiley ex rel. Wiley v. Fleet Farm LLC, No. 24-CV-4135, 2025 WL 2601952, at *23 (D. Minn. Sept. 9, 2025) (citations omitted); *accord Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 843 (D. Minn. 2023) (ruling that, because straw purchasers “by definition are purchasing weapons for people who cannot purchase weapons legally,” a jury could conclude that dealer “should have known there was a high likelihood that the firearms would end with wrongdoers who were highly likely to injure others”).

Indeed, the risk of third-party gun violence is why straw purchases are illegal. *See Abramski v. United States*, 573 U.S. 169, 181 (2014) (observing that “principal purpose” of federal gun laws are “to curb crime by keeping ‘firearms out of the hands of those not legally entitled to possess them’” (citation omitted)). It would be extraordinary to conclude that Delia’s cannot be held liable for the exact harms that made its conduct wrongful in the first place. *See, e.g., Krasevic v. Goodwill Indus. of Cent. Pa., Inc.*, 764 A.2d 561, 569 (Pa. Super. Ct. 2000) (“Stern’s act was precisely the type of conduct that made Goodwill’s conduct ... negligent, and therefore Stern’s act was not a superceding cause but rather the foreseeable and logical result of Goodwill’s negligence.”).

C. The City’s claims also satisfy PLCAA’s exceptions for negligent entrustment and negligence per se

If the Court agrees that the City’s claims may proceed under the predicate exception, it need not reach the separate questions raised by Delia’s, Mem. 13-14, regarding whether the City’s claims satisfy PLCAA’s exceptions for negligent entrustment and negligence per se, 15 U.S.C. § 7903(5)(A)(ii). That’s because the predicate exception applies to the entire “action in which” or “case in which” its provisions are satisfied, 15 U.S.C. § 7903(5)(A)(iii), and thus the predicate exception covers all of the City’s claims in this lawsuit (all of which relate to statutory violations by Delia’s). *See, e.g., King v. Klocek*, 133 N.Y.S.3d 356, 359 (App. Div. 2020) (declining to address arguments “regarding the negligent entrustment and negligence per se exceptions” because predicate exception was satisfied); *Stanisic v. Sturm, Ruger & Co.*, No. X10-UWY-CV-23-6072789 S, 2025 WL 3212692, at *25 (Conn. Super. Ct. Nov. 12, 2025) (same); *Englund v. World Pawn Exch., LLC*, No. 16CV00598, 2017 WL 7518923, at *6-7 (Or. Cir. Ct. June 30, 2017) (same); *Corporan v. Wal-Mart Stores E., LP*, No. 16-2305, 2016 WL 3881341, at *4 n.4 (D. Kan. July 18, 2016) (same). But in any event, the City’s claims may also proceed under these exceptions.

i. The City’s claims are permitted under the negligent entrustment exception

PLCAA allows plaintiffs to bring an action “against a seller for negligent entrustment,” § 7903(5)(A)(ii), which PLCAA defines as “the supplying of a [firearm] by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the [firearm] is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to ... others,” § 7903(5)(B). That fits this case. The record contains ample evidence that Delia’s supplied firearms to straw purchasers who Delia’s knew or reasonably should have known were going to use the firearms dangerously. *See, e.g.* Ex. 11 (Traver report) ¶ 6. The City’s claims thus may proceed under the negligent entrustment exception. *See Noble v. Shawnee*

Gun Shop, Inc., 409 S.W.3d 476, 480 (Mo. Ct. App. 2013) (“[A] state-law claim may continue to be asserted, even if it is not denominated as a ‘negligent entrustment’ claim under state law, if it falls within the definition of a ‘negligent entrustment’ claims provided in 15 U.S.C. § 7903(5)(B).”).

Delia’s argues that the City’s claims do not satisfy the negligent entrustment exception because the straw purchasers did not “use” the firearms “as envisioned under this exception.” Mem. 13. But Delia’s offers no support for its assumption about what Congress envisioned. And in fact, the legislative history suggests that Delia’s is incorrect. *See* 151 Cong. Rec. S8917 (daily ed. July 26, 2005) (statement of Sen. Jeff Sessions) (explaining that PLCAA would allow lawsuits in connection with “a straw purchase” because, “if you know you are selling it to this person and you know it is going to that person, then ... it would be a negligent entrustment or a violation of the statute”).

The City’s reading is bolstered by the plain meaning of the word “use.” In another context, the Supreme Court has explained that the statutory phrase “uses ... a firearm” encompasses both using the firearm “as a weapon” and using it “as an item of barter.” *Smith v. United States*, 508 U.S. 223, 240 (1993). If exchanging a firearm for drugs constitutes a “use” of the firearm, *see id.*, then so too exchanging a firearm for money. When one uses a firearm by exchanging it for money with an individual who is legally prohibited from possessing firearms, that is undoubtedly a use that involves an unreasonable risk of physical injury to others. *See* 15 U.S.C. § 7903(5)(B). The City’s claims may thus proceed under the negligent entrustment exception.

ii. The City’s claim for negligence per se may proceed under the negligence per se exception

Finally, PLCAA also allows plaintiffs to sue firearm sellers under a theory of negligence per se. § 7903(5)(A)(ii). As Delia’s correctly states, because PLCAA does not define “negligence

per se,” this exception is understood to cover state-law negligence per se claims, like the one pressed by the City. Mem. 14; *see* Am. Compl. ¶¶ 113-19. In response to the City’s claim, Delia’s only reiterates its argument that the City has failed to establish proximate cause. Mem. 14. This argument fails for the reasons previously discussed. *See supra* Section B.3. The City’s negligence per se claim may proceed to trial.

VI. CONCLUSION

For the foregoing reasons, the City respectfully asks that Delia’s motion be denied.

DATED this 16th day of January, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on the date below, the foregoing Plaintiff's Opposition to Delia's Motion for Summary Judgment and supporting documents were uploaded via the Court's electronic filing system and thus served upon the parties of record upon acceptance by the Office of Judicial Records.

/s/ Lydia M. Furst
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Dated: January 16, 2026