COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
DIVISION VII
CIVIL ACTION NO. 24-CI-000518

DANA MITCHELL, et al., PLAINTIFFS

V.

RIVER CITY FIREARMS, INC., et al., DEFENDANTS

PLAINTIFFS' OMNIBUS OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS[1]

This Court must reject Defendants' attempts to evade liability for the foreseeable consequences of their negligent conduct for the following reasons:

1. PLCAA does not bar negligent entrustment claims against dealers like River City that sell firearms to persons likely to use them in a manner posing an unreasonable risk of harm.

2. PLCAA does not apply to claims relating to gun accessories, like the sight, vertical grip, and magazines at issue in Plaintiffs' negligence claim, but only to claims relating to firearms and the component parts of firearms. In any event, PLCAA's protection for manufacturers applies only to licensed manufacturers, which Magpul is not.

3. PLCAA expressly allows causes of action for violations of state statutes, which includes Plaintiffs' claims under KRS 411.150.

4. Kentucky common law recognizes claims against parties whose negligent actions foreseeably create a risk of harm to others, as is the case for Defendants here.

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[1] All *Mitchell* and *Elliott* Plaintiffs join in this Opposition to all Defendants' Motions to Dismiss.

5. Defendants' alleged conduct was reckless and exceedingly dangerous, warranting a request for punitive damages.

6. Plaintiffs have not brought product-liability claims, so Kentucky's Product Liability Act is inapplicable.

For the foregoing reasons, as stated more fully herein, Plaintiffs respectfully request that this Court deny Defendants' Motions to Dismiss and permit this case to proceed to discovery and trial.

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PLAINTIFFS' REQUEST FOR ORAL ARGUMENT

Pursuant to Jefferson Rules of Practice, Rule 401, and the Court's prior Agreed Order and Briefing Schedule entered March 4, 2024, the *Mitchell* and *Elliott* Plaintiffs in the consolidated action hereby request oral argument on the subject motions.

INTRODUCTION

Victims of the April 10, 2023, mass shooting at Old National Bank have brought these consolidated actions against the corporate entities that negligently put a fully equipped assault weapon in the hands of a disturbed young man, leading to senseless death and untold suffering. Defendant River City Firearms sold the shooter an AR-15-style rifle, lethal accessories, and plenty of ammunition, despite obvious red flags that he posed a danger to others. And Defendants Magpul and RSR supplied River City with those accessories, and even incentivized River City to push them on its customers, even though River City had a long track record of violating gun regulations and selling a disproportionate number of guns that were recovered at crime scenes soon thereafter. These companies' failures to take reasonable precautions to prevent weaponry from being sold to dangerous individuals directly and foreseeably enabled the shooting at Old National Bank.

Defendants spend considerable time arguing that they are protected by a federal statute, the Protection of Lawful Commerce in Arms Act (PLCAA). But Defendants' reliance is misplaced. While PLCAA provides significant protection for certain conduct and certain defendants, it does not apply to this lawsuit. First, Plaintiffs' negligent entrustment claim against River City is specifically allowed by PLCAA. Second, as multiple courts have recognized, PLCAA applies exclusively to the sale of firearms, ammunition, and "components" thereof. But Plaintiffs' simple negligence claims against each Defendant pertain only to the sale and distribution of certain firearm *accessories*, which are not covered by PLCAA. Third, none of the claims against Magpul are subject to PLCAA because Magpul

is not a covered "manufacturer" as defined by PLCAA. Finally, Plaintiffs' claim under KRS 411.150 may proceed because PLCAA also has an exception for actions involving statutory violations.

Defendants' arguments that Plaintiffs have failed to state causes of action under Kentucky law fail as well. Contrary to Defendants' assertions, Plaintiffs have adequately alleged duty, breach, and causation under the common law. That the shooting at Old National Bank was an intentional act does not excuse Defendants' negligence, since the foreseeable risk of an intentional shooting was precisely what made Defendants' conduct negligent in the first place. Moreover, Plaintiffs' allegations at this stage are sufficient to make out a claim for punitive damages. Finally, RSR's attempt to shield itself with Kentucky's Product Liability Act fails because this action is not a product-liability case and does not fall within that statute's ambit. The motions should be denied.

STATEMENT OF FACTS

On April 4, 2023, Connor Sturgeon, a disturbed young man showing signs of an acute mental breakdown, entered River City Firearms, a Louisville gun dealer that has been repeatedly identified by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as one of the top sellers of crime guns in the country. Am. Compl. ¶¶ 3, 43, 48, 50-51, 59.[2] He was there to buy a gun because he wanted to commit a mass shooting. *See id.* ¶¶ 5, 50. In the store, Sturgeon behaved so suspiciously—avoiding eye contact, acting strangely, hanging his head in shame—that another patron standing near him contemplated contacting the police. *Id.* ¶¶ 5, 54-55. Later, when she heard about the shooting at Old National Bank, that patron correctly predicted that the young man whom she had seen in the store had carried it out. *Id.* ¶ 59.

Yet River City—despite all its training to identify and terminate suspicious transactions—sold him a gun anyway. *Id.* And not just any gun; River City sold him an AR-15, even though Sturgeon,

[2] For simplicity, all citations are to the First Amended Complaint in the *Mitchell* matter, except where necessary. Similar facts are alleged in the *Elliott* Complaint.

who was clearly inexperienced with firearms, claimed that he wanted a gun for self-defense. *See id.* ¶¶ 5, 52-53, 56. It is well known in the industry that an AR-15-style rifle is a poor choice for self-defense, particularly for someone with little to no firearms experience. *See id.* ¶ 57 & n.6.[3] And River City knew this, first proposing that Sturgeon buy a pistol. *See id.* ¶ 56. Yet it ignored one of the main red flags that all federally licensed gun stores are trained to look out for: a customer attempting to buy a gun that is not suitable for his stated purpose. *See id.* ¶¶ 4, 40-42.

Not only did River City sell the visibly disturbed young man an AR-15—it also encouraged him to make his new firearm even more lethal with an array of accessories favored by mass shooters. *See id.* ¶¶ 7, 60. At River City's encouragement, the novice Sturgeon purchased three additional Magpul large-capacity magazines, a red-dot sight, and a Magpul vertical grip, all of which had been sold to River City by RSR. *Id.* ¶¶ 7, 61, 67, 78. And River City sold Sturgeon just enough ammunition to fill each of his magazines once. *Id.* ¶ 3.

Just six days later, on April 10, 2023, Sturgeon carried his fully equipped AR-15-style rifle into Old National Bank, where he worked. *See id.* ¶¶ 3, 86, 87. Once there, he began massacring his colleagues. Despite his total inexperience with firearms, he was able to shoot and kill Jim Tutt, Josh Barrick, Tommy Elliott, Juliana Farmer, and Deana Eckert, and shoot and wound Dallas Schwartz, Dana Mitchell, and Julie Andersen. *See id.* ¶¶ 2, 11, 19-20, 22-24, 74, 88-90; *Elliott* Compl. ¶ 16. After this initial assault, Sturgeon reloaded his weapon with another large-capacity magazine and engaged in a firefight with responding law enforcement. *See* Am. Compl. ¶¶ 75, 92, 94. While firing on law enforcement, Sturgeon also shot and wounded Jimmy Evans, who had escaped from the bank, as well as two police officers. *Id.* ¶¶ 15, 95.

[3] They are, however, preferred by mass shooters, accounting for eleven of the fifteen deadliest mass shootings since 2012. Am. Compl. ¶ 36.

The scale of the devastation at Old National Bank was increased by the deadly accessories manufactured and distributed by Magpul and RSR respectively. *See id.* ¶¶ 75, 77, 140-41. While AR-15s, which are designed for combat, are deadly enough on their own, accessories like large-capacity magazines, red-dot sights, and vertical grips make them even more lethal. *See id.* ¶¶ 36, 60. A large-capacity magazine—i.e., a magazine that can hold more than ten rounds of ammunition—allows a shooter to keep firing longer without reloading and to fire hundreds of rounds with only a few quick magazine changes. *See id.* ¶¶ 70-75. From 2015 to 2022, mass shootings carried out with large-capacity magazines resulted in, on average, over twice as many people killed and nearly ten times as many people wounded. *Id.* ¶ 73. A red-dot sight is mounted atop an AR-15 and superimposes an aiming dot on the shooter's intended target, making targeting substantially easier. *See id.* ¶ 65. They have been used in nine of the fifteen deadliest mass shootings since 2012. *Id.* ¶ 66. And a vertical grip gives the shooter greater control over the AR-15. *Id.* ¶ 64.

Magpul and RSR knew, or should have known, all the foregoing. *See id.* ¶¶ 35-36, 38, 79. Yet they took no action to help prevent the all-too-foreseeable tragedies that are carried out on a regular basis with the products that they sell. Magpul is the largest manufacturer of large-capacity magazines in the country, accounting for the vast majority of the market. *Id.* ¶ 28. And RSR is one of the largest wholesale distributors of firearm accessories in the country. *Id.* ¶ 27. Yet both failed to exercise reasonable care to ensure that the lethal products that they purvey are not sold to dangerous individuals. *Id.* ¶ 9. This reckless conduct included encouraging the retail sellers of their accessories to upsell to retail purchasers—regardless of need or suitability—through incentives such as discounted pricing, dealer rebates, reward programs, and/or other terms contained in distributor or manufacturer agreements. *Id.* ¶ 127. While upselling may be a common and innocuous sales practice in other industries, it is exceedingly dangerous when it involves products that enable a customer to kill faster and more efficiently. Aggravating this irresponsible conduct was Magpul's and RSR's failure to screen

out retailers like River City, who—as Magpul and RSR would have known, had they implemented reasonable controls—have an extensive history of violating federal regulations and selling a disproportionate number of guns later recovered at crime scenes, and who fail to adequately train their employees to identify suspicious transactions. *See id.* ¶¶ 9, 80-82.[4] Plaintiffs have tragically paid the price for Defendants' negligent business practices. *See id.* ¶ 84.

On April 8, 2024, the *Mitchell* Plaintiffs filed their operative complaint, for the injuries to Dana Mitchell, Julie Andersen, Jimmy Evans, and Dallas Schwartz, and for the injuries to and deaths of Jim Tutt and Josh Barrick. Also on April 8, the *Elliott* Plaintiffs filed their complaint, for the injuries to and deaths of Tommy Elliott, Juliana Farmer, and Deana Eckert. On June 14, 2024, Defendants filed motions to dismiss both complaints. On June 18, 2024, the *Mitchell* and *Elliott* actions were consolidated before this Court. Plaintiffs now submit this consolidated opposition to all Defendants' motions to dismiss, which should be denied in their entirety.

LEGAL STANDARD

"Kentucky is a notice pleading jurisdiction, where the 'central purpose of pleadings remains notice of claims and defenses.'" *Russell v. Johnson & Johnson, Inc.*, 610 S.W.3d 233, 240 (Ky. 2020) (citation omitted). "In ruling on a motion to dismiss, the pleadings should be liberally construed in the light most favorable to the plaintiff[s], all allegations being taken as true." *D.F. Bailey, Inc. v. GRW Eng'rs, Inc.*, 350 S.W.3d 818, 820 (Ky. Ct. App. 2011). "[A] court should not grant such a motion 'unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved …." *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010).

[4] Since filing the amended complaint, Plaintiffs have learned that River City's business practices were so dangerous that the ATF recommended revoking the store's license in October 2022, approximately six months before the sale at issue. Although River City ultimately avoided revocation, it promised to adopt written policies and periodic testing to avoid dangerous sales. To the extent that River City adopted any such policies, they clearly were inadequate to prevent the sale to the shooter on April 4, 2023.

ARGUMENT

Each Defendant raises two main arguments in support of dismissal: (i) that the claims must be dismissed because of PLCAA; and (ii) that Plaintiffs have failed to state a viable cause of action under state law. As detailed below, both arguments are wrong. At this early stage of the litigation, Plaintiffs have satisfied the pleading requirements and should be permitted to prove their case.

I. Plaintiffs' claims are not barred by PLCAA.

As Defendants acknowledge, Congress enacted PLCAA to protect certain members of the firearm industry from liability arising from injuries solely caused by a third party's criminal conduct. *See* 15 U.S.C. § 7901(b)(1); *accord* RSR Mem. 5. PLCAA provides that certain civil actions may not be brought against "a manufacturer or seller of a qualified product" for damages resulting from a third party's misuse of that product. 15 U.S.C. §§ 7902(a), 7903(5)(A). Importantly, under the statute, a "qualified product" is defined as a firearm, ammunition, or "a component part of a firearm or ammunition." § 7903(4). Claims that do not involve "qualified products" are not affected by PLCAA. *See* § 7903(5)(A). Similarly, in relevant part, PLCAA applies only to "manufacturers" or "sellers" of qualified products, which, as relevant here, are defined as entities "engaged in the business" of manufacturing or selling a qualified product and who are licensed under federal law to engage in such a business. *Id.* § 7903(2), 6(A)-(B).

Additionally, PLCAA enumerates six types of claims that *are* allowed even if they involve harm from a third party's misuse of a qualified product. *See* § 7903(5)(A)(i)-(vi); *accord* RSR Mem. 10-11; RCF Mem. 4-5. Two are relevant here: First, PLCAA permits claims "brought against a seller for negligent entrustment." § 7903(5)(A)(ii). Second, PLCAA contains what's commonly referred to as the "predicate exception," which allows "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." § 7903(5)(A)(iii).

When determining the applicability of PLCAA, courts generally engage in a claim-by-claim and defendant-by-defendant analysis. *See Doyle v. Combined Sys., Inc.*, No. 22-cv-1536, 2023 WL 5945857, at *6 (N.D. Tex. Sept. 11, 2023) (ruling that, although PLCAA refers to "actions," its protections are analyzed on claim-by-claim basis); *see also Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 320, 326 (Mo. 2016) (holding that PLCAA permitted plaintiff's negligent entrustment claim, but barred plaintiff's negligence claim); *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1138, 1146 (9th Cir. 2009) (holding that PLCAA protected some, but not all, defendants); *New York v. Arm or Ally, LLC*, No. 22-cv-6124, 2024 WL 756474, at *10-13 & n.9 (S.D.N.Y. Feb. 23, 2024) (analyzing applicability of PLCAA on claim-by-claim and defendant-by-defendant basis), *appeal docketed*, No. 24-773 (2d Cir. Mar. 27, 2024).

Defendants do not dispute the foregoing but instead appeal to the "purposes" set forth in PLCAA's preamble. *See* RSR Mem. 5-6; RCF Mem. 3. But it is the "plain language" of PLCAA's substantive provisions that controls, not the legislative purpose. *Delana*, 486 S.W.3d at 322; *see also Barnett v. Cent. Ky. Hauling, LLC*, 617 S.W.3d 339, 341-42 (Ky. 2021) ("Only if the language is unclear do we consider … the statute's purpose …."). Here, the plain language makes clear that PLCAA does not bar any of Plaintiffs' claims, for four reasons.

First, Plaintiffs' negligent entrustment claim, which is brought against River City only, Am. Compl. at 34, is explicitly permitted by PLCAA, § 7903(5)(A)(ii), as River City tacitly acknowledges, RCF Mem. 8. *See infra* Section I.A. Second, neither Plaintiffs' claims against Magpul and RSR, nor Plaintiffs' negligence claims against River City, which pertain only to the accessories sold to the shooter, *see* Am. Compl. ¶¶ 126-28, 132-143, are covered by PLCAA because none of the accessories are "qualified products" under the statute, § 7903(4). *See infra* Section I.B.[5] Third, PLCAA's protections

[5] River City misconstrues Plaintiffs' negligence cause of action when it asserts that "Plaintiffs allege that Defendant was negligent in selling the firearm and its components," RCF Mem. 6. To be clear, Plaintiffs' negligence claim is based solely on Defendants' conduct with respect to the vertical grip, red-dot sight, and large-capacity magazines—not the sale of the firearm.

are entirely unavailable to Defendant Magpul because—regardless of whether it is licensed to manufacture firearms—it is not actually engaged in the business of manufacturing firearms. Thus, it is not a manufacturer covered by PLCAA's scope, §7903(2). *See infra* Section I.C. Finally, Plaintiffs' claim under section 411.150 of the Kentucky Revised Statutes is permitted under PLCAA's predicate exception, § 7903(5)(A)(iii), because section 411.150, which expressly regulates "deadly weapon[s]," is plainly applicable to firearms, KRS 411.150. *See infra* Section I.D.

A. Plaintiffs' negligent entrustment claim is not covered by PLCAA.

As stated above, and as admitted by River City, PLCAA allows claims for negligent entrustment against "sellers" of firearms. 15 U.S.C. § 7903(5)(A)(ii).[6] River City is indisputably a "seller" under the terms of PLCAA. *See* § 7903(6) (defining "seller" as "a dealer [of firearms] who is engaged in the business as such a dealer in interstate … commerce and who is licensed to engage in business as such a dealer"). PLCAA is thus no obstacle to Plaintiffs' negligent entrustment claim.

B. Plaintiffs' negligence claim is not covered by PLCAA because none of the accessories sold by the Defendants are "qualified products."

As Defendants acknowledge, PLCAA applies only to "qualified civil liability actions," which encompass claims "resulting from the criminal or unlawful misuse of a qualified product." 15 U.S.C. §§ 7902(a), 7903(5)(A). The statute defines "qualified product" to mean only a firearm, ammunition, or "*a component part* of a firearm or ammunition." § 7903(4) (emphasis added). A "mere firearm accessory," not constituting a "component part," is not covered by PLCAA. *Prescott v. Slide Fire Sols., LP*, 341 F. Supp. 3d 1175, 1187 (D. Nev. 2018). Defendants assert that Plaintiffs' negligence claim is barred because the vertical grip, red-dot sight, and large-capacity magazines sold to the shooter are

[6] PLCAA's definition of negligent entrustment is "substantially the same" as the section 390 of the Restatement, which Kentucky follows. *See Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 394 (Alaska 2013); *see also infra* Section II.A.

"component parts" rather than "accessories." *See* RSR Mem. 6-9; RCF Mem. 6 n.1. This position is contrary to Plaintiffs' allegations and finds no support in the case law.

In determining whether certain products are "components" of firearms or mere accessories, and thus whether they constitute "qualified products" under PLCAA, courts ask whether the product is "essential" to the functioning of the firearm (and is thus a component) or whether it merely enhances the firearm's effectiveness or aesthetics (and is thus an accessory). *See, e.g.*, *Prescott*, 341 F. Supp. 3d at 1188 (explaining that a "component" is "an essential part" while an "accessory" is "an object or device that is not essential in itself but adding to the beauty, convenience, or effectiveness of something else"); *Jones v. Mean, LLC*, No. 810316/2023, slip op. at 3-5 (N.Y. Sup. Ct. Feb. 22, 2024) (holding that magazine lock "is not an integral part of the gun because the lock could be and was removed and the firearm was still able to function"). Here, as Plaintiffs allege, none of the products at issue is essential to the functioning of an AR-15-style rifle. *See* Am. Compl. ¶ 133. Because an AR-15 can be used and fired without a vertical grip, a red-dot sight, or a large-capacity magazine, none of these products are "qualified products" under PLCAA, and Plaintiffs' negligence claim against each of the Defendants is therefore not barred.

The limited case law on this issue supports Plaintiffs. In *Green v. Kyung Chang Industry USA, Inc.*, No. A-21-838762-C, 2022 WL 987555 (Nev. Dist. Ct. Mar. 23, 2022), the court examined this very issue with respect to a large-capacity magazine and concluded that it was not a "qualified product" because the firearm to which it was attached could operate without it. *Id.* at *1. The same is true here. *See* Am. Compl. ¶ 133. Similarly, in *Prescott*, the court noted that sights "are accessories" because "a rifle is fully functional[]" without them." 341 F. Supp. 3d at 1190; *see also Auto-Ordnance Corp. v. United States*, 822 F.2d 1566, 1571 (Fed. Cir. 1987) (explaining that a rear sight is not a "component part" and that a rifle "will fire without the sights"). And although Plaintiffs are not aware of any case law on

vertical grips, the same reasoning leads to the same result: because a vertical grip is in no way necessary for an AR-15-style rifle to function, it is an accessory, not a component part. *See* Am. Compl. ¶ 133.[7]

RSR and Magpul argue that large-capacity magazines are components because "[a]mmunition is … necessary for a firearm to operate at all, and detachable magazines feed ammunition into many types of firearms." RSR Mem. 9. But the fact that detachable magazines *can* be used to feed ammunition into a firearm does not mean that they *must* be used—particularly where, as here, the magazine was sold separately from the gun. *See Green*, 2022 WL 987555, at *1.[8]

Defendants cite numerous cases, but none supports their position. RSR and Magpul state that, in *In re Academy, Ltd.*, 625 S.W.3d 19 (Tex. 2021), the court held that a magazine was a "qualified part." RSR Mem. 8. That's not true. In *Academy*, the product in question was an AR-style rifle that was bundled and packaged together with a large-capacity magazine, and the parties *did not dispute* that the rifle and magazine were covered by PLCAA. *See* 625 S.W.3d at 23, 26. Accordingly, the court was not asked to decide—and did not decide—the question presented here. The same is true of *Noble v. Shawnee Gun Shop, Inc.*, 409 S.W.3d 476 (Mo. Ct. App. 2013). River City says that the *Noble* court found that magazines were qualified products, RCF Mem. 6 n.1, but that's just not so. *Noble* was about the sale

[7] Defendants' own language undercuts their position. Earlier in this litigation, Defendants described themselves as "the retailer of the rifle and *accessories* used by the shooter, as well as a manufacturer and distributor of *accessories* purchased by the shooter." Joint Mot. to Consol. 3 (emphasis added). Plaintiffs further observe that Magpul's own website—which is referenced in the amended complaint—advertises magazines, vertical grips, and sights—including the particular vertical grip and magazines at issue in this case—under the heading "Firearms Accessories." *See* Magpul, https://magpul.com (last visited July 26, 2024); *see also PMAGs for AR15 / M4 / M16*, Magpul, https://magpul.com/firearm-accessories/pmags/ar15-m4-m16.html (last visited July 26, 2024); *Vertical / Fore Grips*, Magpul, https://magpul.com/firearm-accessories/grips/vertical-fore-grips.html (last visited July 26, 2024).

[8] A Virginia court recently concluded that certain magazines were components because they were "substitutes [for] the original components of the[] firearm." *Lowy v. Daniel Def., LLC*, No. 23-cv-1338, 2024 WL 3521508, at *3 (E.D. Va. July 24, 2024) (citing *Prescott*, 341 F. Supp. 3d at 1189). But in *this* case, it is not clear that the "original" magazine was itself a component. Because the Radical Firearms RF-15 used by Sturgeon does not require a magazine to fire a shot, neither the original magazine that came with the gun nor the additional magazines that Sturgeon purchased are component parts of the firearm. *See Green*, 2022 WL 987555, at *1.

of "magazines and/or ammunition," and, in that case too, the parties *did not dispute* that the suit was a qualified civil liability action. 409 S.W.3d at 478-79.[9] Thus, in neither case did the court analyze and rule on whether large-capacity magazines constitute component parts under PLCAA.

Defendants' other cases are even less useful to them. RSR and Magpul cite *Prescott* for the proposition that an "aftermarket stock" is a qualified product, RSR Mem. 8, but stocks are meaningfully different from the accessories at issue in this case. In *Prescott*, the court ruled that an aftermarket stock (there, a bump stock) was a component because it "replaces the existing stock"—and the parties did not dispute that the stock of a rifle is a component part. 341 F. Supp. 3d at 1189. But here, none of the accessories at issue replace the component parts of an AR-15. *See* Am. Compl. ¶¶ 63-65, 70.[10]

With no on-point precedent in their favor, RSR and Magpul fall back on the argument that magazines are "surely" component parts under PLCAA because some courts have held them to be "arms" under the Second Amendment. RSR Mem. 9. But even if that reading of the Second

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[9] Ammunition, of course, is plainly a qualified product under PLCAA. *See* § 7903(4).

[10] River City also cites several cases that have nothing to do with PLCAA at all. *See* RCF Mem. 6 n.1. In *United States v. Gonzalez*, 792 F.3d 534 (5th Cir. 2015), the question was whether a defendant who had sold AK-47 magazines had illegally exported firearm "components, parts, accessories, [or] attachments." *Id.* at 537 (quoting 22 C.F.R. § 121.1(h)). The court seemed to use the word "component" as shorthand for this phrasal definition, but it was emphatically not deciding *between* components and accessories, which is the question at issue here. *See id.* The next case, *United States v. Espinoza*, No. 20-40853, 2021 WL 4609290 (5th Cir. Oct. 6, 2021), is even further afield: it concerns neither PLCAA *nor* the accessories at issue in this case. River City claims that the *Espinoza* case shows that a "rear sight and pistol grips are 'firearm components,'" RCF Mem. 6 n.1, but *Espinoza* actually concerns a "rear sight *block*," 2021 WL 4609290, at *1 (emphasis added), which is the component part of a rifle upon which a red-dot sight—an accessory—can be mounted. *Cf.* Am. Compl. ¶ 65. And pistol grips, which are mentioned in *Espinoza*, are irrelevant to this case; pistol grips are for the shooting hand—and thus are necessary for holding and firing a gun—whereas this case is about a vertical grip, which is an optional attachment, for the non-shooting hand, that connects to the lower rail of an AR-style rifle to give the shooter greater control over the weapon. *See id.* ¶ 64. (For this same reason, the *Lowy* court's discussion of "grips"—as distinguished from vertical grips—is irrelevant to this case. *See Lowy*, 2024 WL 3521508, at *3.) Finally, *Schmeisser GmbH v. AC-Unity d.o.o.*, No. 21-cv-24, 2021 WL 7286256 (D. Wyo. Mar. 19, 2021), and *Leupold & Stevens, Inc. v. Lightforce USA, Inc.*, No. 16-cv-1570, 2019 WL 4696406 (D. Or. Sept. 26, 2019), which River City also cites, are patent cases that simply use the word "component" in passing. They do not address whether anything *is* a component under *any* legal standard, much less under PLCAA.

Amendment were correct,[11] the conclusion would not follow. Nunchucks may be arms under the Second Amendment, *see Maloney v. Singas*, 351 F. Supp. 3d 222, 237 (E.D.N.Y. 2018), but that certainly doesn't mean that they're firearm components. Defendants cite nothing to support their novel interpretation of PLCAA's plain language, and this Court need not wade into this contested—and wholly irrelevant—constitutional question.

Because neither the vertical grip, nor the red-dot sight, nor the large-capacity magazines that the Defendants manufactured and/or sold are essential to a firearm's ability to fire a shot, they are mere accessories, not component parts of a firearm. Hence, they are not qualified products and thus not covered by PLCAA. Therefore, PLCAA does not bar any of Plaintiffs' claims against RSR and Magpul, nor does it bar Plaintiffs' simple negligence claim against River City, which relates solely to the sale of these accessories.

C. Magpul has no PLCAA protection because it is not a manufacturer under the statute.

Magpul also suggests that it is protected by PLCAA because it "is a manufacturer of firearms under the PLCAA." RSR Mem. 7. But this is simply not accurate—and the amended complaint certainly does not contain such allegations. To be a covered "manufacturer" under PLCAA, a defendant must meet two requirements: (i) it must have a federal license to "engage in business" of manufacturing a qualified product; and (ii) it must be "engaged in the business of manufacturing the product in interstate or foreign commerce." 15 U.S.C. § 7903(2). While Magpul *may* have a federal license to manufacture firearms, there is nothing in the record to indicate that Magpul *is actually* engaged in the business of manufacturing firearms, much less that it manufactured the firearm at issue in this case. *Cf. Ileto v. Glock, Inc.*, 565 F.3d 1126, 1145-46 (9th Cir. 2009) (holding that PLCAA does

[11] And it is far from clear that it is. *See, e.g.*, *Ocean State Tactical, LLC v. Rhode Island*, 646 F. Supp. 3d 368, 388 (D.R.I. 2022) (rejecting argument that large-capacity magazines are "arms" under Second Amendment), *aff'd on other grounds*, 95 F.4th 38 (1st Cir. 2024).

not apply where defendant's "coincidental status" as a manufacturer or seller is unrelated to plaintiff's claims). Because Magpul does not meet the full requirements of the "manufacturer" definition under PLCAA, the statute's protection is simply not available to it.[12]

D. Plaintiffs' section 411.150 claim falls under PLCAA's "predicate exception."

Finally, Plaintiffs' section 411.150 claim against River City is permitted under PLCAA's "predicate exception." PLCAA permits "action[s] 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." 15 U.S.C. § 7903(5)(A)(iii). This is called the predicate exception because it "requires an underlying or predicate statutory violation." *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422, 429-30 (Ind. Ct. App. 2007). Here, Plaintiffs Karen Tutt, Jessica Barrick, Maryanne Elliott, and Michael Eckert have alleged a predicate violation in asserting that Defendants violated section 411.150 of the Kentucky Revised Statutes by "aiding or promoting" the "careless, wanton or malicious use of a deadly weapon" by Connor Sturgeon, resulting in the deaths of Jim Tutt, Josh Barrick, Tommy Elliott, and Deana Eckert, KRS 411.150. *See* Am. Compl. ¶¶ 162-64; *Elliott* Compl. ¶¶ 149-53.

Congress wrote the predicate exception broadly, allowing any law that is "applicable to the sale or marketing" of a firearm to qualify. § 7903(5)(A)(iii). Courts have consistently held that this exception is not limited to those statutes that *explicitly* reference the sale or marketing of firearms. *See, e.g.*, *Soto v. Bushmaster Firearms Int'l*, 202 A.3d 262, 302 (Conn. 2019) ("If Congress had intended to limit the scope of the predicate exception to violations of statutes that are *directly*, *expressly*, or *exclusively* applicable to firearms, … it easily could have used such language …."); *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 404 (2d Cir. 2008) (holding that predicate exception includes statutes that

[12] The fact that Magpul is a manufacturer of accessories (or even if the Court were to accept that it is a manufacturer of "component parts") is completely irrelevant to this inquiry, because there is no federal license required for the manufacture of these products.

"clearly can be said to implicate the purchase and sale of firearms," even if the statute "do[es] not expressly regulate firearms"); *Brady v. Walmart Inc.*, No. 21-cv-1412, 2022 WL 2987078, at *7 (D. Md. July 28, 2022).

KRS 411.150 is undoubtedly a predicate statute. It allows the spouse or child of a person killed by a "malicious use of a deadly weapon" to sue a defendant who "aid[ed] or promot[ed]" the malicious use of the weapon. KRS 411.150. This statute clearly implicates the sale of a firearm equipped with deadly accessories, because someone who furnishes the deadly weapon used in a killing has thereby aided in that killing. *See Self v. Mantooth*, No. 2011-CA-1161, 2012 WL 4209929, at *5 (Ky. Ct. App. Sept. 21, 2012) (noting that definition of "aid" includes "to support, as by furnishing … means"); *see also infra* Section II.D; *cf. Brady*, 2022 WL 2987078, at *8 (finding statute that "only mentions a prohibition on the possession of firearms" "applicable to the sale of firearms" under PLCAA); *Prescott v. Slide Fire Sols., LP*, 410 F. Supp. 3d 1123, 1138 (D. Nev. 2019) (holding that statute "specifically regulat[ing] the sale and marketing of goods" satisfies PLCAA's predicate exception); *Soto*, 202 A.3d at 308 (similar).

River City baldly asserts that this cause of action "is not recognized under any exception to the PLCAA," but makes no effort to explain how it does not fit under the predicate exception. RCF Mem. 7. RSR and Magpul, by contrast, argue that the section 411.150 claim does not satisfy the predicate exception because the predicate exception "can only be satisfied by the violation of statutes that specifically regulate the firearms industry." RSR Mem. 13. As just explained, that misstates the law. RSR and Magpul rely on cases that look past PLCAA's plain language to congressional purpose, *see id.* at 13-14, but even these cases reject Defendants' position. *See, e.g.*, *Ileto v. Glock, Inc.*, 565 F.3d

1126, 1134 (9th Cir. 2009) (rejecting, as "too narrow," the argument advanced by Defendants here);[13] *Beretta*, 524 F.3d at 401 ("[W]e do not agree that the PLCAA requires that a predicate statute expressly refer to the firearms industry.").[14]

For all the aforementioned reasons, PLCAA does not bar the any of Plaintiffs' claims.

II. Plaintiffs have adequately pleaded their claims under Kentucky law.

Because Plaintiffs' claims are not barred by PLCAA, this Court can evaluate each of the Plaintiffs' claims under state law. As detailed below, Plaintiffs have sufficiently alleged the elements of each of their claims. First, Plaintiffs' negligent entrustment claim against River City is supported by Kentucky common law and the Restatement (Second) of Torts, which Kentucky follows. *See infra* Section II.A. Second, Plaintiffs' negligence claims against all Defendants are supported by Kentucky law and do not depend upon the existence of a special relationship, as alleged by River City. *See infra* Section II.B. Third, Plaintiffs have adequately alleged causation, and Sturgeon's foreseeable act did not supersede Defendants' negligence. *See infra* Section II.C. Fourth, Plaintiffs Tutt, Barrick, Elliott, and Eckert have stated a claim under Kentucky's "aiding or promoting" statute, KRS 411.150. *See infra* Section II.D. Finally, Plaintiffs' requests for punitive damages should stand because they are adequately pleaded, and dismissal before discovery would be premature. *See infra* Section II.E.

[13] All the *Ileto* court held was that "general tort theories of liability," such as negligence and public nuisance, that had been codified by the state legislature would not satisfy PLCAA. 565 F.3d at 1136. That holding has no applicability here.

[14] RSR and Magpul also make the fallback argument that if section 411.150 satisfies PLCAA's predicate exception, it's somehow preempted by PLCAA. *See* RSR Mem. 14 n.6. This makes no sense. If such predicate statutes were all preempted by PLCAA, the predicate exception would be a dead letter. Defendants offer no authority for this extraordinary view of the law.

A. Kentucky law supports Plaintiffs' negligent entrustment claim against River City.

The supplier of a potentially dangerous item—like a car, or a firearm—may be liable for negligent entrustment if he knows or has reason to know that that the person to whom he supplied the item is likely to misuse it. *See* Restatement (Second) of Torts § 390 (1965) ("One who supplies directly … a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm … is subject to liability."); *accord Hercules Powder Co. v. Hicks*, 453 S.W.2d 583, 587 (Ky. 1970). That is precisely what Plaintiffs have alleged here: River City supplied Connor Sturgeon with an AR-15, decked out with lethal accessories, plus enough ammunition for his deadly rampage, even though it reasonably should have known—based on his statements, demeanor, and behavior in the store—that Sturgeon was likely to use the weapon in an unreasonably dangerous manner. *See* Am. Compl. ¶¶ 3, 90, 94, 96-98.

River City's primary response is that Kentucky law does not recognize negligent entrustment in the context of sales. *See* RCF Mem. 8-9. But this outdated understanding of negligent entrustment liability has been rejected both by the Restatement (Second) of Torts, which Kentucky follows, *see, e.g.*, *Stiens v. Bausch & Lomb Inc.*, 626 S.W.3d 191, 201 (Ky. Ct. App. 2020), and by Kentucky case law.

Section 390 of the Restatement explicitly provides that one who *sells* chattel to an unfit individual may be liable for negligent entrustment. *See* Restatement (Second) of Torts § 390 cmt. a (1965) ("The rule stated applies to anyone who supplies a chattel for the use of another. *It applies to sellers*, lessors, donors or lenders, and to all kinds of bailors …." (emphasis added)). And Kentucky courts have repeatedly regarded section 390 as instructive when considering negligent entrustment claims. *See, e.g.*, *Hercules Powder Co.*, 453 S.W.2d at 587-88 (recognizing section 390 as "a basis for liability"); *Burke Enters., Inc. v. Mitchell*, 700 S.W.2d 789, 793-94 (Ky. 1985) (same); *see also Zetter v. Griffith*

Aviation, Inc., No. 03-cv-218, 2006 WL 1117678, at *14 (E.D. Ky. Apr. 25, 2006) (noting that Kentucky courts have adopted section 390).

Two decisions in particular preclude River City's interpretation. In *Hercules Powder Co.*, Kentucky's highest court considered negligent entrustment claims brought by injured construction workers against a dynamite manufacturer and its distributor. 453 S.W.2d at 586-87. Although the court ruled against the plaintiffs for unrelated reasons, it held that section 390 "could be a basis for liability" against the manufacturer, even though title to the chattel had fully transferred from the manufacturer. *Id.* at 585, 588. At no point did the court consider the sale of the dynamite an impediment to the negligent entrustment claim.[15]

More recently, the Court of Appeals affirmed the viability of a negligent entrustment claim against a salvage car dealer where the car in question had been sold, and title already transferred, to the buyer. *See Savage v. Allstate Ins. Co.*, No. 2017-CA-0615-MR, 2021 WL 137261, at *11-12 (Ky. Ct. App. Jan. 15, 2021),[16] *aff'd in part, rev'd in part on other grounds sub nom. Savage v. Co-Part of Conn., Inc.*, 671 S.W.3d 48 (Ky. 2023). In *Savage*, the buyer of an undrivable salvage vehicle accidentally killed someone on the highway while towing the vehicle, shortly after leaving the salvage dealer's lot. *See id.* at *2. Notwithstanding that title had transferred to the buyer, the court ruled that because "[t]here were significant issues of fact whether [the dealer] knew or should have known how [the buyer] intended to transport the [vehicle] …, the negligence and negligent entrustment claims against [the dealer] were properly submitted to the jury." *Id.* at *12.[17]

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[15] *Hercules* also makes plain that negligent entrustment is not limited to automobiles. *See also* Restatement (Second) of Torts § 390 illus. 1 (negligent entrustment of firearm).

[16] This opinion was designated "To Be Published" and is thus citable pursuant to Ky. R. App. P. 41.

[17] River City's contrary argument overreads *Graham v. Rogers*, 277 S.W.3d 251 (Ky. Ct. App. 2008). *See* RCF Mem. 8-9. *Graham*, which primarily analyzes statutory requirements for the transfer of automobile title, contains no discussion of negligent entrustment whatsoever. *See Graham*, 277 S.W.3d at 253-54. Moreover, *Savage*—which, as described above, allowed a negligent entrustment claim to proceed despite a transfer of title—

Other states that rely on section 390 of the Restatement similarly recognize its applicability to sales, including sales of firearms and ammunition. *See, e.g.*, *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 325 (Mo. 2016) (applying section 390 to sale of firearm and holding that "negligent entrustment liability is not premised on the legal status of the transaction as a lease, sale, bailment or otherwise"); *Rains v. Bend of the River*, 124 S.W.3d 580, 597 (Tenn. Ct. App. 2003) (analyzing negligent entrustment liability in context of ammunition sale and noting that "[w]hile negligent entrustment claims usually arise in the context of a bailment, it is now widely agreed that the merchants may be considered to be suppliers of chattels"); *Knight v. Wal-Mart Stores, Inc.*, 889 F. Supp. 1532, 1539 (S.D. Ga. 1995) (applying section 390 to sale of firearm); *Shirley v. Glass*, 44 Kan. App. 2d 688, 700 (2010) (same), *aff'd in part, rev'd in part on other grounds*, 308 P.3d 1 (Kan. 2013); *Ireland v. Jefferson Cnty. Sheriff's Dep't*, 193 F. Supp. 2d 1201, 1229 (D. Colo. 2002) (same); *Chiapperini v. Gander Mountain Co.*, 48 Misc. 3d 865, 879 (N.Y. Sup. Ct. 2014) (same); *First Tr. Co. of N.D. v. Scheels Hardware & Sports Shop, Inc.*, 429 N.W.2d 5, 8-9 (N.D. 1988) (same); *Kitchen v. K-Mart Corp.*, 697 So. 2d 1200, 1208 (Fla. 1997) (same).

Rains, which dealt with a negligent entrustment claim regarding the sale of ammunition, is a useful comparison to the instant case. 124 S.W.3d at 596-97. There, a young adult—Rains—shot himself shortly after purchasing ammunition. *Id.* at 585-86. The court noted that Rains was "not a stranger to firearms" and that there was "no evidence in th[e] record regarding the conduct or demeanor of Mr. Rains when he purchased the ammunition that would have given [the store] any basis to suspect that he was not competent to use the ammunition." *Id.* at 595, 597. Since plaintiffs could not demonstrate the existence of a material factual dispute regarding what the store clerk knew or should have known at the time of purchase, the court dismissed their negligent entrustment claim. *Id.* at 597; *see also id.* at 594 ("[T]he courts have sent cases to the jury when the evidence of the

explicitly relies on *Graham*, *see Savage*, 2021 WL 137261, at *11-12 (citing *Graham*, 277 S.W.3d 251), thereby demonstrating that the Kentucky Court of Appeals does not share River City's understanding of *Graham*.

purchaser's conduct or demeanor in the store would permit a trier of fact to conclude that the seller knew or should have known that the purchaser was mentally imbalanced."); *cf. Knight*, 889 F. Supp. at 1540 (denying motion for summary judgment due to outstanding factual issues, including purchaser's demeanor during firearm purchase).

In contrast, Plaintiffs here have alleged that River City knew, or should have known, that Sturgeon was completely inexperienced with firearms and was attempting to buy a firearm that was particularly ill-suited for his claimed purpose. Am. Compl. ¶ 113. An eyewitness also saw Sturgeon behaving oddly when purchasing the weapon: averting his gaze, hanging his head in shame, and generally acting suspiciously. *Id.* ¶ 55. These are all red flags that gun stores like River City are trained to identify because they indicate that the customer may be intending to use the firearm to hurt himself or others. Thus, Plaintiffs' allegations, all of which must be taken as true for present purposes, state a textbook claim for negligent entrustment.

Finally, River City appears to suggest that negligent entrustment claims must be premised on an underlying statutory violation. *See* RCF Mem. 9. This has no basis in the law, and River City cites no authority to support it. Negligent entrustment claims are rooted in common law negligence principles—namely, what the alleged tortfeasor knew or should have known about the recipient's inexperience, carelessness, or recklessness concerning use of the particular product when it is supplied. Plaintiffs have stated a claim for negligent entrustment.

B. Plaintiffs' negligence claims are adequately supported by Kentucky common law.

1. Defendants breached their duty of ordinary care to the Plaintiffs.

Every person owes a duty to exercise ordinary care in the course of their activities to prevent foreseeable injury. *Shelton v. Ky. Easter Seals Soc'y, Inc.*, 413 S.W.3d 901, 908 (Ky. 2013). This duty applies equally to corporate entities such as retailers, manufacturers, and distributors. *See, e.g.*, *Stiens v. Bausch & Lomb Inc.*, 626 S.W.3d 191, 200 (Ky. Ct. App. 2020).

Critically, the duty to exercise ordinary care is "commensurate with the circumstances" of each case. *Sheehan v. United Servs. Auto. Ass'n*, 913 S.W.2d 4, 6 (Ky. Ct. App. 1996); *see also James v. Wilson*, 95 S.W.3d 875, 893 (Ky. Ct. App. 2002) ("[T]he particular circumstances of the case must be considered in ascertaining whether a duty is owed."). Several factors inform this analysis, including foreseeability, public policy, and pre-existing statutory and common law. *See Bramlett v. Ryan*, 635 S.W.3d 831, 839 (Ky. 2021). Here, each factor makes clear that the Defendants breached their duty of care to the Plaintiffs: RSR and Magpul breached their duty by failing to take reasonable steps to ensure that the retail purchasers of their products were fit to use and possess them, by failing to implement reasonable controls to ensure that they were not supplying their products to irresponsible dealers, and by encouraging their dealers to upsell their dangerous products to consumers regardless of need or suitability. Am. Compl. ¶ 127. And River City breached its duty by selling these dangerous products to Sturgeon despite the red flags that he presented. *Id.* ¶¶ 135-37.

i. Foreseeability

Foreseeability is the most important factor Kentucky courts use to determine whether a duty exists. *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 89 (Ky. 2003). Plaintiffs need not demonstrate that their precise injuries were foreseeable but must demonstrate that there was a "probability of some *general* risk of injury resulting from the defendant's negligent act." *Stiens*, 626 S.W.3d at 200; *see also Miller v. Mills*, 257 S.W.2d 520, 522 (Ky. 1953) ("[I]t is sufficient if the probability of injury of some kind to persons within the natural range of effect of the alleged negligent act could be foreseen."). Kentucky courts may consider a broad range of facts to help determine whether an injury was foreseeable. In *Culp v. SI Select Basketball*, for example, a referee accused a sports director of negligence for failing to establish policies and procedures that could have prevented an assault on the referee. 663 S.W.3d 451, 452-53 (Ky. Ct. App. 2023). Whether this failure breached the duty of care, the court ruled, "hinge[d] upon whether the assault was reasonably foreseeable or could have been anticipated."

Id. at 455. The Court of Appeals considered that such behavior had not been witnessed over ten years, that the plaintiff had refereed a dozen tournaments for the league and had never been concerned about violence, and that the punch was completely unexpected. *Id.* Under those circumstances, the court concluded that the assault was not reasonably foreseeable. *Id.*[18] Plaintiffs' allegations here suffer from no such infirmities. Plaintiffs' injuries are all well within the "natural range of effect" of Defendants' negligent acts or omissions, and the foreseeability that was missing in *Culp* is present in spades.

First, all the Defendants are aware of the scourge of mass shootings across the United States. *See, e.g.*, Am. Compl. ¶¶ 35-36. And all gun companies receive trainings and resources, from both the ATF and industry partners, aimed at helping them prevent dangerous sales to dangerous people. *See, e.g.*, *id.* ¶ 40. The natural consequence of failing to follow such precautions is precisely the type of harm suffered by Plaintiffs here. *Cf. Howard Bros. of Phenix City, Inc. v. Penley*, 492 So. 2d 965, 968 (Miss. 1986) (ruling it negligent for firearm dealer to provide "no training, no guidelines, no safety instructions whatever" for its salesclerk and observing that "some injury should clearly have been foreseeable by this lax conduct in the sale of handguns"); *Knight v. Wal-Mart Stores, Inc.*, 889 F. Supp. 1532, 1539 (S.D. Ga. 1995) ("With regard to the sale of a rifle to a mentally defective person, a firearm dealer should foresee that such a sale could easily result in irresponsible use of the firearm and thus injury to the buyer or third parties. The dealer clearly has a duty of care to the public to avoid such sales."). With respect to River City specifically, it was also aware of its own past regulatory failures, as well as the fact that, at the time of the sale, it was a top source of firearms used in crimes, *see* Am. Compl. ¶¶ 43-

[18] Notably, the *Culp* court made this determination at the summary judgment stage after the factual record had been established. To make that determination at the motion to dismiss stage—as Defendants are asking—would wrongly deny Plaintiffs the opportunity to develop those facts that *Culp* finds so crucial.

48. And, of course, Sturgeon's suspicious behavior in the store made Plaintiffs' injuries all the more foreseeable. *See id.* ¶¶ 54-59.

While Magpul and RSR did not interact personally with Sturgeon, it was nevertheless foreseeable that incentivizing upselling by retailers, while also failing to avoid supplying products to irresponsible retailers like River City, would increase the probability that their products would be used to injure and kill innocent people. Magpul's and RSR's conduct is analogous to the pharmaceutical manufacturers and distributors that overpromoted addictive pain medicine, while using unscrupulous doctors to distribute their products. The foreseeable result was the opioid epidemic, for which manufacturers and distributors have been held liable. *See, e.g.*, *In re Nat'l Prescription Opiate Litig.*, 440 F. Supp. 3d 773, 809-10 (N.D. Ohio 2020) (finding it foreseeable that plaintiffs would be injured "as a result of Defendants' role in facilitating the opioid crisis, including facilitating the flow of opioids into the illegal, secondary market, failing to maintain effective controls against opioid diversion, failing to effectively monitor, investigate, report, or stop suspicious opioid orders, and deceptively marketing opioids"); *City of Everett v. Purdue Pharma L.P.*, No. C17-209RSM, 2017 WL 4236062, at *4 (W.D. Wash. Sept. 25, 2017) (denying motion to dismiss and citing plaintiff's allegations that manufacturer had "supplied OxyContin to obviously suspicious physicians and pharmacies").

ii. Public Policy and Existing Law

Courts may also consider the potential public-policy implications along with any relevant statutory, regulatory, or common law when analyzing the parameters of duty in particular circumstances. *See James*, 95 S.W.3d at 893. When making this determination, the court "engages in what is essentially a policy determination." *Sheehan*, 913 S.W.2d at 6.

Strong public-policy interests support the finding that Defendants breached their duty of care under these circumstances. *See, e.g.*, *Bernethy v. Walt Failor's, Inc.*, 653 P.2d 280, 282-83 (Wash. 1982) (identifying "strong public policy … that certain people should not be provided with dangerous

weapons" and recognizing duty "not [to] furnish a dangerous instrumentality such as a gun to an incompetent"). In *T & M Jewelry, Inc. v. Hicks ex rel. Hicks*, the Kentucky Supreme Court recognized that although "[a] seller or dealer of an ordinary product, normally, has no obligation to evaluate whether the buyer is fit to possess the product being sold," this is not true of gun dealers, upon whom the law imposes "special obligations." 189 S.W.3d 526, 531 (Ky. 2006).

While *T & M Jewelry* concerned the sale of a handgun, the underlying policy interest applies equally with respect to the sale of accessories for AR-15 rifles that are often used to carry out mass shootings. *See* Am. Compl. ¶¶ 66, 71. And the same public-policy interests also apply to upstream actors like Magpul and RSR. The policy goal of keeping inherently dangerous products out of the hands of irresponsible people is served equally well by a retailer's duty to use caution and judgment when selling such products as by a manufacturer or distributor's duty to avoid selling its products to irresponsible dealers in the first place. Plaintiffs are not suggesting anything "onerous," RSR Mem. 15, but merely an ordinary duty to take reasonable precautions under the circumstances. *See* Am. Compl. ¶ 80 (describing potential reasonable controls).[19]

As Defendants note, the existence of duty is a question of law for this Court. *See* RCF Mem. 10; RSR Mem. 15. But, critically, "the particular circumstances of the case must be considered in ascertaining whether a duty is owed." *James*, 95 S.W.3d at 893. And the question whether such duty was breached is one of fact, for the jury. *Culp*, 663 S.W.3d at 453. Plaintiffs have more than sufficiently alleged that Defendants breached their duty of ordinary care in these circumstances. The foreseeable nature of Plaintiffs' injuries resulting from Defendants' acts and omissions, along with ample public-

[19] Magpul and RSR object that Plaintiffs "failed to allege that [they] did not act as a 'like business' would 'under the circumstances.'" RSR Mem. 15 (quoting *T & M Jewelry*, 189 S.W.3d at 530). But the question is not whether a "like business" might do the same thing; it's what a "*prudent person* engaged in a similar or like business" would do. *T & M Jewelry*, 189 S.W.3d at 530 (emphasis added). Moreover, "[e]ven an entire industry" may not "adopt[] careless methods to save time and effort or money." *C. D. Herme, Inc. v. R. C. Tway Co.*, 294 S.W.2d 534, 537 (Ky. 1956) (quoting Prosser, Torts, First Edition, § 37.).

policy considerations implicating the safety of Kentuckians, favor allowing Plaintiffs' claims to proceed at this early stage of litigation.[20]

2. Defendants' duty is not dependent upon the existence of a special relationship.

River City objects that there is "no duty to control the conduct of a third person to prevent him from causing harm to another" absent a "special relationship." RCF Mem. 9. Plaintiffs, however, are not suggesting that River City had a duty to *control* Sturgeon; rather, it had a duty not to sell him dangerous products in the face of obvious red flags—just as the gun dealer in *T & M Jewelry* had a duty not to sell a handgun to an unfit purchaser. *See* 189 S.W.3d at 532. Were a special relationship required for such a duty, *T & M Jewelry* would have read quite differently.[21]

More broadly, it is black-letter law that defendants may be liable for acts or omissions involving an unreasonable risk of harm due to the *foreseeable* conduct of third parties. *See, e.g.*, *Greer v. Kaminkow*, 401 F. Supp. 3d 762, 777 (E.D. Ky. 2019) ("The conduct of a defendant can lack reasonable care insofar as it foreseeably combines with … the improper conduct of … a third party."). Foreseeability in such circumstances may derive from knowledge about the qualities or habits of a particular third party or simply from the fact that a certain amount of negligence is part and parcel of daily life. *See* Restatement (Second) of Torts § 302A cmt. c. For instance, in *Wesley v. Page*, the Kentucky Supreme Court upheld a judgment of negligence against a teacher who allowed her students to handle a shotgun

[20] River City's argument that it did not violate any particular law and therefore could not have breached its duty of ordinary care, *see* RCF Mem. 9, is unavailing and seems to confuse the doctrines of common law negligence and negligence per se. A gun dealer may plainly be liable for common law negligence despite not violating any statutes. *See, e.g.*, *Cullum & Boren-McCain Mall, Inc. v. Peacock*, 592 S.W.2d 442, 444 (Ark. 1980).

[21] Indeed, the rule in *Grand Aerie Fraternal Order of Eagles v. Carneyhan*, 169 S.W.3d 840 (Ky. 2005), upon which River City relies, is that "an actor *whose own conduct has not created a risk of harm* has no duty to control the conduct of a third person." *Id.* at 849 (emphasis added). That rule has no applicability in this case, where Plaintiffs allege that Defendants, including River City, *did* create a risk of harm. *See, e.g.*, Am. Compl. ¶¶ 127, 135.

with live ammunition, because she had a duty to anticipate a certain amount of careless behavior. *See* 514 S.W.2d 697, 699 (Ky. 1974).

Section 302A of the Restatement, cited in *Wesley*, is particularly relevant to Magpul's and RSR's duties of care, and Plaintiffs' negligence claim contains clear parallels to an illustration within that section:

> A, constructing a building, blocks the sidewalk, and forces pedestrians to walk in the street, where there is heavy traffic and no protection. A *could easily avoid the risk by constructing, at slight expense, a passage with a guardrail, but fails to do so*. B, a pedestrian forced into the street, is struck and injured by an automobile driver who is not keeping a proper lookout. A may be found to be negligent toward B.

Restatement (Second) of Torts § 302A illus. 3 (1965) (emphasis added). In a similar way, Magpul and RSR were negligent in failing to establish reasonable safeguards—constructing a "guardrail," to borrow from the illustration—to prevent their products from falling into dangerous hands. *See* Am. Compl. ¶ 80.

Similarly, section 302B explains that negligence liability is appropriate "[w]here the actor entrusts an instrumentality capable of doing serious harm if misused, to one whom he knows, or has strong reason to believe, to intend or to be likely to misuse it to inflict intentional harm." Restatement (Second) of Torts § 302B cmt. e.; *see also Waldon v. Hous. Auth. of Paducah*, 854 S.W.2d 777, 779 (Ky. Ct. App. 1991) (applying section 302B). That describes Plaintiffs' claim against River City perfectly. *See* Am. Compl. ¶¶ 132-37.

C. Plaintiffs have more than sufficiently alleged causation at this stage.

1. Plaintiffs have alleged proximate causation and causation in fact.

An actor's conduct may constitute proximate cause (or "legal cause") if it is a "substantial factor in bringing about the harm." *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 92 (Ky. 2003). Whether negligent conduct was in fact a substantial factor is "for the jury," "[e]xcept in such cases where reasonable minds could not differ, where the court would conclude as a matter of law that it was

clearly unreasonable to foresee the potential harm from the misconduct involved." *Grayson Fraternal Ord. of Eagles, Aerie No. 3738, Inc. v. Claywell*, 736 S.W.2d 328, 334 (Ky. 1987).

Plaintiffs allege that RSR and Magpul failed to take steps to ensure that the lethal accessories they make and sell, including those known to be favored by mass shooters, did not fall into the hands of people intending to do harm. *See* Am. Compl. ¶ 127. These Defendants failed to establish precautions to ensure that the retailers they supplied did not have a history of regulatory violations and disproportionate sales of crime guns, as River City did. *See id.* ¶¶ 43-48, 127. Meanwhile, River City failed to recognize obvious red flags indicating that Sturgeon was unfit to wield a firearm and not only sold him an AR-15 but also pushed him to purchase various accessories that made the weapon even deadlier. *Id.* ¶¶ 52-61. In light of the scourge of mass shootings across the country, Plaintiffs adequately allege a direct through-line from Defendants' negligent acts and omissions to Sturgeon's ability to carry out his heinous act.

Defendants deny that their alleged negligence was a substantial factor in causing Plaintiffs' injuries, *see* RCF Mem. 10-11; RSR Mem. 18, but none of their arguments is availing. First, River City points yet again to its purported compliance with applicable statutory requirements as proof that its conduct cannot be a legal cause of Plaintiffs' injuries. RCF Mem. 11 ("The fact that lawful products were sold in conformity with the law cannot be a 'legal cause' of the harms in this case."). But again, this fundamentally misstates basic negligence principles. River City offers no authority whatsoever for the novel suggestion that only conduct that violates some statute or regulation can be a legal cause of harm. And RSR and Magpul offer even less—just the bald assertion, devoid of any reasoning or authority, that their conduct is "not something that any reasonable person would regard as a substantial [factor]." RSR Mem. 18. The Court should not hesitate to reject Defendants' wholly unsupported arguments; this is exactly the kind of determination that is left for a jury.

RSR and Magpul also assert that Plaintiffs have failed to allege cause in fact (or cause in the "philosophic sense"), claiming that "there is no allegation or reason to believe that the shooting would not have occurred without the Component Parts." *Id.* In fact, Plaintiffs expressly alleged that: (1) "[t]he accuracy and control provided by the sight and grip helped Sturgeon overcome [certain] difficulties and cause greater carnage"; (2) Sturgeon's possession of all the accessories emboldened him and "resulted in more carnage at Old National Bank than Sturgeon would have otherwise caused"; and (3) Sturgeon's possession of the extra large-capacity magazines specifically resulted in the injury to Plaintiff Jimmy Evans, who would not have been shot otherwise. Am. Compl. ¶¶ 69, 75, 77. These allegations, taken as true, establish that RSR's and Magpul's negligent distribution of their deadly accessories was a substantial, "but-for" cause of some of Plaintiffs' injuries. How much of Plaintiffs' damages are attributable to RSR's and Magpul's negligence is a question for the jury.

2. Connor Sturgeon's foreseeable actions did not supersede Defendants' negligence.

This Court should also reject Defendants' claim that Sturgeon's conduct was a superseding intervening cause that relieves them of liability. *See* RSR Mem. 18-20; RCF Mem. 11-12. As Defendants acknowledge, *see* RSR Mem. 18, "the superseding intervening cause doctrine interplays with proximate causation," *Howard v. Spradlin*, 562 S.W.3d 281, 288 (Ky. Ct. App. 2018), and the analysis depends in part on whether "the [defendant] at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created," Restatement (Second) of Torts § 448 (1965). Whether a defendant "realized or should have realized" the possibility of harm resulting from its acts or omissions is essentially foreseeability restated, and "the question of foreseeability and its relation to the unreasonableness of the risk of harm is properly categorized as a factual one, rather than a legal one." *Shelton*, 413 S.W.3d at 916. Such a determination might be appropriate at the summary-judgment

stage, where the parties have had the opportunity to develop the requisite factual record, but not at the motion-to-dismiss stage.[22]

Plaintiffs have alleged facts sufficient to establish foreseeability, *see supra* Section II.B.1.i. It is all too foreseeable that a disturbed young man who purchases an AR-15-style rifle and deadly accessories, while acting suspiciously, would use the rifle and accessories to carry out a shooting. *See* Am. Compl. ¶ 50. In contrast, the case that River City relies on, *Briscoe v. Amazing Products, Inc.*, involves facts far more extraordinary and unforeseeable than what is alleged here. *See* 23 S.W.3d 228, 230 (Ky. Ct. App. 2000) (ruling that hardware store could not have anticipated customer's decision to attack someone with drain cleaner).

Defendants suggest that Sturgeon's conduct must be a superseding cause because it was "intentional and criminal." RCF Mem. 11-12; *see also* RSR Mem. 19 ("[T]he shooting was caused by the unforeseen act of a third party, the Shooter, which was not merely negligent, but intentional."). But as the Kentucky Supreme Court has observed, "If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor [defendant] negligent, such an act … whether innocent, negligent, intentionally tortious, or criminal, does not prevent the actor [defendant] from being liable for harm caused thereby." *Britton v. Wooten*, 817 S.W.2d 443, 449 (Ky. 1991) (alterations in original) (quoting Restatement (Second) of Torts § 449 (1965)). In other words, Defendants' conduct was negligent *because* it created the risk of intentional shootings. Therefore,

[22] This is confirmed by RSR and Magpul's recitation of the criteria set forth in *NKC Hospitals, Inc. v. Anthony*, 849 S.W.2d 564, 568 (Ky. Ct. App. 1993). *See* RSR Mem. 18-19. Namely, three out of six criteria emphasize that a superseding cause is one that is not foreseeable. *See NKC Hosps.*, 849 S.W.2d at 568 (stating that (4) superseding cause "must not have been reasonably foreseeable"; (5) superseding cause must "involve[] … unforeseen negligence"; and (6) "the distinction between a legal cause and a mere condition [is] foreseeability of injury"). At this stage in the proceedings, the Court may grant Defendants' motions to dismiss on these grounds only if no set of facts alleged in the complaint could possibly render foreseeable of the type of harm suffered by Plaintiffs. *See, e.g.*, *Pari-Mutuel Clerks' Union of Ky., Loc. 541 v. Ky. Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). For instance, the *NKC Hospitals* court's superseding-cause analysis took place after a verdict had been reached; the parties thus had developed a full factual record on which the court could evaluate the applicability of the six factors. *See* 849 S.W.2d at 567.

that Sturgeon's conduct was intentional in no way makes it an unforeseen or superseding act. Plaintiffs have adequately alleged causation.[23]

D. Plaintiffs have stated a claim under KRS 411.150.

Section 411.150 of the Kentucky Revised Statutes provides that "[t]he surviving spouse … 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 (1) or more of them." KRS 411.150 (emphasis added). Plaintiffs Tutt, Barrick, Elliott, and Eckert are the surviving spouses of deceased victims of Sturgeon's wanton and malicious use of a deadly weapon. *See* Am. Compl. ¶¶ 23-24; *Elliott* Compl. ¶¶ 24, 26, 74. Defendants aided or promoted this killing—River City by negligently furnishing Sturgeon with the deadly assault weapon he would use in the shooting, and Magpul and RSR by negligently distributing the accessories that Sturgeon would employ to make his AR-15 even deadlier. Plaintiffs' allegations thus fall within the plain text of KRS 411.150.

Defendants acknowledge that Kentucky courts have recognized that "aid," as used in section 411.150, can mean "to support, as by furnishing … means to effect a purpose." RSR Mem. 20 (quoting *Self v. Mantooth*, No. 2011-CA-1161, 2012 WL 4209929, at *5 (Ky. Ct. App. Sept. 21, 2012)); *accord* RCF Mem. 12. And that is exactly how Defendants here aided Sturgeon, by furnishing him the means to carry out the killings at Old National Bank. Yet Defendants assert that more is required, that KRS 411.150 applies only to "active involvement in the actual killing." RSR Mem. 20-21; *see also* RCF Mem. 12.

Defendants' atextual argument overreads the case law. In *Commonwealth v. Hurt*, a sheriff's deputy maliciously shot and killed the plaintiff's husband, and an action was brought under KRS

[23] Because Plaintiffs have adequately alleged negligence and negligent entrustment, including causation, Plaintiffs' derivative claims for wrongful death and loss of consortium may also proceed. *See* RCF Mem. 10; RSR Mem. 14-15.

411.150 against the sheriff, on the theory that the sheriff aided and promoted the killing by appointing an unfit man to be deputy. 64 S.W. 911, 911-12 (Ky. 1901). The court affirmed a judgment for the defendant, but specifically because the deputy was not "doing anything in his official capacity, at the time of the killing." *Id.* at 912. In *Self*, the Kentucky Court of Appeals observed that "the [*Hurt*] Court implied that, if [the deputy] had been acting in an official capacity, it might have found that [the sheriff], by appointing [the] deputy, had aided and promoted [the] killing." *Self*, 2012 WL 4209929, at *5. This analysis makes clear that by "active participation in the killing," *id.* at *6, the *Self* court did *not* mean "active involvement in the actual killing," as RSR and Magpul would have it, RSR Mem. 20-21. Rather, "participation" clearly encompasses wrongful behavior that helps bring about the killing. *See Self*, 2012 WL 4209929, at *5-6.

Indeed, the facts of *Self* are far afield from the facts of this case. In *Self*, the defendant's neighbor handed the defendant a gun, which the neighbor had recently purchased, just to show it to him. *Id.* at *1. The defendant then handed the gun back to his neighbor, who later accidentally shot and killed his wife. *Id.* The court rejected a section 411.150 claim under these circumstances, where the defendant was never the rightful owner of the gun but "simply handled [it] and returned it" to the shooter. *Id.* at *6. This, the court ruled, did not amount to "active participation" such that the defendant could be said to have "aid[ed] or promot[ed]" the killing. *Id. Self* is an unpublished decision, but even if it were binding, it would not control the claims at issue here, where the Defendants owned and controlled the deadly firearm and accessories before they were furnished to Sturgeon, and where River City *encouraged* the obviously unfit Sturgeon to purchase those items. *See* Am. Compl. ¶¶ 59-61, 67. Plaintiffs have adequately alleged a claim under section 411.150.

E. Plaintiffs' punitive damages claim should stand.

Defendants' attempts to dismiss Plaintiffs' claims for punitive damages at this early stage of the litigation are premature at best, since no discovery has yet been taken. Further, Plaintiffs have

adequately pleaded their punitive damage claims, with ample factual allegations showing gross negligence on the part of Defendants.

Kentucky law provides two different avenues for recovery of punitive damages: one statutory and one under common law. The Supreme Court of Kentucky has held that punitive damages may be awarded upon a showing of the common law standard of gross negligence. *Williams v. Wilson*, 972 S.W.2d 260, 262-65 (Ky. 1998). Gross negligence means a "wanton or reckless disregard for the lives, safety, or property of others." *Gibson v. Fuel Transp., Inc.*, 410 S.W.3d 56, 59 (Ky. 2013) (citation omitted).

Further, it is well established that Kentucky has a notice pleading standard under CR 8.01. "The true objective of a pleading stating a claim is to give the opposing party fair notice of its essential nature." *Cincinnati, Newport & Covington Transp. Co. v. Fischer*, 357 S.W.2d 870, 872 (Ky. 1962). Defendants attempt to persuade the Court that there is some type of heightened pleading standard for punitive damages, *see* RSR Mem. 22, but that argument is baseless and unsupported by Kentucky jurisprudence.

As a result, with regard to Plaintiffs' punitive damages claims, Plaintiffs need not *prove* their claims at this juncture in the litigation, when no discovery has been conducted, but only plausibly allege them. And Plaintiffs have alleged facts that a jury could find rise to the level of gross negligence. Plaintiffs allege that River City recklessly ignored red flags when Sturgeon purchased his AR-15, despite its duty to prevent firearms from falling into dangerous hands. Am. Compl. ¶¶ 4-5, 39. River City ignored Sturgeon's obvious lack of experience with guns, his unusual demeanor, and inconsistencies in his story of why he wanted to purchase a gun, and then upsold him dangerous accessories. *Id.* ¶¶ 50-77. RSR and Magpul, likewise, were grossly negligent in recklessly failing to implement reasonable controls for the sale of their products. *Id.* ¶¶ 9, 78-85. Indeed, instead of instituting controls, RSR and Magpul incentivized dealers to sell as many of their products as possible,

regardless of whether it was safe to do so. *Id.* ¶¶ 81-82. These facts show a clear "wanton or reckless disregard for the lives, safety, or property of others," *Gibson*, 410 S.W.3d at 59, and, as such, Plaintiffs' punitive damages claim has been properly pleaded and should not be dismissed.[24]

III. Kentucky's Product Liability Act does not apply to Plaintiffs' claims.

Finally, RSR (but not Magpul or River City) asserts that Plaintiffs' claims against it are barred by Kentucky's Product Liability Act (KPLA), KRS 411.300-.350. *See* RSR Mem. 22. This argument fails for the simple reason that Plaintiffs' injuries were not caused by a product defect, as Magpul acknowledges. *See id.* 22 n.7. As such, the KPLA does not apply, and RSR cannot benefit from its "middleman" provision. *See* KRS 411.340.

The KPLA applies to claims for injury or death "caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, advertising, packaging, or labeling of any product." *Id.* § 411.300(1). Although the KPLA can apply to claims founded in strict liability, breach of warranty, or negligence, all cases under the KPLA require "that the product was defective and was the legal cause of the injury." *Primal Vantage Co. v. O'Bryan*, 677 S.W.3d 228, 245-46 (Ky. 2022).

Plaintiffs allege no such thing. Plaintiffs do not allege that the firearm accessories at issue here were defectively designed or manufactured. Rather, Plaintiffs' claims rely on the potential harm that can come to third parties when such non-defective products are put in the hands of an unfit person. *See* Am. Compl. ¶¶ 126-27. Plaintiffs do not allege that Magpul, for instance, should adopt a safer design, cure manufacturing defects, or provide warnings to users about dangers inherent in ordinary

[24] River City asserts that "Plaintiffs' cause of action for punitive damages (Count V) should be dismissed" because punitive damages are "not an independent cause of action." RCF Mem. 12-13. But how a request for punitive damages is labeled, *compare Elliott* Compl. at 40 ("Count VI—Punitive Damages"), *with* Am. Compl. at 45 ("Punitive Damages"), is utterly irrelevant to whether Plaintiffs are entitled to recover them. Indeed, "it is unnecessary for a plaintiff to pray for punitive damages in express terms." *Louisville & Nashville Ry. Co. v. Taylor*, 237 S.W.2d 842, 843 (Ky. 1951). River City's argument lacks any merit.

use of the products, as a case under the KPLA would. Plaintiffs allege, rather, that these products may be *foreseeably used* to harm people, and that irresponsible dealers—through their negligent business practices—are likely to equip persons at risk of using such products to harm others. *See id.*

This distinction is illustrated by a recent decision interpreting the similar Ohio Product Liability Act,[25] in a case where plaintiffs alleged that "otherwise safe and non-defective drugs … were diverted into the black market." *In re Nat'l Prescription Opiate Litig.*, 589 F. Supp. 3d 790, 813 (N.D. Ohio 2022), *appealed*, 82 F.4th 455 (6th Cir.), *certifying questions to Nat'l Prescription Opiate Litig. v. Purdue Pharma, L.P.*, 222 N.E.3d 661 (Ohio 2023). As the court explained, "Plaintiffs' claims *do not stem from the products themselves*, but from the manner in which Defendants dispensed the products—that is, Defendants' failure to provide effective controls to detect 'red flags' and prevent diversion." *Id.* (emphasis added). Accordingly, the court ruled, the claims were not covered by the Act. *See id.*

The same reasoning applies here. Because Plaintiffs do not allege that any defect in the accessories was the legal cause of their injuries, the KPLA does not apply, and Plaintiffs' claims against RSR are not barred by section 411.340.

CONCLUSION

For the foregoing reasons, this Court should deny Defendants' pending motions to dismiss in their entirety.

DATE: July 29, 2024

Respectfully submitted,

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[25] *Compare* Ohio Rev. Code Ann. § 2307.71(A)(13) (defining "[p]roduct liability claim" to include any claim arising from "[t]he design, formulation, production, construction, creation, assembly, rebuilding, testing, or marketing of th[e] product," "[a]ny warning or instruction, or lack of warning or instruction, associated with th[e] product," or "[a]ny failure of th[e] product to conform to any relevant representation or warranty"), *with* KRS 411.300(1) (substantially similar).

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