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 REPLY IN SUPPORT OF MOTION TO DISMISS

Defendant River City Firearms, Inc. ("River City"), by and through undersigned counsel, hereby submits the following reply in support of its motion to dismiss the Complaints of all Plaintiffs (Mitchell, Elliott, and Zurich) in this consolidated matter for failure to state a claim upon which relief can be granted pursuant to C.R. 12.02(f).

ARGUMENT

I. The PLCAA Bars Plaintiffs' Negligence Claims Against River City.

As Plaintiffs acknowledge, the 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. See Preamble to 15 U.S.C. § 7901.[1] Under the express terms of the Act, a "qualified civil liability action may not be brought in any Federal or State court." 15 U.S.C. § 7902(a). A qualified civil liability action means

> **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.**

[1] In opposition, Plaintiffs quizzically ask the Court to ignore the statute's preamble, but case law demonstrates that the preamble contributes to a general understanding of a statute and, with respect to the PLCAA, a court "may consider the statute's explicitly stated purpose to shield manufacturers and sellers in cases in which a shooter is solely responsible for the death of another." Brady v. Walmart, Inc., 2022 WL 2987078, at *5 (D. Md. July 28, 2022).

Id. § 7903(5)(A) (emphasis added). Here, the claims against River City unquestionably meet this definition. Plaintiffs bring a civil action against River City (a seller) for the sale of a rifle (qualified product) for damages resulting from the criminal or unlawful misuse of the rifle (qualified product) by the shooter. Thus, the PLCAA is applicable, and all common law causes of action not enumerated in an exception to the Act should be dismissed. See, e.g., Ileto v. Glock, Inc., 565 F.3d 1126, 1139 (9th Cir 2009).

The PLCAA prohibits common law negligence claims. See 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 v. Savage Arms. Inc., 338 P.3d 103, 105 (N.M. Ct. App. 2014) (holding that the PLCAA "preempts common law claims based on general tort liability").

In opposition, Plaintiffs acknowledge that the PLCAA applies to River City and that it forecloses all claims that do not meet the recognized exceptions to the Act. Despite this acknowledgement, and despite the express language of the PLCAA, Plaintiffs contend that their common law negligence claim against River City should not be dismissed because the negligence claim is not based on the sale of the rifle but only on the contemporaneous sale of the components for the rifle (grip, sight, and magazines). In this regard, Plaintiffs argue that the components purchased with the rifle were "accessories" and do not fall within the definition of a "qualified product." However, this effort to plead around the PLCAA is unavailing for two reasons.

First, Plaintiffs' negligence claim against River City should be dismissed whether or not the other products purchased with the rifle are "accessories" or "components." The unambiguous text of the PLCAA preempts a plaintiff from bringing a "qualified civil liability action," which is defined as:

(1) "a civil action"
(2) "brought by any person against a manufacturer or seller of a qualified

product"
(3) "for damages, punitive damages, or injunctive relief"
(4) "resulting from the criminal or unlawful misuse of a qualified product by a person or a third party."

15 U.S.C. § 7903(5)(A) (emphasis added). As acknowledged by Plaintiffs, and based on the face of the Complaints, Plaintiffs have brought suit against (1) River City, a seller of a firearm, (2) for damages, (3) that resulted from the criminal misuse of the firearm by the shooter. Thus, Plaintiffs' claims against River City meet the definition of a "qualified civil liability action," bringing this case within the PLCAA. See 15 U.S.C. § 7902(a). The only way for a cause of action to proceed against River City is if it meets an exception to the Act, and there is no exception for negligence listed in the PLCAA. Nor is there an exception for negligent sale of accessories. This ends the inquiry, and Plaintiffs' common law negligence claim against River City should be dismissed.

In arguing otherwise, Plaintiffs ignore the plain text of the Act. Indeed, Plaintiffs' attempt to confine its negligence claim to the alleged sale of "accessories" does not negate the fact that the claims against River City meet the definition of a "qualified civil liability action" under the PLCAA. Once this threshold has been established, the only claims that may proceed are the ones identified as exceptions to the Act. See, e.g., Sambrano v. Savage Arms. Inc., 338 P.3d 103, 105 (N.M. Ct. App. 2014) ("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.").

Similar efforts to plead around the PLCAA's plain language have previously been rejected. In Sambrano, a rifle was sold with a cable lock, which is a separate cable with a locking mechanism that goes through a firearm and prevents ammunition from being loaded or otherwise blocks the barrel and chamber. 338 P.3d at 104. The plaintiffs alleged that a burglar bypassed the cable lock to access the rifle and then used the rifle to shoot and kill the homeowner. Id. Just as in this case, the plaintiffs argued that the PLCAA was not applicable because its negligence claims were not based on the sale of the rifle but were based on the distribution of the cable lock, but this argument was rejected:

> Plaintiffs specifically argue that their action is not a qualified civil liability action because the lock, as an accessory to the rifle, is not a qualified product under 15 U.S.C. § 7903(4). . . . . Plaintiffs' argument, however, misses the mark. Although Plaintiffs have framed their complaint to focus upon the lock as opposed to the rifle, [the shooter] nonetheless used a qualified product, the rifle, as the instrument to commit the crime that resulted in the harm. As a result, the congressional intent embraces Plaintiffs' action.

Id. at 106. The PLCAA applied because "Plaintiffs' claimed damages nevertheless resulted from a third party's criminal or unlawful misuse of the rifle." Id. at 105. The same result should be reached here, and Plaintiffs' negligence claim against River City should be dismissed.

Second, contrary to Plaintiffs' arguments, the other products (grip, sight, and magazine) are component parts of a firearm subject to PLCAA's protections. Indeed, Plaintiffs' contention that these products are mere "accessories" was recently rejected in Lowy v. Daniel Defense, LLC:

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

2024 WL 3521508, at *3 (E.D. Va. July 24, 2024). Other cases have likewise demonstrated that magazines are component parts for purposes of the PLCAA. See 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); Noble v. Shawnee Gun Shop, Inc., 409 S.W.3d 476, 479 (Mo. Ct. App. 2013) (applying the PLCAA to the sale of ammunition and magazines).[2]

Defendant's motion to dismiss cited ample cases where magazines, sights, and grips were

[2] In opposition, Plaintiffs argue that these cases should be ignored because the courts did not specifically analyze whether magazines were component parts. This argument is unpersuasive because it is undisputed that the courts in those cases expressly applied the PLCAA to claims involving the sale of magazines.

found to be components of a firearm. (Def. Mot. at p. 6 n. 1.) In a footnote in opposition, Plaintiffs attempt to distinguish these cases by contending that they were decisions issued prior to the PLCAA or decisions that did not involve applying the PLCAA. This is a distinction without a difference because it is undisputed that in those cases, the identified products (magazines, sights, and grips) were considered firearm "components." Thus, these cases strongly support Defendant's position, and Plaintiffs' negligence claim should be dismissed pursuant to the terms of the PLCAA.

II. The PLCAA's Negligent Entrustment Exception Does Not Apply.

While the PLCAA has an exception for negligent entrustment, the cause of action must arise under state law. See In re Academy, 625 S.W.3d at 29 (explaining that courts will apply state law on negligent entrustment claims when evaluating whether the exception applies). Under Kentucky law, the tort of negligent entrustment has typically been confined to situations where an owner has allowed someone else to use his vehicle or a product they own. Graham v. Rogers, 277 S.W.3d 251, 253-54 (Ky. Ct. App. 2008); Cox v. Waits, 2004 WL 405811, at *2 (Ky. Ct. App. Mar. 5, 2004).

In opposition, Plaintiffs point to the comments to the Restatement (Second) of Torts § 390 regarding a seller supplying chattel for the use of another. (Plt. Opp. at p. 16.) However, Plaintiffs implicitly admit that Kentucky courts have never expressly adopted Section 390,[3] which is why Plaintiffs argue that some courts have found section 390 to be "instructive." (Id.) Indeed, the Kentucky state cases Plaintiffs cite do not support their contention that negligent entrustment is a viable cause of action in the context of a sale. See Burke Enterps., Inc v. Mitchell, 700 S.W.2d 789, 790, 794 (Ky. 1985) (analyzing a negligent entrustment claim in a case involving the *rental* of a post hole digger); see also Lloyd v. Lloyd, 479 S.W.2d 623, 625 (Ky. 1972) (analyzing a

[3] Plaintiffs cite to Stiens v. Bausch & Lomb, Inc., 626 S.W.3d 191 (Ky. Ct. App. 2020), for the sweeping proposition that Kentucky follows the Restatement of Torts. However, the Stiens case involved product liability claims under the Kentucky Products Liability Act, and the court was addressing only the strict liability standard of the Restatement (Second) of Torts, which is Section 402A. 626 S.W.3d at 201. This case did not address a negligent entrustment claim at all.

negligent entrustment claim against the owner of a power-drive riding lawnmower who had loaned the lawnmower to his son). Moreover, in Savage v. Allstate Ins. Co., 2021 WL 137261 (Ky. Ct. App. Jan. 15, 2021), which is a case upon which Plaintiffs principally rely, the Court of Appeals expressly explained:

> The common law theory of negligent entrustment is "one who entrusts his vehicle to another whom he knows to be inexperienced, careless, or reckless . . . is liable for the natural and probable consequences of the entrustment." **Logically, one cannot maintain a negligent entrustment suit against the former owner of a vehicle who properly transferred ownership of the subject vehicle.**

Id. at *11 (quoting and citing McGrew v. Stone, 998 S.W.2d 5, 9 (Ky. 1999), and Graham v. Rogers, 277 S.W.3d 251 (Ky. App. 2008) (emphasis added). Thus, Kentucky state case law supports Defendant's position.

Plaintiffs are also wrong to suggest that the Graham v. Rogers case, upon which Defendant relied, had "no discussion of negligent entrustment whatsoever." (Plt. Opp. at p. 17.) In Graham, an accident occurred shortly after the sale of a vehicle, and the injured person brought a negligence claim against the vehicle's operator and a negligent entrustment claim against the seller of the vehicle. 277 S.W.3d at 251, 253. As the Court of Appeals explained:

> Graham brought suit against Rogers for negligent operation of a vehicle and against Loudon for negligent entrustment of the vehicle to Rogers. . . . After written discovery and depositions, all parties filed motions for summary judgment. The trial court concluded that Loudon had taken all steps necessary under Kentucky statutes to transfer ownership of the vehicle to Rogers, therefore finding that Rogers was legal owner of the Caprice at the time of the accident and dismissing all claims against Loudon . . . .

Id. at 253. Since the car was lawfully sold to the driver, it was no longer owned by the seller, and the trial court's dismissal of the negligent entrustment claim against the seller was affirmed. Id. The same conclusion follows here, as River City lawfully sold a firearm, and the shooter was the legal owner at the time of the incident. Therefore, the negligent entrustment claim against River City should therefore be dismissed.

Finally, even if Kentucky recognized the tort of negligent entrustment in the context of a sale, the Complaints contain insufficient factual allegations that, if true, could support such a

cause of action. Plaintiffs argue that the shooter was "inexperienced" with firearms and was not making eye contact when at the store. However, there is no allegation that the purchaser was prohibited from buying a firearm or that all requirements under the law were not followed. In fact, Plaintiffs concede that the sale conformed with all laws. As such, Defendant respectfully submits that these factual allegations are insufficient to state a cognizable claim for negligent entrustment.

III. The PLCAA's Predicate Exception Does Not Apply.

Plaintiffs argue that their claim under Kentucky Statute § 411.150 against River City should not be dismissed because (1) this claim meets the predicate exception to the PLCAA and (2) sufficient facts have been alleged to state such a claim. Plaintiffs are incorrect on both counts.

First, the predicate exception applies only to a cause of action where "a seller of a qualified product **knowingly violated a State or Federal statute applicable to the sale or marketing of the product** and the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). The PLCAA provides two representative examples of when the predicate exception would be applied, including where a seller knowingly makes a false entry in its records that are required to be kept under the law or when the seller knowingly provides a firearm to someone who is not lawfully allowed to possess it. Id. § 7903(5)(A)(iii). Neither situation exists here, as Plaintiffs concede that all laws were complied with at the time of sale.

Instead, Plaintiffs argue that Section 411.150 is a "predicate" statute, but that is not true. Section 411.150 codifies a general tort theory of liability (wrongful death); it is not a statute that "regulate[s] manufacturing, importing, selling, marketing, and using firearms or that regulate[s] the firearms industry." Ileto v. Glock, Inc., 565 F.3d 1126, 1134 (9th Cir. 2009). The predicate exception is not satisfied by pointing to general tort theories, even if those theories "happened to be codified by a given jurisdiction." Id. at 1136. The "predicate exception" encompasses only those statutes that "clearly can be said to regulate the firearms industry." City of N.Y. v. Beretta

U.S.A. Corp., 524 F.3d 384, 402 (2d Cir. 2008). Thus, the predicate exception cannot be met by an alleged violation of a statute that codifies the common law or an alleged violation of a statute that created a civil cause of action. See, e.g., id. at 400 (holding that an alleged violation of New York's codified nuisance statute, N.Y. Penal Law § 240.45(1), was insufficient to meet the predicate exception); Estate of Charlot v. Bushmaster Firearms, Inc., 628 F. Supp. 2d 174, 181 (D.D.C. 2009) (holding that the Assault Weapons Manufacturing Strict Liability Act is "not a predicate exception statute within the meaning of 15 U.S.C. § 7903(5)(A)(iii)").

Second, even if Section 411.150 could be utilized to meet the predicate exception, there is no basis to permit such a cause of action in this case. 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. "'[A]iding or promoting' requires some active participation in the killing by the person so charged." Self v. Mantooth, 2012 WL 4209929, at *3 (Ky. Ct. App. Sept. 21, 2012); Casey v. Fidelity, 128 S.W.2d 939, 941 (Ky. Ct. App. 1939) (holding that a plaintiff cannot maintain a claim under Section 411.150 "unless [the defendants] were present and aided and abetted in the offense complained of"). Here, the factual allegations confirm that Defendant made a lawful sale and did not participate in the incident at issue, which was solely caused by the intentional and criminal acts of the shooter. Therefore, KRS 411.150 does not apply as a matter of law.

IV. Plaintiffs Fail to State a Claim Under Kentucky Law.

A. Permitting Plaintiffs' Negligence Claim Would Create Limitless Liability.

Even if not barred by the PLCAA, Plaintiffs' negligence claim should still be dismissed. Plaintiffs argue that there was a heightened duty on River City to prevent the shooter's intentional and criminal acts, but case law belies this contention. In this regard, Plaintiffs rely on T&M Jewelry, Inc. v. Hicks to argue that under Kentucky law there are "special obligations" on a firearm seller. (Plt. Opp. at p. 23.) However, what the Supreme Court of Kentucky really said in Hicks

was that:

> The Gun Control Act regulates the means by which lawful ownership of handguns may be acquired through licensed dealers. These regulations have a direct bearing on our view of foreseeability. . . . A seller or dealer of an ordinary product normally has no obligation to evaluate the buyer is fit to possess the product being sold. However, because of the dangerous nature of handguns, the Gun Control Act imposes special obligations on the licensed dealers that sell handguns.

189 S.W.3d 526, 531-32. Thus, the duty on a firearm seller was defined by the provisions of the Gun Control Act. In Hicks, the Gun Control Act provided the proper standard for a negligence claim brought under such circumstances, and the negligence claim was allowed to proceed because the seller violated the Gun Control Act when it sold a firearm to someone underage. The opposite situation exists in this case. As Plaintiffs concede, Defendant did not violate the Gun Control Act or any other law related to the subject sale.

B. Plaintiffs Cannot Establish Causation as a Matter of Law.

Although Plaintiffs acknowledge that Kentucky recognizes the superseding intervening cause doctrine, they argue that application of this doctrine should await summary judgment. (Plts. Opp. at p. 27-28.) However, based on Plaintiffs' pleadings, it is apparent that the doctrine applies and Plaintiffs' claims should be dismissed. As noted, the alleged facts establish that the rifle and components were purchased in conformity with all applicable laws and that the shooter unlawfully and intentionally utilized the rifle to shoot people on the day of the incident.

CONCLUSION

Based on the foregoing arguments and authorities, as well as the arguments contained in its original Motion, Defendant River City respectfully submits that Plaintiffs' lawsuit should be dismissed for failing to state a claim upon which relief may be granted.

Dated: August 19, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

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