DOCKET NO: UWY-CV23-6072791-S	:	SUPERIOR COURT
NATHANIEL GETZ, EXECUTOR OF THE ESTATE OF SUZANNE FOUNTAIN	:	J.D. OF WATERBURY
VS.	:	AT COMPLEX LITIGATION DOCKET
STURM, RUGER & COMPANY, INC.	:	AUGUST 2, 2024

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS BASED ON THE DOCTRINE OF FORUM NON CONVENIENS

Ruger has more than met its burden to demonstrate that the fair and appropriate forum in which this case should proceed is Colorado. *See Durkin v. Intevac, Inc.* 258 Conn. 454, 465 (2001). In his Opposition, Plaintiff focuses narrowly on just one issue in the case: whether Ruger properly designated and sold the AR-556 Pistol as a pistol rather than as a rifle. Plaintiff ignores all other issues necessary for him to succeed on his claims. Most notably, he fails to recognize that evidence of causation and damages lies exclusively in Colorado, where the criminal shooter acquired the firearm, where the shooting occurred, where law enforcement conducted its investigation, where the shooter resides and awaits trial, and where Plaintiff's decedent resided. Even with respect to what Plaintiff characterizes as the "key dispute" in this case—Ruger's manufacture, distribution, and marketing of the pistol—Ruger's activities took place outside Connecticut.

I. Proximate Cause is a Central Issue in this Case.

Causation is an issue in nearly all wrongful death cases, but here causation has an especially important role. Under the Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. § 7901 *et seq.*, Ruger and other firearm manufacturers have threshold immunity against being sued in any federal or state court for damages in cases arising from the criminal misuse of firearms. 15 U.S.C. §7903(5) (defining a prohibited qualified civil liability action). Immunity from suit under

the PLCAA is broad, but not complete. An action against a firearm manufacturer can be pursued based on evidence that the manufacturer knowingly violated a federal or state statute applicable to the sale or marketing of firearms, provided that the knowing statutory violation is "a proximate cause of the harm for which relief is sought." 15 U.S.C. §7903(5)(A)(iii). Plaintiff's claims are pled under this exception, which is commonly referred to as the "predicate exception."

With respect to Plaintiff's claim that Ruger marketed the firearm for criminal "assaultive uses," proximate cause can only be established with evidence that the criminal shooter was exposed to Ruger's marketing materials and was motivated by Ruger's marketing of the firearm to criminally misuse the firearm. Evidence material to marketing causation exists solely in Colorado, most notably the shooter's testimony, but also the testimony of identified medical professionals who interviewed the shooter and may have learned his reason for acquiring the firearm and his motivation for committing his crimes. Marketing causation evidence—or its absence—may also exist in not yet available law enforcement records regarding law enforcement's search of the shooter's home and computer. Because it undermines his argument, Plaintiff downplays the importance of this evidence, but it clearly is crucial to his case and Ruger's defense.

Likewise, with respect to Plaintiff's claim that Ruger improperly designated and sold the AR-556 Pistol as a pistol, proximate cause can only be established with evidence that "but for" Ruger's designation of the firearm as a pistol, the shooting would not have occurred. *See Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 467 P.3d 287, 292 (Colo. 2020) (the test for causation is the "but for" test – whether but for the defendant's alleged conduct, the harm would not have occurred); *Ruiz v. Victory Properties, LLC*, 315 Conn. 320, 329 (2015) (same) . Evidence material to this causation question again exists only in Colorado, specifically the criminal shooter's testimony and evidence of what other firearms were available for the shooter to purchase at Eagle's

Nest Armory in Arvada, Colorado.[1] Again, this evidence is critical to Plaintiff's case and Ruger's defenses. *See Soto v. Bushmaster Firearms International, LLC*, 331 Conn. 53, 98 (2019) (recognizing that proving a causal link between alleged wrongful advertising and shooter's motivation to commit criminal attack "may prove to be a Herculean task"); *Lowy v. Daniels Defense, LLC*, No. 1:23-cv-1338 (E.D. VA. July 24, 2024) (dismissing wrongful advertising case against firearms manufacturers used in a criminal shooting on the ground that allegation that shooter relied on defendant's advertisements was conclusory) (attached as Exhibit 1).

Plaintiff takes Ruger's statement in its removal papers describing its designation of the firearm as the "central point of dispute" out of context. That statement strictly related to the issue of federal question jurisdiction. Here, the central issue is the location of evidence necessary to Plaintiff's claims and Ruger's defenses. Certainly, that encompasses significantly more than the designation of the firearm, and includes evidence related to causation and damages that exists exclusively in Colorado. Any attempt to parlay Ruger's statement into something more is disingenuous.

II. Ruger's Offices in Connecticut Do Not Make Connecticut an Appropriate Forum.

That Ruger has corporate offices in Connecticut and some decisions were allegedly made here does not tip the scale toward Connecticut. *See Durkin*, 258 Conn. at 461 (rejecting argument

[1] Plaintiff's argument that the "relevance and admissibility" of the criminal shooter's testimony "is uncertain at best" is perplexing. The shooter knows whether he was exposed to Ruger marketing materials and whether Ruger's marketing motivated him to commit his crimes, and the shooter's testimony can establish—or fail to establish—that "but for" the availability of the Ruger AR-556 Pistol at Eagle's Nest Armory, he would not have shot and killed innocent persons. If the shooter is unavailable or unwilling to testify, statements he made to healthcare providers, including Drs. Torres and Reis, which may concern his criminal motivation and reasons for purchasing firearms and his motivation for the shooting, would be admissible under Colorado Rule of Evidence 803(4) (Statements Made for Purposes of Medical Diagnosis or Treatment). *See also* Connecticut Code of Evidence §8-3(5) (same). Without this evidence, Plaintiff cannot prevail. *See Daniels Defense, supra*, No. 1:23-cv-1338.

that motion to dismiss should be denied because defendants were located in Connecticut or conducted significant operations here). Indeed, the Court in *Melgares v. Sikorsky Aircraft Corp.*, 613 F. Supp. 2d 231, 242 (D. Conn. 2009) rejected this exact argument. There, survivors and estate representatives of decedents from a helicopter accident in Spain sued the helicopter manufacturer, which was based in Connecticut. Although there were records and witnesses in Connecticut essential to the plaintiffs' suit, the court found that the plaintiffs "underestimated the importance of documents and witnesses located outside the United States." *Id.* at 242. The court reasoned that "while the records and witnesses concerning the helicopter's design and manufacture are located in Connecticut, records and witnesses concerning the role design and manufacture played in the accident are located in Spain" and dismissed the case. *Id.* (emphasis added). That same analysis applies here with even greater force. Any records "concerning the role design and manufacture played" in the criminal shooting are located in Colorado, and evidence concerning the AR-556 Pistol's manufacture, sale, and marketing are located outside Connecticut.

This Court also should reject Plaintiff's contention that public interest factors weigh in favor of Connecticut as a proper forum because of "Connecticut's policy interest in regulating businesses that are headquartered in Connecticut." Opp. at 27. Taken to its logical extension, this argument would mean that no business with corporate offices in Connecticut could ever succeed on a *forum non conveniens* motion. Certainly, that is not the case. *See, e.g. Durkin*, 258 Conn. at 461 (defendant's significant operations located in Connecticut).[2]

---

[2] Moreover, Plaintiff claims in his Second Amended Complaint that Ruger somehow violated *federal* law—not *Connecticut* law—and that this violation proximately caused the decedent's death in Colorado. Plaintiff's CUTPA claim does not change this analysis. As Ruger has previously indicated, Colorado law should apply to this case. Even if, however, Connecticut law applies, Conn. Gen. Stat. §§ 42–110b (a) and 42–110a (4) do not authorize CUTPA claims regulating trade or commerce occurring outside the state. *W. Dermatology Consultants, P.C. v. VitalWorks, Inc.*, 146 Conn. App. 169, 201 (2013), *aff'd on other grounds*, 322 Conn. 541 (2016).

Ruger is a Delaware corporation, with offices in multiple locations, including Connecticut. AR-556 Pistols were not designed or manufactured in Connecticut. Marketing materials for them were not created in Connecticut. They were not shipped from Connecticut. The tragic criminal shooting occurred in Colorado, by a Colorado resident, killing other Colorado residents. Connecticut's interest in this case is considerably less than its interest in *Durkin* and other Connecticut cases that have been dismissed pursuant to the doctrine of *forum non conveniens*.

III. Ruger Has Met its Burden that Colorado is the Appropriate and Fair Forum.

Ruger has provided the names and locations of multiple material witnesses in Colorado along with the subject matters their testimony will address. However, in his Opposition, Plaintiff complains that Ruger has not provided the names and locations of *all* potential Colorado-based witnesses. Plaintiff demands too much. Ruger's present inability to identify all Colorado-based witnesses who may need to testify is because, as Plaintiff acknowledges in his Opposition, the shooter has not yet been tried on criminal charges and law enforcement's complete, unredacted investigation records are not yet available.[3]

Ruger's present inability to identify all Colorado-based witnesses is not a reason to deny Ruger's motion. If anything, as the United States Supreme Court and Connecticut Supreme Court have made clear, it only underscores why Colorado is a more appropriate forum for this case.

> [The plaintiff] suggested that defendants seeking forum non conveniens dismissal must submit affidavits identifying the witnesses they would call and the testimony these witnesses would provide if the trial were held in the alternative forum. Such detail is not necessary. [The defendants] have moved for dismissal precisely because many crucial witnesses are located beyond the reach of compulsory process, and thus are difficult to identify or interview. Requiring extensive investigation would defeat the purpose of their motion. Of course, defendants must provide enough information to enable the District Court to balance the parties'

[3] Plaintiff's belief that law enforcement investigation records and surveillance video will be available upon completion of the shooter's criminal trial is questionable. If the shooter is found guilty and an appeal is pursued, law enforcement likely will continue to keep its investigation records out of the public domain until appeals have been exhausted.

> interests. Our examination of the record convinces us that sufficient information was provided here.

Piper Aircraft Co. v. Reyno, 454 U.S. 235, 258–59 (1981). *See also Durkin*, 258 Conn. at 472 ("A hearing on a motion to dismiss on the ground of forum non conveniens … reflects 'both the preliminary nature of the question and the counterproductivity of substantial discovery before dismissing an action so that it can be reinstated elsewhere.'"); *Union Carbide Corp. v. Aetna Cas. and Sur. Co.*, 212 Conn. 311, 321 (1989) (inferential findings about witness significance were not impermissibly speculative because "[b]y necessity, a motion for dismissal on the ground of forum non conveniens must be heard on a record that is less specific than we would require for a trial on the merits."); *accord, Vargas*, 2010 WL 219666 at *20 (rejecting argument that the defendant had not sufficiently identified witnesses unavailable for trial in Connecticut and finding that sufficient information was provided to assess the relative ease of access to proof).

Contrary to Plaintiff's argument, Ruger has met its burden to show that the non-forum witnesses are unwilling to travel to Connecticut to testify. Indeed, courts have repeatedly held that the burden is met "by providing circumstantial evidence, for example, that an ongoing "criminal investigation provid[es] a major disincentive to voluntary testimony." *Melgares*, 613 F. Supp. 2d at 243 ("The mere existence of a criminal investigation focused on the accident in this dispute would appear to be a major disincentive to voluntary testimony of the type defendants seek from witnesses in Spain"); s*ee also First Union Nat'l Bank v. Banque Paribas*, 135 F.Supp.2d 443, 450 (S.D.N.Y. 2001). Ruger has made that showing. Doc. Entry 151.00, p. 11.[4]

[4] The Superior Court decisions upon which Plaintiff relies on page 17 of his Opposition are inapposite because the defendants in those cases did not even identify witnesses by name, nor indicate any reason witnesses would be unwilling to testify. *See Everbank Com. Fin., Inc. v. Row Equipment, Inc.*, No. CV166030117S, 2017 WL 3880504 (July 20, 2017) (defendant did not identify the name of a single witness, their location, the substance of their testimony, or why they would be unwilling to testify in Connecticut); *Mathis v. Marriot Intern., Inc.*, No. CV146044292S, 2014 WL 5138023 (Sept. 12, 2014) (same); *Corriveau v. Corriveau,* No. CV075006980, 2009 WL 1874183 (June 12, 2009) (same). In contrast,

IV. Colorado Witnesses and Evidence are Not Subject to Compulsory Process.

Plaintiff's insistence that there are no discovery hurdles in light of the newly-adopted UIDDA reflects an incomplete understanding of the complexities the parties will face if this case proceeds in Connecticut. Although there are procedures whereby Colorado witnesses can be subpoenaed to appear and give deposition testimony in a Connecticut case, and Colorado records can be subpoenaed for production, in the event objections are raised by Colorado residents to providing testimony or producing records, those objections will require that subpoena enforcement proceedings be initiated in a Colorado court. *See* C.R.S.A. §13-90.5-106 (motions to enforce a foreign subpoena must comply with Colorado law and be submitted to the Colorado district court in which discovery is to be conducted). The inevitable result will be parallel discovery-related proceedings (and potentially interlocutory appeals) under different state law in Connecticut and Colorado courts. This complication and inconvenience can be avoided by ensuring that Colorado is the forum in which this case proceeds, a forum that Plaintiff acknowledges is adequate.

By contrast, discovery of evidence in Ruger's possession in Connecticut or elsewhere is not made inconvenient based on the forum in which the case proceeds. Ruger is a party, and as a party its records and employees are subject to discovery in Colorado and elsewhere without resort to compulsory process. *See Vargas v. General Elec. Co.*, No. X08CV085007177S, 2010 WL 219666 at *24 (April 30, 2010) (whether out-of-forum witnesses were subject to compulsory process in the forum immaterial because witnesses were under defendant's control).

V. The Manufacture, Distribution, and Marketing of the Ruger AR-556 Pistol Did Not Take Place in Connecticut.

As noted above, Plaintiff argues that the "key dispute" in this case concerns Ruger's design,

---

Ruger has supplied an affidavit identifying Colorado-based witnesses by name, explained the substance and materiality of their testimony, and identified reasons why they are unavailable to testify in Connecticut.

production, distribution, and marketing of its AR-556 Pistol. (Opp. at 3.) Yet, Ruger has shown that none of these activities occurred in Connecticut. The pistol was manufactured by Ruger in North Carolina, and distributed by Ruger from North Carolina to an independent federally-licensed distributor in Arizona. Ruger's marketing activities are conducted in New York. Ruger does not take credit for "designing" the pistol because the pistol's underlying design is based on the long-established AR platform used in countless firearms manufactured by numerous manufacturers for nearly 75 years. *See Worman v. Healy*, 293 F.Supp.3d 251, 257, 58 (D. Mass. 2018) (describing Armalite's development of an AR platform rifle in the mid-1950s). Regardless, no Connecticut-based Ruger employee was involved in work that could be characterized as the "design" of the AR-556 Pistol. (Ruger's Answer to Pl.'s Interrog. No. 9, attached as Exhibit 2). In any assessment of the relative ease of access to proof, Connecticut is barely in the equation.

VI. Technology Has Not Replaced the Need for Personal Attendance of Witnesses.

Plaintiff's argument that, under *Picketts v. International Playtex, Inc.*, 215 Conn. 490 (1990), the availability of video depositions mitigates the burden and prejudice to Ruger if this case were tried in Connecticut; (Opp. at 16); ignores that the Connecticut Supreme Court in *Durkin* held otherwise: "*Picketts* should not be read to support the proposition that technology has replaced the need for personal attendance by witnesses." 258 Conn. at 475. Connecticut courts have repeatedly reaffirmed this principle. *See, e.g., DeCicco v. Dynata, LLC*, No. X06-UWY-CV-20-6052136-S, 2022 WL 6389300, at *8 (Bellis, J.) (Sept. 12, 2022) ("There are also a large number of witnesses to rely on only videotaped depositions, and as the court stated in *Durkin v. Intevac, Inc., supra*, 258 Conn. 454, in the event that this case goes to trial, it would be unsatisfactory to have the defendants try their case based solely on videotaped depositions."), *aff'd,* 225 Conn. App. 725 (2024); *Doe v. Spence*, 2012 WL 6634606 at *3 ("The plaintiff also suggests that the defendant

can videotape their testimony and present the videotape in court. While the proposal is technically feasible, there is no reason why the defendant (or the plaintiff) should have to present much if not all of his (or her) case on videotape in Connecticut when an available forum exists in Massachusetts where witnesses can testify in person."); *Vargas*, 2010 WL 219666 at *20-24 (finding that causation and damage evidence was all outside of Connecticut and the lack of live testimony by non-Connecticut witnesses would be prejudicial to the defendant); *Molinary v. Patrick ex rel. Patrick*, No. CV00068946, 2001 WL 1285408 (Oct. 10, 2001) ("[d]espite ... modern technological advances" providing means to obtain testimony by deposition, most witnesses reside in New Jersey and none would be subject to compulsory process to appear and testify in Connecticut).

Durkin reaffirms the long-established principle "that to fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to try their cases on deposition, is to create a condition not satisfactory to the court, jury, or most litigants." *Durkin*, 258 Conn. at 475; *quoting Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 511 (1947). If this case is tried in Connecticut, Ruger will be forced to present its case almost exclusively through recorded witness testimony given months before trial. Ruger would have no ability to question these witnesses on new matters raised during the trial, or recall them if the need arises. This is precisely the "condition not satisfactory" that favors personal witness appearance at trial. *See id.* Reinstating this case in Colorado will eliminate prejudice to Ruger while inflicting no prejudice on Plaintiff.

VII. Plaintiff Will Not Be Prejudiced by Reinstatement in Colorado

As previously stated, Ruger will: (1) agree to accept service of process in Colorado, (2) stipulate, for the purpose of his case, that it is subject to personal jurisdiction in Colorado, and (3) stipulate that it will not assert statute of limitation defenses not available to it in Connecticut, provided Plaintiff reinstates his case in Colorado within 30 thirty days of the Court's order on this

motion. Ruger will also agree that if the Colorado court finds it does not have jurisdiction, the case can be returned to Connecticut.

Ruger will not, however, agree to the additional condition on reinstatement proposed by Plaintiff—that Ruger will not raise the defense that new causes of action pled for the first time in Plaintiff's Second Amended Complaint are time-barred. That defense remains available in Connecticut because it has not yet been ruled on by a Connecticut court. Judge Bellis' one-word order—"Overruled"—to Ruger's objection to Plaintiff's Request to Amend was not a substantive determination and does not preclude Ruger from moving to strike the untimely allegations. Doc. Entry 129.20. Indeed, Judge Bellis made no factual findings and offered no reason for her decision. It is not uncommon for a court to overrule an objection to a request to amend a complaint only to later grant a dispositive motion on the same ground as the objection to amendment. *See, e.g., Mesner v. Cheap Auto Rental*, No. CV075009039S, 2008 WL 590495 (Feb. 13, 2008) (Bellis, J.) (granting summary judgment where new allegations in amended complaint did not relate back to original complaint and were thus barred by the statute of limitations, despite previously allowing the amendment and overruling defendant's objection on the same ground). As Plaintiff argued extensively when he sought to amend his Complaint; Doc. Entry 135.00, pp. 4-5; amendments to pleadings are liberally granted and, in the absence of a sound reason, refusal to allow an amended pleading is an abuse of discretion. *See Tedesco v. Julius C. Pagano, Inc.,* 182 Conn. 339, 341 (1980). Whether the Second Amended Complaint relates back to the Original Complaint remains an issue to be addressed whether in Connecticut or, if Ruger's motion is granted, in Colorado.

VIII. Conclusion

Ruger respectfully requests that this Court grant its motion to dismiss pursuant to the doctrine of *forum non conveniens*.

Respectfully submitted,

THE DEFENDANT,
STURM, RUGER & COMPANY, INC.

/s/ 404648
Robert C. E. Laney, Esq.
Ryan Ryan Deluca LLP
1000 Lafayette Boulevard, Suite 800
Bridgeport, CT 06604
(203) 549-6650
Fax: (203) 549-6655
roblaney@ryandelucalaw.com

James B. Vogts (PHV ct437445)
Swanson, Martin & Bell, LLP
330 N. Wabash, Suite 3300
Chicago, Illinois 60611
(312) 321-9100
Fax: (312) 321-0990
jvogts@smbtrials.com

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2024, I delivered a true and correct of the foregoing via email to the following counsel of record:

Andrew B. Ranks, Esq. ranks@cttrialfirm.com
Andrew P. Garza, Esq. andrew@cttrialfirm.com
Connecticut Trial Firm, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033

Eric Tirschwell, Esq. etirschwell@everytown.org
Carolyn Shanahan, Esq. cshanahan@everytown.org
Laura Keeley, Esq. lkeeley@everytown.org
Everytown Law
450 Lexington Ave.
P.O. Box 4184
New York, NY 10163

Soumya Dayananda, Esq. sdayananda@willkie.com
Willkie, Farrr & Gallagher LLP
1878 K Street NW
Washington, DC 200

James Vogts, Esq. jvogts@smbtrials.com
Swanson, Martin & Bell, LLP
330 North Wabash, Suite 3300
Chicago, IL 60611

/s/ 404648
Robert C. E. Laney, Esq.

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

KAREN LOWY, *et al.*,

Plaintiffs,

v.

DANIEL DEFENSE, LLC, *et al.*,

Defendants.

Civil Action No. 1:23-cv-1338

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the court on motions to dismiss submitted by all fifteen defendants.

Plaintiffs' suit arises from a shooting on April 22, 2022, at Edmund Burke School in Washington, D.C. That afternoon, when a gunman ("Shooter") opened fire from an apartment window overlooking the school, Plaintiff Karen Lowy was waiting outside the school to pick up her daughter, Plaintiff N.T., and Plaintiff Antonio Harris was a security guard at the school. Bullets struck Lowy and Harris while N.T. sheltered inside the school. In addition to Lowy and Harris's physical injuries, plaintiffs seek to recover for emotional distress.

Plaintiffs describe defendants as manufacturers of assault rifles, rifle accessories, and ammunition. Plaintiffs allege that defendants' liability stems from their negligence, negligence *per se*, and violations of Virginia statutes in a "foreseeable and predictable chain of events" that led to plaintiffs' injuries. Specifically, plaintiffs claim that defendants "have deceptively and unfairly marketed their assault rifles, rifle

accessories, and ammunition in ways designed to appeal to the impulsive, risk-taking tendencies of civilian adolescent and post-adolescent males." Those men, according to plaintiffs, then foreseeably use defendants' products in mass shootings. "Upon information and belief," plaintiffs claim that Shooter was one of the men influenced by defendants' marketing practices and relied on defendants' advertisements when purchasing his weapons in Virginia. Plaintiffs allege that, by these acts, all fifteen defendants violated the Virginia False Advertising Statute, Va. Code Ann. § 18.2-216, and the Virginia Consumer Protection Act, Va. Code Ann. § 59.1-196 *et seq.* In addition, plaintiffs claim six defendants committed negligence and another six committed negligence *per se* for violations of the National Firearms Act, 26 U.S.C. § 5801 *et seq.*, and the Virginia Uniform Machine Gun Act, Va. Code Ann. § 18.2-288 *et seq.* Plaintiffs seek compensatory and punitive damages owing to these alleged acts. The fifteen defendants, represented by eleven motions to dismiss, seek to dismiss plaintiffs' complaint for failing to invoke the Court's subject-matter jurisdiction under Rule 12(b)(1) and failing to state a claim under Rule 12(b)(6).

Challenges to the Court's subject-matter jurisdiction under Rule 12(b)(1) may be either facial or factual. Beck v. McDonald, 848 F.3d 262, 270 (4th Cir. 2017). A facial challenge, like defendants', contends that "a complaint simply fails to allege facts upon which subject matter jurisdiction can be based." Id. (quoting Kerns v. United States, 585 F.3d 187, 192 (4th Cir. 2009)). Faced with such a challenge, the Court "must apply a standard patterned on Rule 12(b)(6) and assume the truthfulness of the facts alleged." Kerns, 585 F.3d at 193. "A motion to dismiss pursuant to Rule 12(b)(6) tests the sufficiency of the claims pled in a complaint." Nadendla v. WakeMed, 24 F.4th 299, 304

(4th Cir. 2022) (quoting ACA Fin. Guar. Corp. v. City of Buena Vista, 917 F.3d 206, 211 (4th Cir. 2019)). Claims survive a Rule 12(b)(6) challenge if the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Id. (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). Put another way, a plaintiff alleges sufficient facts when the court can "draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

Defendants first challenge plaintiffs' standing. "To invoke federal jurisdiction, a plaintiff bears the burden of establishing the three 'irreducible minimum requirements' of Article III standing:

> (1) an injury-in-fact (i.e., a concrete and particularized invasion of a legally protected interest); (2) causation (i.e., a fairly traceable connection between the alleged injury in fact and the alleged conduct of the defendant); and (3) redressability (i.e., it is likely and not merely speculative that the plaintiff's injury will be remedied by the relief plaintiff seeks in bringing suit)."

Beck, 848 F.3d at 269 (quoting David v. Alphin, 704 F.3d 327, 333 (4th Cir. 2013)). Defendants' standing challenge focuses on the second requirement, causation. Alleging causation does not require plaintiffs to allege that the defendants' actions were "the very last step in the chain of causation." Bennett v. Spear, 520 U.S. 154, 169 (1997). In fact, "the causation element of standing does not require the challenged action to be the sole or even immediate cause of the injury." Sierra Club v. U.S. Dep't of the Interior, 899 F.3d 260, 284 (4th Cir. 2018) (citing id.). However, when plaintiffs plead that a third party's actions bridge the causal chain between defendants' conduct and plaintiffs' injuries, that indirectness "may make it substantially more difficult to meet the minimum requirement of Art. III." Warth v. Seldin, 422 U.S. 490 (1975). Plaintiffs cannot satisfy Article III's causation requirement if their injury resulted "from the

independent action of some third party not before the court." Simon v. E. Ky. Welfare Rts. Org., 426 U.S. 26, 42 (1976) (emphasis added). "Indeed, where multiple actors are involved, a plaintiff can establish causation only if the defendant's conduct had a 'determinative or coercive effect upon the action of someone else.'" Alvarez v. Becerra, No. 21-2317, 2023 WL 2908819, at *3 (4th Cir. Apr. 12, 2023) (quoting Bennett, 520 U.S. at 169).

Here, a third party bridges the alleged causal chain between defendants' conduct and plaintiffs' injuries. At the beginning of the alleged causal chain, defendants marketed their weapons and weapons accessories to potential consumers in Virginia. At the end, Shooter injured plaintiffs by firing at an elementary school. This chain relies on Shooter, a third party not before the Court, to link defendants to plaintiffs' injuries. Accordingly, to establish standing against defendants, plaintiffs must allege that defendants' conduct had a determinative or coercive effect upon Shooter's actions.

Much of plaintiffs' complaint concerns defendants' marketing to Virginia residents generally and "young men like the Shooter," id. ¶ 57, but few paragraphs allege the effect of defendants' marketing on Shooter specifically. To link Shooter's actions to Defendant Daniel Defense, LLC, for example, plaintiffs plead that Daniel Defense "advertised to Virginia residents such as the Shooter," Dkt. No. 1 ¶¶ 149, 240, and allege "[u]pon information and belief, the Shooter relied on Defendant Daniel Defense, LLC's advertisements to purchase the DDM4 V7 rifle and DD magazine," id. ¶ 243 (Counts XV–XXVI allege identical reliance on other defendants' advertisements). These allegations fail for two reasons.

First, concerning Shooter's reliance on defendants' marketing, plaintiffs' allegations are conclusory. Generally, a plaintiff may plead "based on 'information and belief' if such plaintiff is in a position of uncertainty because the necessary evidence is controlled by the defendant." Ridenour v. Multi-Color Corp., 147 F. Supp. 3d 452, 456 (E.D. Va. 2015). But, like all other allegations, allegations pled upon information and belief "may not be wholly conclusory." Kashdan v. George Mason Univ., 70 F.4th 694, 701 (4th Cir. 2023). If "not supported by any well-pled facts that exist independent of [plaintiffs'] legal conclusions," allegations pled upon information and belief fail. Id. Such is the case here: no factual allegations in the complaint support the conclusion that Shooter relied on defendants' marketing. The complaint does not suggest defendants control such evidence of Shooter's reliance and does no more than speculate that Shooter, like other young men in Virginia, observed defendants' advertisements. Without more support, these pleadings fail to raise plaintiffs' right to relief above the speculative level and can proceed no further. Lokhova v. Halper, 995 F.3d 134, 148 (4th Cir. 2021) ("It is well established that speculative conclusions are insufficient to survive a motion to dismiss.").

Second, viewed most optimistically, plaintiffs allege that Shooter relied on defendants' advertisements when choosing to purchase defendants' products. The Court cannot transform that allegation into an allegation that defendants' marketing had a "determinative or coercive effect" on Shooters' decision to shoot at plaintiffs. While the bounds of Article III's causation requirement may at times seem opaque, "[c]ausation makes its most useful contribution to standing analysis in circumstances that show a clear break in the causal chain." 13A Charles Alan Wright & Arthur R. Miller, Federal

Practice and Procedure § 3531.5 (3d ed. 2024). Here, the actions of a third party injured plaintiffs. As explained above, completing the causal chain requires plaintiffs to allege defendants' conduct had a determinative or coercive effect on that third party's injurious actions. This complaint, however, fails to make that allegation. *Maybe* defendants' advertising coerced Shooter to *purchase* defendants' products (and that allegation, as discussed above, is speculative), but absent is any allegation that defendants' advertising coerced Shooter to attack the elementary school. Without that allegation, plaintiffs' alleged causal chain is incomplete, and plaintiffs lack standing against these defendants.

But, even had plaintiffs invoked standing, the Protection of Lawful Commerce in Arms Act ("PLCAA"), 15 U.S.C. § 7901 *et seq.*, blocks plaintiffs' claims. As the PLCAA's title suggests, the statute protects firearm companies' "lawful" commerce in arms and prohibits plaintiffs from bringing civil liability actions against such companies when their injury results solely from "the criminal or unlawful misuse" of the companies' products by a third party. §§ 7901(b)(1), 7902, 7903(5)(A). The PLCAA contains various exceptions, however, "to ensure that it does not insulate firearm companies against lawsuits resulting from their unlawful behavior." Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc., 91 F.4th 511, 526 (1st Cir. 2024). Here, defendants qualify for the PLCAA's protections, and plaintiffs fail to invoke the Act's exceptions.

The PLCAA protects "a manufacturer or seller of a qualified product, or a trade association" from qualified civil liability actions. § 7903(5)(A). A "qualified product" includes firearms, ammunition, or "a component part of a firearm or ammunition." § 7903(4). Defendants here manufacture rifles (e.g., Defendants Daniel Defense and

Bravo Company), ammunition (e.g., Defendants Federal Cartridge Company and Vista), and component parts (e.g., Defendants Loyal 9 Manufacturing and Centurion Arms), and plaintiffs do not deny most defendants fall within the PLCAA's protections. But plaintiffs allege that the magazines and grips manufactured by Defendants Magpul Industries and Surefire, LLC are not component parts, excluding those defendants from the PLCAA's protections. Plaintiffs cite Prescott v. Slide Fire Solutions, LP, 341 F. Supp. 3d 1175 (D. Nev. 2018) for support, but that case belies their claim. There, the court found that the defendants' bump stocks "are component parts of a rifle and, therefore, constitute qualified products under the PLCAA." Id. at 1190. In reaching that conclusion, "the Court [found] significant the fact that bump stocks replace existing stocks rendering them component parts, even if they are after-market enhancements." Id. The same reasoning applies here: when a firearm user substitutes the original components of their firearm for defendants' magazines and grips, defendants' magazines and grips then become component parts of the newly assembled firearm. See id. at 1189. As manufacturers of component parts, the PLCAA extends to qualified civil liability actions against these manufacturers like the other defendants.

Plaintiffs must invoke one of the PLCAA's exceptions to proceed—defendants fall within the PLCAA's protections, and this suit is a civil action for damages resulting from the criminal misuse of defendants' products by a third party. § 7903(5)(A). One of the PLCAA's exceptions exempts actions "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." § 7903(5)(A)(iii). "This exception has come to be known as the

'predicate exception,' because a plaintiff not only must present a cognizable claim, he or she also must allege a knowing violation of a 'predicate statute.'" Ileto v. Glock, Inc., 565 F.3d 1126, 1132 (9th Cir. 2009), *cert. denied*, 560 U.S. 924 (2010) (citing City of New York v. Beretta U.S.A. Corp., 524 F.3d 384, 390 (2d Cir. 2008), *cert. denied*, 556 U.S. 1104 (2009)). Here, the Court assumes without deciding that the VFAS and VCPA are predicate statutes because, in any event, plaintiffs fail the predicate exception's proximate causation requirement.

Part of the PLCAA's predicate exception asks whether defendants' violation of the predicate statute proximately caused the plaintiffs' harm. § 7903(5)(A)(iii); Estados Unidos Mexicanos, 91 F.4th at 534. In Virginia, the "proximate cause of an event is that act or omission which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces the event, and without which that event would not have occurred." Wolf v. Fauquier Cnty. Bd. of Supervisors, 555 F.3d 311, 321 (4th Cir. 2009) (quoting Beverly Enterprises-Virginia v. Nichols, 247 Va. 264, 269 (1994)). The pleading standard for proximate cause is not the same as the Article III causation standard discussed above—Article III's pleading standard is lower. DiCocco v. Garland, 52 F.4th 588, 592 (4th Cir. 2022). Therefore, the complaint's deficiencies under Article III also doom plaintiffs' allegations of proximate cause. To briefly reiterate, plaintiffs' allegations that Shooter relied on defendants' advertisements are conclusory, and plaintiffs fail to allege that the shooting "would not have occurred" absent those advertisements. See Wolf, 555 F.3d at 321. So, even further assuming that plaintiffs adequately allege defendants violated the VCPA and VFAS—which the court does not

decide—plaintiffs fail to adequately allege those violations proximately caused their injuries.

Plaintiffs appeal to a recent First Circuit decision to argue their causation allegations are sufficient. However, the dissimilarities between the pleadings in that case and this one only underscore the deficiencies here. In Estados Unidos Mexicanos, the Mexican government alleged that several American firearm companies deliberately "engage in conduct—design decisions, marketing tactics, and repeated supplying of dealers known to sell guns that cross the border—with the intent of growing and maintaining an illegal market in Mexico from which they receive substantial revenues." 91 F.4th at 532. This conduct allegedly harmed Mexico by requiring the Mexican government to "incur significant costs in response to the increased threats and violence accompanying drug cartels armed with an arsenal of military-grade weapons." Id. at 534. The First Circuit held Mexico sufficiently alleged that conduct proximately caused the government's injuries, "thereby satisfying the final demand of the predicate exception." Id. at 538. In so holding, the First Circuit contrasted the Mexican government's allegations with the City of Philadelphia's allegations in City of Philadelphia v. Beretta U.S.A. Corp., 277 F.3d 415 (3d Cir. 2002). Estados Unidos Mexicanos, 91 F.4th at 535.

In City of Philadelphia, the City alleged that the defendant firearm companies' "conduct in the marketing and distribution of handguns allows them to fall into the hands of criminals and children, creating and contributing to their criminal use in Philadelphia." 277 F.3d at 419. Like the Mexican government's allegations, the City asserted "their injuries include the costs associated with preventing and responding to

incidents of handgun violence and crime." Id. The district court dismissed the complaint, holding the plaintiffs' claims "failed for lack of proximate cause because their injuries are too remote from the gun manufacturers' alleged conduct." Id. at 423–24. The Third Circuit affirmed; plaintiffs' allegations were too remote to allege proximate cause because plaintiffs failed to allege the gun manufacturers "intend[ed] to inflict injury upon the citizens of Philadelphia . . . ." Id. at 424. The City "at most" alleged the firearm companies possessed an "awareness of the means by which prohibited purchasers end up possessing handguns"—an allegation insufficient to support proximate cause. Id. The First Circuit, meanwhile, held the Mexican government succeeded where the City of Philadelphia failed: Mexico adequately alleged the gun manufacturers' intent, "expressly alleg[ing] that the defendants did know which dealers were making illegal sales." Estados Unidos Mexicanos, 91 F.4th at 535.

Both Estados Unidos Mexicanos and City of Philadelphia are unlike this case. First, in those cases, the government plaintiffs pled that defendants' conduct injured them via years of public expenditure. Plaintiffs here are neither a municipal nor a national government; plaintiffs' injuries are specific to a single incident perpetrated by a single shooter. Accordingly, unlike the government plaintiffs, plaintiffs here had to allege defendants' conduct caused one, specific shooting. As discussed above, these pleadings fail to allege defendants' advertisements caused Shooter's singular attack. Second, plaintiffs' pleadings also echo the deficiencies of those in City of Philadelphia: plaintiffs here allege *some* causation (defendants' advertisements intentionally caused consumers' purchases), but those allegations do not allege proximate causation (defendants' advertisements intentionally caused Shooter's attack).

The deficiencies in plaintiffs' allegations of causation doom all their claims alike. Their claims under the VFAS and VCPA fail the proximate causation prong of the PLCAA's predicate exception, and their claims of negligence and negligence *per se* fare no better. As is axiomatic, claiming negligence requires the plaintiff to show that the defendant's breach "was the proximate cause of injury." Willner v. Dimon, 849 F.3d 93, 113 (4th Cir. 2017). And when a plaintiff claims negligence *per se*, the alleged "statutory violation must be a proximate cause of plaintiff's injury." Kaltman v. All Am. Pest Control, Inc., 281 Va. 483, 496 (2011). The question of proximate cause is usually a question of fact for a jury, but when "reasonable persons may not differ in their conclusions that such negligence was such a cause[,] a trial court properly decide the question as a matter of law." Thomas v. Settle, 247 Va. 15, 20 (1994). Here, reasonable persons may not differ because plaintiffs' pleadings provide no basis for finding proximate cause. So, plaintiffs' negligence and negligence per se claims fail too. Accordingly, it is hereby

ORDERED that defendants' motions to dismiss are **GRANTED**, and this case is **DISMISSED.**

Alexandria, Virginia
July 24, 2024

Claude M. Hilton
CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

DOCKET NO: UWY-CV23-6072791-S	:	SUPERIOR COURT
NATHANIEL GETZ, EXECUTOR OF THE ESTATE OF SUZANNE FOUNTAIN	:	J.D. OF WATERBURY
VS.	:	COMPLEX LITIGATION DOCKET
STURM, RUGER & COMPANY, INC.	:	JULY 25, 2024

DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO RUGER

Defendant Sturm, Ruger & Company, Inc. ("Ruger"), hereby objects and responds to Plaintiff's First Set of Interrogatories in accordance with Practice Book § 13-8.

DEFINITIONS

1. Plaintiff incorporates the Definitions and Rules of Construction in Practice Book Section 13-1.

2. "AR-556 MPRs" means the law-enforcement-only Firearms sold by Ruger with the model number of 8587.

3. "AR-556 Pistols" means the Firearms sold by Ruger with model numbers 8570, 8571, 8572, 8573, and any additional model numbers in the same line.

OBJECTION: Ruger objects to this definition on the ground that it is vague and ambiguous because the phrase "any additional model numbers in the same line" is unclear. Ruger interprets "AR-556 Pistols" to include all firearms produced by Ruger with model name AR-556 classified as a pistol.

4. "Advertisement" means any attempt, other than by use of a price tag, to directly or indirectly induce the purchase or rental of merchandise at retail, appearing in any newspaper, magazine, periodical, catalog, circular, in-store or out-of-store sign or other written matter placed before the consuming public, or in any product placement, promotion, radio broadcast, television broadcast, electronic medium or delivered to or through any computer, including websites, Social

Ruger further objects to this interrogatory as it seeks information that is immaterial to Plaintiffs' claims. *See* Practice Book § 13-2. The information sought here, concerning compliance with the NFA and registration of short-barreled rifles, does not relate to Plaintiffs' claims—which concern the AR-556 Pistol, which is not a short-barreled rifle—and is, accordingly, outside the scope of discovery.

Subject to and without waiving the above objections, compliance with statutes is a complex and wide-ranging effort. Ruger utilizes compliance associates at each of its manufacturing facilities, located in Mayodan, North Carolina; Newport, New Hampshire; and Prescott, Arizona. Ruger's Associate General Counsel for ATF Compliance, Nathan Siegel, is based out of Southport, Connecticut. Furthermore, Ruger associates across all locations each have responsibility for helping to ensure the Company's compliance with applicable statutes and regulations.

9. Identify the names, titles, and employment locations of Connecticut-based Ruger employees involved in the design of the Ruger AR-556 Pistols and AR-556 MPRs. State whether each individual listed is currently employed by You, and, if so, in what capacity and where such individual is presently employed.

OBJECTION AND ANSWER:

Ruger objects to this interrogatory as unduly burdensome and outside the scope of discovery because it seeks documents that are irrelevant to the allegations in the Original Complaint. The Original Complaint did not give notice of the GCA and NFA violation claims pled in the Amended Complaint. The GCA and NFA violation claims are untimely and subject to dismissal. The documents sought would be of no assistance in the prosecution or defense of the action, and are accordingly outside the scope of discovery. *See* Practice Book § 13-2.

Subject to and without waiving the above objections, no Connecticut-based Ruger employees were involved in the design of the Ruger AR-556 Pistol or the AR-556 MPR.

10. Identify the names, titles, and employment locations of Connecticut-based employees involved in the approval of designs of the Ruger AR-556 Pistols and AR-556 MPRs. State whether each individual listed is currently employed by You, and, if so, in what capacity and where such individual is presently employed.

OBJECTION AND ANSWER:

Ruger objects to this interrogatory as unduly burdensome and outside the scope of discovery because it seeks documents that are irrelevant to the allegations in the Original Complaint. The

CERTIFICATION

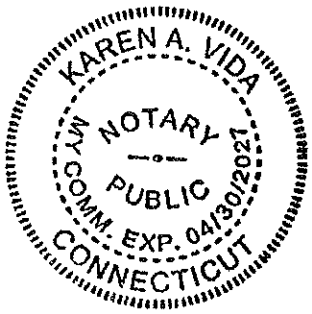
I, Robert J. Werkmeister, Jr., am the Vice President of Marketing for Sturm, Ruger & Company, Inc. The foregoing Answers to Interrogatories were prepared based on information contained in presently existing files and records regularly maintained in the ordinary course of business and information from various individuals. I have reviewed the Answers and based on reasonable inquiry hereby certify that they are true and correct to the best of my knowledge, information, and belief.

STURM, RUGER & COMPANY, INC.

By: _____

Robert J. Werkmeister, Jr.
Vice President of Marketing

Signed and sworn to before me this 24 day of July 2024.



_____
Notary Public/Commissioner of the Superior Court

My commission expires: 4/30/2027

Respectfully submitted,

THE DEFENDANT,
STURM, RUGER & COMPANY, INC.

/s/ 404648
Robert C. E. Laney, Esq.
Ryan Ryan Deluca LLP
1000 Lafayette Boulevard, Suite 800
Bridgeport, CT 06604
(203) 549-6650
Fax: (203) 549-6655
roblaney@ryandelucalaw.com

James B. Vogts (PHV ct437445)
Swanson, Martin & Bell, LLP
330 N. Wabash, Suite 3300
Chicago, Illinois 60611
(312) 321-9100
Fax: (312) 321-0990
jvogts@smbtrials.com

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2024, I delivered a true and correct of the foregoing via email to the following counsel of record:

Andrew B. Ranks, Esq. ranks@cttrialfirm.com
Andrew P. Garza, Esq. andrew@cttrialfirm.com
Connecticut Trial Firm, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033

Eric Tirschwell, Esq. etirschwell@everytown.org
Carolyn Shanahan, Esq. cshanahan@everytown.org
Laura Keeley, Esq. lkeeley@everytown.org
Everytown Law
450 Lexington Ave.
P.O. Box 4184
New York, NY 10163

Soumya Dayananda, Esq. sdayananda@willkie.com
Willkie, Farrr & Gallagher LLP
1878 K Street NW
Washington, DC 200

James Vogts, Esq. jvogts@smbtrials.com
Swanson, Martin & Bell, LLP
330 North Wabash, Suite 3300
Chicago, IL 60611

/s/ 404648
Robert C. E. Laney, Esq.