

JEFFERSON CIRCUIT COURT
 CASE NO. 24-CI-000518
 DIVISION SEVEN (7)
 JUDGE MELISSA LOGAN BELLOWS

DANA MITCHELL, et al.,

PLAINTIFFS

v.

RIVER CITY FIREARMS, INC., et al.,

DEFENDANTS

DEFENDANT RIVER CITY FIREARMS, INC.'S MOTION TO DISMISS

Defendant River City Firearms, Inc. (“River City”), by and through counsel, and pursuant to C.R. 12.02 moves to dismiss Plaintiffs’ Amended Complaint filed herein on April 8, 2024 on the grounds that it fails to state a claim upon which relief can be granted. More specifically, Plaintiffs’ claims are barred by federal statute and no exceptions exist to preclude dismissal. As such, Plaintiffs’ claims should be dismissed with prejudice. A Memorandum in Support is included herewith.

Respectfully submitted,

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MEMORANDUM IN SUPPORT**I. FACTUAL ALLEGATIONS**

On April 10, 2023, a shooter intentionally misused a semi-automatic rifle at the Old National Bank in Downtown Louisville, which resulted in the deaths of five people and injuries to approximately eight others. (*Am. Compl.*, ¶ 1.) Plaintiffs Dana Mitchell, Julie Andersen, James E. Evans, II, Stephanie Schwartz, Karen Tutt, Individually and as Administrator of the Estate of James Tutt, Jr., deceased, Jessica Barrick, Individually and as Next Friend, Parent, and Natural Guardian of C.G.B. and J.P.B., and James M. Gilly, Jr., as Executor of the Estate of Joshua Barrick, deceased (“Plaintiffs”) are victims of the criminal actor or family members of persons injured or killed in the shooting. (*Id.* ¶¶ 19-24.)

On April 4, 2023, the shooter visited River City, where he was assisted by an employee. (*Id.* ¶ 54-55.) Plaintiffs allege that the shooter appeared to be a “novice” and spoke quietly with the salesperson. (*Id.*) He advised the employee that a “friend’s home had recently been broken into,” and he was initially shown handguns but then was shown semi-automatic rifles. (*Id.* ¶ 56.) He chose to purchase a semi-automatic rifle along with rifle components, including magazines, a vertical grip, and a red-dot sight. (*Id.* ¶¶ 58, 60.) There is no allegation that the sale violated any law or that the appropriate forms and background checks were not completed and passed. Six days later, he intentionally and criminally discharged the semi-automatic rifle at the Old National Bank. (*Id.* ¶¶ 86-87.)

II. LEGAL STANDARD

Pursuant to Kentucky Rule of Civil Procedure 12.02, a complaint may be dismissed for failure to state a claim upon which relief may be granted. C.R. 12.02(f). Such a motion challenges the legal sufficiency of the complaint and takes all well-pleaded facts as true. *See, e.g., Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010). “[T]he court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?” *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. App. 2002); *see also Carruthers v. Edwards*, 395 S.W.3d 488, 491 (Ky. Ct. App. 2012).

III. **ARGUMENT**a. **Plaintiff's Claims are Barred by the Protection of Lawful Commerce in Arms Act.**1. **Introduction.**

The Protection of Lawful Commerce in Arms Act (“PLCAA”) is a federal preemption statute that prohibits lawsuits brought by any person against the manufacturer or seller of a firearm for damages caused by the criminal misuse of the product unless the action fits within one of the limited exceptions to the Act. In this way, the PLCAA preempts all common law theories of liability other than the claims identified as exceptions in the Act. If a plaintiff’s causes of action do not meet any of the enumerated exceptions to the Act, the entire lawsuit must be immediately dismissed.

The PLCAA was enacted with the express purpose of prohibiting civil lawsuits against manufacturers and sellers of firearms for damages “resulting from the misuse of their products by others.” *See*, Preamble to 15 U.S.C. § 7901. Indeed, the PLCAA’s express purpose is to “prohibit causes of action against manufacturers, distributors, dealers and importers of firearms” for harm “caused by the criminal or unlawful use of firearms” that “functioned as designed and intended.” 15 U.S.C. § 7901(b)(1); *see City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 402 (2d Cir 2008) (“We think Congress clearly intended to protect from vicarious liability members of the firearms industry who engage in the ‘lawful design, manufacture, marketing, distribution, importation or sale of firearms.’”). Congress viewed actions by individual plaintiffs seeking to hold manufacturers liable for the criminal misuse of firearms that “functioned as designed and intended” as improper attempts to regulate an already “heavily regulated” industry “through judgments and judicial decrees.” 15 U.S.C. §§ 7901(a)(3)-(4), (8).

Under the PLCAA, a cause of action that meets the definition of a “qualified civil liability action” shall not be brought in any federal or state court. *Id.* § 7902(a). Thus, any implicated claims must be immediately dismissed, which means that the applicability of the PLCAA is a

threshold issue. *Id.* § 7902(b). A “qualified civil liability action” is defined as:

A civil action or proceeding or an administrative proceeding brought by another person against a manufacturer or seller of a qualified product or a trade association, for damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.

Id. § 7903(5)(A). Firearms are included within the definition of “qualified product,” and “unlawful misuse” is defined as “conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.” *Id.* § 7903(4), (9). Thus, Congress created broad immunity for firearm manufacturers and sellers. *Id.* § 7903(5)(a).

In enacting the PLCAA, however, Congress provided six narrow exceptions which permit the following state law causes of action to proceed, which include:

- (i) an action brought against a transferor convicted under section 924(h) of Title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;
- (ii) an action brought against a seller for negligent entrustment or negligence per se;
- (iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including –
 - (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make an appropriate entry in, any record to be kept under Federal or State law with respect to the qualified product, or aided, abetted or conspired with any person in making any false entry or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
 - (II) any case in which the manufacturer or seller aided, abetted, or conspired with any person to sell or otherwise dispose of a qualified product, knowing or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18;
- (iv) an action for breach of contract or warranty in connection with the purchase of the product;
- (v) an action for death or physical injuries or property damage resulting

directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that 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; or

- (vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of Title 18 or chapter 53 of Title 26.

15 U.S.C. § 7903(5)(A)(i)-(vi).

With the PLCAA, Congress created a new federal law that preempts certain statutory and common law claims. *See, Estate of Charlot v. Bushmaster Firearms, Inc.*, 628 F. Supp. 2d 174, 182 (D.D.C. 2009). The PLCAA created a new federal standard that governs when plaintiffs can sue manufacturers or sellers of firearms or firearm products: “The PLCAA bars qualified civil liability actions, as defined in the statute. The definition of qualified civil liability action permissibly sets forth a new legal standard to be applied to all actions.” *City of New York, supra*, 524 F.3d at 395. Accordingly, the PLCAA “preempts and displaces conflicting state law.” *Estate of Charlot*, 628 F. Supp. 2d at 182; *see also, Iletto v. Glock, Inc.*, 565 F.3d 1126, 1139-40 (9th Cir. 2009); and *City of New York*, 524 F.3d at 395-96. “Congress clearly intended to preempt common-law claims, such as general tort theories of liability” and

[this] conclusion is bolstered by Congress’ inclusion of the second exception to preemption: **The PLCAA does not preempt claims against a seller of firearms for negligent entrustment or negligence per se. That exception demonstrates that Congress consciously considered how to treat tort claims. While Congress chose generally to preempt all common-law claims, it carved out an exception for certain specified common-law claims.**

Iletto, 565 F.3d at 1135 n. 6 (internal citations omitted) (emphasis added).

In this way, the Act serves as a filter for qualified lawsuits. *See, Woods v. Steadman's Hardware, Inc.*, 2013 WL 709110, at *10-11 (D. Mont. Feb. 26, 2013). “Subject to [the] exceptions *** the PLCAA establishes a new legal standard for actions that fall within the definition of a qualified civil liability action that preempts common law claims based on general tort liability.” *Sambrano v. Savage Arms, Inc.*, 338 P.3d 103, 105 (N.M. Ct. App. 2014).

Here, it is undisputed that the PLCAA applies. Plaintiffs are seeking damages against River City (a seller of firearms) resulting from the criminal and unlawful misuse of a firearm by the shooter. *See*, 15 U.S.C. § 7903(5)(A); *see also* § 7903(6)(A).¹ Thus, the threshold issue is whether any of Plaintiffs' causes of action meet one of the exceptions to the Act. As will be demonstrated below, they do not, and Plaintiffs' lawsuit against River City should be dismissed.

2. The PLCAA Bars Plaintiffs' Causes of Action for Negligence (Count II).

In their Second Cause of Action, Plaintiffs allege that Defendant was negligent in selling the firearm and its components and for failing to take "reasonable steps" to sell firearms and firearm components that "augment the lethality of already dangerous weapons." (*Am. Compl.*, ¶ 127.) However, Plaintiffs' common law negligence claim is barred by the PLCAA. In fact, such a general negligence claim is precisely the reason the PLCAA was enacted.

A common law negligence claim is not listed as an exception to the PLCAA. 15 U.S.C. § 7903(5)(A). As courts have explained, "Congress clearly intended to preempt common-law claims, such as general tort theories of liability." *Ileto*, 565 F.3d at 1135 n. 6. In enacting the PLCAA, "Congress consciously considered how to treat tort claims" and it "chose generally to preempt all common law claims," except for the "specified common-law claims" listed in the exceptions to the Act. *Id.*; *see also*, *Estate of Charlot*, 628 F Supp 2d at 182 (explaining that the PLCAA "preempts and displaces conflicting state law"). Thus, the PLCAA prohibits common law

¹ It should also be noted that the pistol grip, magazines, and sight are component parts of a semi-automatic rifle. *See, e.g., United States v. Gonzalez*, 792 F.3d 534, 537 (5th Cir. 2015) (finding that an empty magazine for a semi-automatic rifle is a "component part"); *United States v. Espinoza*, 2021 WL 4609290, at *1, 4 (5th Cir. 2021) (explaining that the rear sight and pistol grips are "firearm components for a semi-automatic rifle"); *In re Academy, Ltd.*, 625 S.W.3d 19, 23 (Tex. 2021) (applying the PLCAA to a rifle that was purchased along with thirty-round magazines as magazines are "qualified products" subject to the PLCAA); *Schmeisser GmbH v. AC-Unity d.o.o.*, 2021 WL 7286256, at *1 (D. Wyo. Mar. 19, 2021) (noting that "cartridge magazines for firearms" are "components"); *Leupold & Stevens, Inc. v. Lightforce USA, Inc.*, 2019 WL 4696406, at *3 (D. Ore. Sept. 26, 2019) (noting that the expert had "design[ed] the forearm grip of a rifle component"); *Noble v. Shawnee Gun Shop, Inc.*, 409 S.W.3d 476, 479 (Mo. Ct. App. 2013) (applying the PLCAA to the sale of magazines, finding that the magazines were "qualified products" within the meaning of the Act).

negligence claims. *Ileto*, 565 F.3d at 1135 n. 6; *see also*, *Jeffries v. District of Columbia*, 916 F. Supp. 2d 42, 46 (D.D.C. 2013) (holding that the PLCAA unequivocally barred the plaintiff's negligence claim against the firearms manufacturer); *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 321-22 (Mo. 2016) (noting that the PLCAA prohibits common law negligence actions seeking damages from the criminal misuse of a firearm); *Sambrano*, 338 P.3d at 105 (holding that the PLCAA “preempts common law claims based on general tort liability”); *Estate of Kim v. Coxe*, 295 P.3d 380, 386 (Alaska 2013) (“The statutory exceptions do not include general negligence and reading a general negligence exception into the statute would make the negligence per se and negligent entrustment exceptions a surplusage.”).

In the Amended Complaint, Plaintiffs assert a general negligence claim, alleging that River City – as a seller of firearms – had a heightened duty of care because it was selling “dangerous” products.² Such a general, common-law claim of negligence is expressly barred by the PLCAA. Accordingly, Plaintiffs’ Second Cause of Action for general negligence should be dismissed with prejudice.

3. The PLCAA Bars Plaintiffs’ Cause of Action Pursuant to Kentucky Statute § 411.150 (Count VI).

The PLCAA sets forth six narrow exceptions to the immunity statute. Kentucky Statute § 411.150 provides that the “surviving spouse and child . . . of a person killed by the careless, wanton, or malicious use of a deadly weapon, not in self-defense, may have an action against the person who committed the killing and all others aiding or promoting, or any one or more of them.” *Id.* Under such an action, “the jury may give vindictive damages.” *Id.* Such a cause of action is not recognized under any exception to the PLCAA. As such, Plaintiffs’ Sixth Cause of Action pursuant to Section 411.150 should be dismissed.

² Indeed, there is no recognized “heightened” duty of care for the sale of firearms under the common law. *See, T&M Jewelry, Inc. v. Hicks ex rel. Hicks*, 189 S.W.3d 526, 530–31 (Ky. 2006).

IV. **Plaintiffs' Negligent Entrustment Cause of Action (Count 1) Should Be Dismissed.**

The PLCAA provides that negligent entrustment causes of action are not preempted. *See* 15 U.S.C. § 7903(5)(A)(ii). The PLCAA contains a definition of negligent entrustment:

the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

15 U.S.C. § 7903(5)(B). The Act does not, however, establish a cause of action for negligent entrustment. *Id.* § 7903(5)(C). Therefore, the cause of action for negligent entrustment must arise under state law. *See, e.g., In re Academy, Ltd.*, 625 S.W.3d 19, 29 (Tex. 2021) (explaining that courts will apply state law on negligent entrustment claims when evaluating whether the exception applies); *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1225 (D. Colo. 2015) (“Although the PLCAA identifies negligent entrustment as an exception to immunity, it does not create the cause of action. Accordingly, the claim arises under state law.”).

Kentucky has traditionally recognized the tort of negligent entrustment in the use of motor vehicles. *Owensboro Undertaking & Livery Ass’n v. Henderson*, 115 S.W.2d 563, 564 (Ky. 1938). Under negligent entrustment, “one who entrusts her vehicle to another whom she knows to be inexperienced, careless, or reckless, or given to excessive use of intoxicating liquor while driving, is liable for the natural and probable consequences of the entrustment.” *Cox v. Waits*, 2004 WL 405811, at *2 (Ky. Ct. App. Mar. 5, 2004). “The owner is liable if he knows, or under the facts known to him in the exercise of ordinary care should know, that the person driving the car is incompetent to drive it.” *Henderson*, 115 S.W.2d at 564. Kentucky courts have held that where an automobile has been sold to another person, there can be no finding of negligent entrustment. *See, e.g., Graham v. Rogers*, 277 S.W.3d 251, 253-54 (Ky. Ct. App. 2008). For example, in *Graham*, an individual sold a used car to another person, who subsequently got into a car accident. *Id.*, at 254. The injured plaintiff brought suit for negligence against the driver as well as negligent entrustment against the seller. *Id.* However, the negligent entrustment claim was

dismissed because the car had been sold and the sale complied with all state requirements. *Id.* Here, the rifle at issue was sold in conformity with the law, which means that, just as in the context of an automobile, there can be no basis for a common law negligent entrustment claim.

Moreover, Defendant submits that the facts pleaded in the Amended Complaint do not establish a cognizable basis for a negligent entrustment claim. There is no allegation that the purchaser was prohibited from purchasing or that the requirements under the law were not followed. Therefore, even if negligent entrustment were recognized in the context of sales, there would still be no basis to maintain such a cause of action in this case.

V. **Plaintiffs' Negligence Cause of Action (Count II) Should Be Dismissed Pursuant to Kentucky Common Law.**

To establish a negligence claim, a plaintiff must prove (1) that a defendant owed a duty to the plaintiff; (2) that the defendant breached that duty; and (3) that injury resulted from the breach of that duty. *S.G. ex rel. S.B.J. v. Care Academy, Inc.*, 2012 WL 246439, at *3 (Ky. Ct. App. Jan. 27, 2012). The standard is one of ordinary care that “requires every person to exercise ordinary care in his activities to prevent foreseeable injury.” *T&M Jewelry*, 189 S.W.3d at 531. “Ordinary care is the same degree of care as a prudent person engaged in a similar or like business would exercise under the circumstances.” *Id.* For example, in *T&M Jewelry*, a firearms dealer sold a firearm to an underage individual in violation of federal law, and the duty on the dealer was evaluated based upon the applicable laws. *Id.* at 532. In this case, there is no allegation that River City violated any law or that the appropriate background check and forms were not completed. Thus, the asserted factual allegations demonstrate that River City did not breach any duty of ordinary care.

Moreover, there is generally no duty to control the conduct of a third person to prevent him from causing harm to another. *Grand Aerie Fraternal Order of Eagles v. Carneyhan*, 169 S.W.3d 840, 849 (Ky. 2005). Only if there is a special relationship will a duty arise to prevent harm by controlling a third person’s conduct. *Id.* Under Kentucky law, special relationships

giving rise to a duty to control a third person's conduct include the relationship between a parent and minor child; employer and employee if the employee is using an instrumentality of the employment relationship to cause harm; owner of land or chattel and the person using such; one who takes charge of a person with dangerous propensities; and mental health professional and patient. *Id.*

Here, there is no recognized special relationship, and the facts establish that River City sold the rifle and other components in conformity with the applicable law. Under such circumstances, there is no recognized legal duty, and the question of whether a duty exists is an issue of law for the court. *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 248 (Ky. 1992). As such, Plaintiffs' cause of action for negligence should be dismissed.

VI. **Plaintiffs' Subordinate Causes of Action for Loss of Consortium and Wrongful Death (Counts III, IV, and V) Should Be Dismissed.**

A claim for loss of consortium is a derivative claim and contingent upon a finding of wrongful death. *See, Martin v. Ohio County Hosp. Corp.*, 295 S.W.3d 104, 115 (Ky. 2009). Similarly, a wrongful death claim, while a standalone cause of action, is contingent on the existence of an underlying tort. *Id.*; *see also, Sudderth v. White*, 621 S.W.2d 33, 36 (Ky. Ct. App. 1981) (explaining that the wrongful death claim was based upon establishing the negligence of the defendant). Since Plaintiffs' other causes of action (negligence and negligent entrustment) fail to state a claim, Plaintiffs' derivative and contingent claims should also be dismissed.

VII. **Plaintiffs' Lawsuit Should Be Dismissed For Lack of Proximate Cause.**

To establish proximate cause, the acts of a defendant must be the legal cause of another's harm. *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 91-92 (Ky. 2003). "In order to be a legal cause of another's harm, it is not enough that the harm would not have occurred had the actor not been negligent[.] The negligence must also be a substantial factor in bringing about the plaintiff's harm." *Id.* In this regard, "[t]he word 'substantial' is used to denote the fact that the defendant's conduct has such an effect in producing the harm as to lead reasonable met to regard it as a cause,

using that word in the popular sense, in which there always lurks the idea of responsibility, rather than in the so-called ‘philosophic sense,’ which includes every one of the great number of events without which any happening would not have occurred.

In this case, River City lawfully sold a rifle and rifle components in conformity with all applicable laws. As acknowledged by the pleadings, all paperwork was completed and the background checks performed. Indeed, there is no allegation of an unlawful sale in any way. The fact that lawful products were sold in conformity with the law cannot be a “legal cause” of the harms in this case.

Moreover, Kentucky law recognizes the superseding intervening cause doctrine. *See, e.g., Patton v. Bickford*, 529 S.W.3d 717, 731 (Ky. 2016); *Howard v. Spradlin*, 562 S.W.3d 281, 287 (Ky. App. 2018); *NKC Hosps., Inc. v. Anthony*, 849 S.W.2d 564, 568 (Ky. App. 1993). Courts apply the superseding intervening cause doctrine by determining whether the chain of causation applicable to a defendant’s conduct has been broken by “facts [that] are legally sufficient to constitute an intervening cause.” *Montgomery Elevator Co. v. McCullough*, 676 S.W.2d 776, 780 (Ky. 1984).

Facts sufficient to constitute a superseding intervening cause “are facts of such extraordinary rather than normal or highly extraordinary nature, unforeseeable in character, as to the original wrongdoer of liability to the ultimate victim.” *Id.* Under Kentucky law, there is no affirmative duty to control the wrongful acts of third persons unless such actions were foreseeable. *See, Briscoe v. Amazing Products, Inc.*, 23 S.W.3d 228, 229 (Ky. App. 2000) (holding that Defendant is not responsible for a third-party act that is “extraordinary and of an unforeseeable nature”).

Here, even assuming for purposes of River City’s Motion to Dismiss that Plaintiffs’ allegations that the shooter appeared to be a “novice” and spoke quietly with the salesperson, the intentional and criminal conduct by the shooter breaks any causal connection based upon the superseding intervening cause doctrine because those characteristics alone do not equate to it

being foreseeable to River City that the shooter would engage in an extraordinary act of committing a mass shooting requiring River City to assume an affirmative duty to somehow control the shooter's unforeseeable and extraordinary actions. Instead, the facts alleged in the Complaint establish that the rifle and components were purchased in conformity with all applicable laws, and it was the shooter's unlawful, unilateral, and intentional criminal conduct that are the sole cause of the Plaintiffs' injuries and death. Thus, the shooter's multiple criminal and intentional actions are the sole proximate cause of the injuries in this case.

VIII. **Plaintiffs' Claim Under Kentucky Statute § 411.150 (Count VI) Should Be Dismissed.**

Section 411.150 provides that the "surviving spouse and child . . . of a person killed by the careless, wanton, or malicious use of a deadly weapon, not in self-defense, may have an action against the person who committed the killing and all others aiding or promoting, or any one or more of them." *Id.* While the statute does not define "aiding or promoting," case law demonstrates that these terms should be construed according to the common and approved usage of language. *Self v. Mantooth*, 2012 WL 4209929, at *3 (Ky. Ct. App. Sept. 21, 2012). "Aid" is defined as "to help; to assist; to support, as by furnishing strength or means to effect a purpose; to forward; to facilitate" and "promote" is defined as "to incite or urge on a person." *Id.* "Aiding or promoting" requires some active participation in the killing by the person so charged." *Id.* Here, it is undisputed that River City did not actively participate in the intentional and criminal acts of the shooter. Accordingly, KRS 411.150 does not apply, and this cause of action should be dismissed.

IX. **Plaintiffs' Claim For Punitive Damages Should Be Dismissed.**

A request for punitive damages is not an independent cause of action. *See, e.g., Dalton v. Animas Corp.*, 913 F. Supp. 2d 370, 379 (W.D. Ky. 2012); *Shibeshi v. Alice Lloyd Coll.*, 2011 WL 4970781, at *5 (E.D. Ky. Oct. 19, 2011). "Rather, certain torts entitle a plaintiff to punitive damages." *Id.* Therefore, Plaintiffs' cause of action for punitive damages (Count V) should be

dismissed as a matter of law. Moreover, even if cognizable as a standalone cause of action, any request for punitive damages should be dismissed. The standard for punitive damages is gross negligence, which is defined as a failure to exercise reasonable care coupled with a “wanton or reckless disregard for the lives, safety or property of others.” *Phelps v. Louisville Water Co.*, 103 S.W.3d 46, 52-53 (Ky. 2003). Here, the allegations in the Complaint demonstrate that the sales at issue were lawful and in compliance with all requirements. Indeed, there is no allegation that River City failed to comply with the applicable laws. Based on these facts pleaded, there is no basis to assert a claim for punitive damages, and such a request for relief should be stricken from the Complaint.

X. **CONCLUSION**

Based on the foregoing arguments and authorities, Defendant River City respectfully submits that Plaintiffs’ Amended Complaint should be dismissed for failing to state a claim upon which relief may be granted.

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