CASE NO: 24-CI-000518
(C/W CASE NO. 24-CI-002451 and 24-CI-002351)

JEFFERSON CIRCUIT COURT
DIVISION: SEVEN (7)
JUDGE MELISSA LOGAN BELLOWS

ELECTRONICALLY FILED

DANA MITCHELL, et al. PLAINTIFFS

vs.

MOTION OF DEFENDANT MAGPUL INDUSTRIES CORPORATION FOR JUDGMENT ON THE PLEADINGS

RIVER CITY FIREARMS, INC., et al. DEFENDANTS

* * * * * * * *

COMES NOW Defendant, Magpul Industries Corporation ("Magpul"), by and through counsel, and respectfully moves the Court for Judgment on the Pleadings pursuant to CR 12.03. In pertinent part, CR 12.03 provides that a party "[a]fter the pleadings are closed but within such time as not to delay the trial . . . may move for judgment on the pleadings." Here, the pleadings are closed, and consideration of the Motion for Judgment on the Pleadings will not delay any trial. A Memorandum in Support of this Motion is tendered herewith.

WHEREFORE, for the reasons set forth in the accompanying Memorandum in Support of Motion for Judgment on the Pleadings, Mapgul respectfully requests that this Motion be granted, and that the claims against Magpul be dismissed with prejudice, and that Magpul receive all other just and equitable relief to which it may be entitled.

RESPECTFULLY SUBMITTED

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2026, a true and correct copy of the foregoing was filed via the Court's electronic filing system, which provides notice to all counsel of record and served upon the following counsel by email.

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DANA MITCHELL, et al. PLAINTIFFS

vs. **MEMORANDUM IN SUPPORT OF DEFENDANT, MAGPUL INDUSTRIES CORPORATION'S, MOTION FOR JUDGMENT ON THE PLEADINGS**

RIVER CITY FIREARMS, INC., et al. DEFENDANTS

****

COMES NOW, Magpul Industries Corporation ("Magpul"), and for its Memorandum in Support of Motion for Judgment on the Pleadings, respectfully states as follows:

I. INTRODUCTION AND SUMMARY OF ARGUMENT

On April 10, 2023, in a senseless act of horrific violence, the criminal murderer Connor Sturgeon killed five people and injured eight others at the Old National Bank in downtown Louisville. The Plaintiffs,[1] who are some of the victims of the shooting, filed their Complaints seeking retribution not from the shooter, Sturgeon, but from River City Firearms, Inc., ("River City") the store which sold Sturgeon the Radical Firearms RF-15 semi-automatic rifle used to commit these crimes, RSR Industries, Inc. ("RSR") a distributor alleged to have sold River City the magazines and grip purchased by Sturgeon when he bought the rifle, and Magpul, the manufacturer of the magazines and grip ultimately sold to Sturgeon by others.

While the claims against River City are tenuous at best, the Plaintiffs sued Magpul even though there is no allegation that Magpul's products malfunctioned, that Magpul acted illegally in

[1] The Plaintiffs are: Dana Mitchell, Julie Andersen, James E. Evans II, Stephanie Schwartz, Karen Tutt, Individually and as Administrator of the Estate of James Tutt, Jr., deceased, Jessica Barrick, Individually and as Next Friend and the Parent and Natural Guardian of C.G.B and J.P.B., and James M. Gilley, Jr., as Executor of the Estate of Joshua Barrick, deceased, Maryanne Elliott, Individually and as the Executrix of the Estate of Thomas K. Elliott, A'Lia Tazhia Chambers and J'Yeon Christopher Chambers, as the Administrators of the Estate of Juliana Marie Farmer, and Michael Eckert, Individually and as Administrator of the Estate of Judy Dean "Deana" Eckert.

manufacturing the products, or that Magpul had any interaction whatsoever with the criminal Sturgeon. Instead, the Plaintiffs accuse Magpul of "failing to implement reasonable controls" and "ensuring that their products were not sold to individuals who posed a risk to themselves or others" effectively imputing strict liability on Magpul for the actions of the criminal, Sturgeon.

These claims, brought not against the criminal who harmed the victims and their families, but against the manufacturer who had no interaction with the criminal, are plainly in the category of suits that Congress—and now the Kentucky General Assembly—has barred from the courts. In response to similar lawsuits, Congress enacted the Protection of Lawful Commerce in Arms Act (15 U.S.C. § 7901 - 7903 – the "PLCAA") in 2005, which confers broad immunity from claims against the firearms industry for suits arising from the unlawful misuse of its products by third parties. Kentucky has just reaffirmed that effort in the Kentucky PLCAA Clarification Act, House Bill 78 (attached as Exhibit A)[2] which complements the federal PLCAA by adding procedural provisions ensuring prompt grants of immunity and clarifies how certain disputed definitions in the federal PLCAA are to be interpreted in the Commonwealth.

Plaintiffs have suffered grave harm. But blame is not appropriately placed—and indeed, *cannot* be placed consistent with federal and State law—upon Magpul, who is alleged to have done nothing more than manufacture and sell its legal products in a legal manner.

In *any* case, such an effort would be foreclosed by ordinary tort principles of duty, causation and other familiar requirements for imposing civil liability. Indeed, if the claims against Magpul were allowed to stand, Jim Beam would face liability for distilling bourbon and selling it to a distributor, which in turn sold bourbon to a retail liquor store, which in turn sold a bottle of

[2] While Section 2 of the Kentucky PLCAA states that it shall apply to any qualified civil liability action filed on or after the effective date of the act, its passage clearly evidences the General Assembly's intention to completely foreclose this type of vexatious litigation in the Commonwealth.

bourbon to an individual who later drove drunk and killed another driver. In *this* case, the result is even clearer, because Congress and now the Kentucky General Assembly has spoken directly to the question by affording manufacturers in the firearm industry immunity from suits *exactly like this one*. Indeed, Congress foresaw the very kind of suit Plaintiffs bring here: a suit based on a series of events, actions, and wrongs undertaken by a criminal third party yet seeking damages from a manufacturer who did nothing but manufacture legal products in the ordinary course of its business. That the PLCAA is now complemented by the Kentucky PLCAA shows that it is the policy of the Commonwealth to stop these claims in their tracks. The Plaintiffs have brought the very type of suit that Congress expressly foreclosed, and the claims against Magpul must be dismissed.

To be sure, an earlier decision by Judge Perry denied motions to dismiss filed by all three Defendants in a single opinion. *See* Opinion and Order (May 19, 2025), attached as Exhibit "B". But that opinion: (1) did not have the benefit of the Kentucky General Assembly's recent clarification for how the PLCAA should be interpreted in this Commonwealth, and (2) was, by its own terms, tentative in nature given the early posture of the case at that time. The opinion made clear:

> It is important at the outset to note the procedural posture of the case. This is a Motion to Dismiss brought before any discovery has been completed. As such, the bar for defense success is extremely high . . . . [because] Kentucky is a notice pleading jurisdiction . . . . [i]t is in that context that the Court [denied the motions.]

Id. at 2 (cleaned up). While we respectfully submit this reasoning misunderstood and misapplied the PLCAA without the need for clarification, following the Kentucky General Assembly's passage of the Kentucky PLCAA Clarification Act, House Bill 78, the fact that the PLCAA provides immunity and requires early dismissal despite the early procedural posture of the case is now crystal clear. Of course, this case is no longer in that early posture. Magpul has been subject to sweeping, extraordinarily expensive, discovery demands, has litigated discovery disputes before the Court (with more to come). The time has now come for Magpul to be dismissed from this lawsuit.

II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On January 22, 2024, the Mitchell Plaintiffs filed a Complaint against River City. The Mitchell Plaintiffs filed an Amended Complaint ("Mitchell Am. Compl.") on April 8, 2024 to add RSR and Magpul as further defendants. On April 3, 2024, Zurich American Insurance Company as subrogee of certain victims filed a Complaint against River City. The Elliott Plaintiffs filed their Complaint on April 8, 2024, against River City, RSR, and Magpul ("Elliott Compl."). On May 6, 2024, the Zurich Plaintiffs filed an Amended Complaint adding RSR and Magpul as Defendants. The Mitchell and Elliott Plaintiffs assert five causes of action against Magpul: (1) negligence; (2) wrongful death; (3) loss of spousal consortium; (4) loss of parental consortium (Mitchell Plaintiffs only); and (5) relief under KRS 411.150. The Zurich Complaint raises causes of action against Magpul for negligence only.[3]

In their Complaints, the Plaintiffs allege that River City sold Sturgeon the Radical Firearms rifle used in the shooting, together with three (3) magazines and a vertical grip manufactured by Magpul. Mitchell Am. Compl. ¶ 60; Elliott Compl. ¶ 60. The Plaintiffs accurately recite the chain of commerce and Magpul's distance and complete separation from the ultimate sale to Sturgeon: Magpul manufactured the magazines and grip and sold them to a federally licensed distributor, RSR; In turn, RSR, sold them to a federally licensed retailer, River City. Mitchell Am. Compl. ¶¶ 26–28, 78; Elliott Compl. ¶¶ 27–29, 77. Sturgeon in turn chose to use the legally manufactured and acquired products to commit a heinous violent crime.

[3] Each of the Mitchell Am. Compl., Elliott Compl. and the Zurich Complaint assert the foregoing claims against all other defendants, and a claim for negligent entrustment against River City only.

Plaintiffs allege that "River City has a legal duty to not sell guns to prospective purchasers whom it knows, or reasonably should know, pose an unreasonable risk of harm to themselves or others." Mitchell Am. Compl. ¶ 6; Elliott Compl. ¶ 10. For Magpul, which had no interaction with either Sturgeon or River City, Plaintiffs' claims are intentionally vague and opaque. Plaintiffs aver that Magpul "owed and owe the general duty imposed on all persons and entities to act reasonably and not to expose others to foreseeable risks of injury" – as if Magpul could reasonably foresee the harm complained of following the legitimate and legal sale of its products to a federally regulated distributor, which in turn made a legal sale to a federally licensed retailer. Mitchell Am. Compl. ¶ 124; Elliott Compl. ¶ 121.

On May 19, 2025—approximately one year *before* the Kentucky General Assembly passed the Kentucky PLCAA Clarification Act—Judge Perry denied motions to dismiss based on the PLCAA brought by all three Defendants. He reasoned in a single opinion, in relevant part, that the "[t]he Plaintiffs here have carefully crafted their Complaint to avoid the protections of the PLCAA," Ex. B at 3, and he was bound to accept all of the Plaintiffs' factual allegations at the motion to dismiss stage. *See id.* at 8. Judge Perry concluded that the Court "cannot say that the large-capacity magazine is a component part" to trigger the PLCAA, *id.* at 4.

Since Judge Perry declined to grant PLCAA immunity, the parties have been engaged in protracted, contentious, and extremely expensive, discovery disputes, which remain ongoing. There have been multiple motions to compel. Magpul has been forced to collect over a terabyte of data, to review documents from over 20 custodians and numerous databases and document repositories, with Plaintiffs demanding even more. Magpul has run over 292 searches through its collected data to identify responsive documents, and has spent hundreds of hours and hundreds of thousands of dollars attempting to appease Plaintiffs' discovery demands. Plaintiffs have engaged an alleged ESI discovery expert forcing Magpul to engage its own expert, and there have been numerous meet and confers and written correspondence exchanged regarding the appropriate format for collecting and producing documents, what metadata fields and file path information must be provided, and how data is stored and retained for purposes of production. This is before Plaintiffs have noticed even a single deposition or even scratched the surface on their own discovery obligations.

III. ARGUMENT

Kentucky's "Civil Rule 12.03 provides that any party to a lawsuit may move for a judgment on the pleadings." *City of Pioneer Village v. Bullitt Cnty.*, 104 S.W.3d 757, 759 (Ky. 2003). A judgment on the pleadings "should be granted if it appears beyond doubt that the nonmoving party cannot prove any set of facts that would entitle him/her to relief." *Id.* "[T]he circuit court is not required to make any factual determination; rather, the question is purely a matter of law." *James v. Wilson*, 95 S.W.3d 875, 883–84 (Ky. App. 2002).

To foreclose suits like this one, Congress spoke with a clear voice in the PLCAA: "A qualified civil liability action *may not be brought* in any Federal or State court." 15 U.S.C. § 7902(a) (emphasis added). The law is remarkably direct: "Lawsuits have been commenced against manufacturers . . . of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals." 15 U.S.C. § 7901(a)(3). The PLCAA "prohibit[s] [these] causes of action." *Id.* § 7901(b)(1). Indeed, PLCAA immunity must be recognized at the *earliest* possible point in a lawsuit, even if state pleading standards may encourage that suits remain live for further factual development.

The PLCAA explicitly guarantees "immunity from suit," not just a defense or an "immunity from liability." *Atlantica Holdings, Inc. v. Sovereign Wealth Fund Samruk-Kazyna JSC*, 813 F.3d 98, 116 (2nd Cir. 2016). "Congress intended courts to weed out, *expeditiously*, claims the PLCAA bars." *Jefferies v. District of Columbia*, 916 F. Supp. 2d 42, 47 (D.D.C. 2013) (emphasis added). And "[t]hat intent is not served by allowing an action barred by the PLCAA to proceed to trial only to be inevitably reversed on appeal, regardless of the procedural device the defendant utilizes to seek dismissal." *In re Acad., Ltd.*, 625 S.W.3d 19, 34–35 (Tex. 2021). The Kentucky General Assembly has recently reaffirmed this straightforward conclusion through the Kentucky PLCAA Clarification Act, and unmistakably instructs courts that the relatively loose pleading standard normally afforded plaintiffs in Kentucky state courts should not impede the proper application of the PLCAA at an early juncture of the litigation.[4]

This makes sense. The entire point of immunity from suit is to prevent the Defendants from being subjected to the burdens of discovery, motions practice, and trial. Magpul should not have had to face those burdens for so long in this case, but at the very least should not be subject to more. In the PLCAA, Congress took the extraordinary step of directing that all qualified suits pending when the statute took effect be "immediately dismissed." 15 U.S.C. § 7902(b). The PLCAA's protections are absolute—the statute prohibits covered suits from being filed in any state or federal court. The claims against Magpul should never have reached this stage but certainly should go no further. Judicial economy would be well served by prompt consideration and dismissal, especially given the ongoing and complex discovery disputes between the parties.

But even if Magpul were not immune under the PLCAA, plaintiffs' common law claims should be dismissed for several other reasons. First, Plaintiffs have failed to adequately allege causation. Second, Plaintiffs' factual allegations do not support a violation of any statute. Finally, Plaintiffs' claims for punitive damages must be dismissed because they do not constitute an

[4] Although the Kentucky PLCAA Clarification Act provides further support for a straightforward application of the PLCAA here, it is not necessary for the dismissal of Plaintiff's claims against Magpul. The federal PLCAA confers Magpul complete immunity from suit.

independent basis on which relief can be granted, and the conclusory allegations in the Complaints do not come close to meeting the high threshold to justify punitive damages.

A. The PLCAA Requires Dismissal Of The Complaints.

Congress passed the PLCAA in 2005 to address the specific problem of lawsuits brought by plaintiffs against America's firearms industry for harms resulting from the misuse of legal products by criminals. 15 U.S.C. § 7901(a)(3).

To remedy that problem, Congress declared that law-abiding firearm companies could not be held "liable for the harm caused by those who criminally or unlawfully misuse firearm products." *Id*. § 7901(a)(5). Congress reasoned that if a manufacturer complies with the "heav[y]" array of regulations governing the firearms industry, *id*. § 7901(a)(4), it should not also be held liable in a "civil action" for injuries "resulting from the criminal or unlawful misuse" of legal products, *id*. § 7903(5)(A).

In addition to this broadly stated grant of immunity, Congress specified its purposes in passing the PLCAA. The Act intended to foreclose the "possibility of imposing liability on an entire industry for harm that is solely caused by others," which is "an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, [and] invites the disassembly and destabilization of other industries[.]" *Id.* § 7901(a)(6). Based upon the express purposes stated therein, Congress enacted the PLCAA to prohibit qualified civil liability actions, such as this case, from being "brought in any Federal or State court." *Id.* § 7902(a).

The PLCAA establishes complete statutory immunity from suit. Where the PLCAA applies, no covered action may be "brought" in "any Federal or State court." *Id*. The PLCAA also includes, as relevant here, one narrow exception to its broad grant of immunity. What is often called the PLCAA's "predicate exception" permits suit only when a company "knowingly" violates a state or federal firearms law, *and* that violation "was a proximate cause" of whatever harm the suit alleges. *Id*. § 7903(5)(A)(iii).

Applying Congress's instructions, the face of the Complaints make evident that the Plaintiffs' claims are prohibited "qualified civil liability action[s]" under the PLCAA. *See id.* § 7903(5)(A). The component parts Magpul manufactured are "qualified product[s]" under the PLCAA and the claims are predicated upon the underlying criminal acts of the purchaser of the products. Accordingly, the Complaints seek damages from Magpul "resulting from the criminal or unlawful misuse" of their products and must be dismissed. *See id*.

1. This Case is a Qualified Civil Liability Action

As defined by the PLCAA, and subject to only limited exceptions, a "qualified civil liability action" barred in state or federal court is a "civil action . . . brought by any person against a manufacturer or seller of a qualified product . . . for damages, punitive damages, injunctive or declaratory relief, . . . or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party . . . ." *Id*. There is no legitimate dispute that Magpul is a manufacturer[5] subject to the protections of the PLCAA. The Plaintiffs readily concede that the alleged damages and other relief sought by the Plaintiffs resulted from the criminal misuse—the murder of five innocent people and intentional injuring of eight additional people—of qualified products by a third party, the murderer Sturgeon.[6] Based on the allegations in the Complaints, this case is a civil proceeding brought by persons (Plaintiffs) against a manufacturer (Magpul) of qualified products (the magazine and grip component parts) for damages and other

[5] A "manufacturer," under the PLCAA is "a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of Title 18 [United States Code.]" 15 U.S.C. § 7903(2). Chapter 44 of title 18 of the United States Code, in turn, defines a manufacturer as "any person engaged in the business of manufacturing firearms," including component parts of firearms, "for purposes of sale or distribution; and the term 'licensed manufacturer' means any such person licensed under the provisions of this chapter." 18 U.S.C. § 921(a)(10).

[6] Sturgeon's actions plainly violate several criminal laws including KRS 507.020 and KRS 508.010.

relief based on the criminal misuse of the qualified products (the April 10, 2023 murders) by a third party (Sturgeon).

2. The Component Parts are Qualified Products

The PLCAA defines a "qualified product," the manufacture of which gives rise to PLCAA immunity, to include a "component part of a firearm." 15 U.S.C. § 7903(4). Taking the allegations in the Complaints as true, the relevant parts of the firearm at issue here: firearm magazines and a firearm grip are plainly both component parts of a firearm and thus qualified products for purposes of the PLCAA. The Complaints allege that the magazine is an "ammunition-feeding device[] that contain[s] the unfired rounds" that can be "fire[d] before having to reload [the] weapon." Mitchell Am. Compl. ¶ 70; Elliott Compl. ¶ 70. The grip is alleged to be "affixed to the rifle's lower rail for the shooter to grasp, reducing recoil and allowing for greater control" and "stability." Mitchell Am. Compl. ¶ 64; Elliott Compl. ¶ 64.

Courts have confirmed the straightforward conclusion that such parts of a firearm are component parts for purposes of the PLCAA. *See*, *e.g.*, *Prescott v. Slide Fire Sols., LP*, 341 F. Supp. 3d 1175, 1189 (D. Nev. 2018) (holding that an aftermarket stock is qualified product defined by PLCAA); *In re Acad.*, 625 S.W.3d at 29 (holding that a magazine is a qualified part for purposes of the PLCAA). Indeed, magazines and other analogous parts have been held to be not only component parts but themselves "Arms" covered by the Second Amendment's protections. *See, e.g.*, *Ass'n of N.J. Rifle & Pistol Clubs v. Att'y Gen. of N.J.*, 910 F.3d 106, 116 (3d Cir. 2018), *abrogated by N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022) (holding magazines are "arms"); *Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1117 (S.D. Cal. 2017), *aff'd*, 742 Fed. App'x 218 (9th Cir. 2018) ("Without protection for the closely related right to keep and bear ammunition magazines for use with the arms designed to use such magazines, 'the Second Amendment would be toothless.'" (quoting *Luis v. United States*, 578 U.S. 5, 27 (2016) (Thomas, J., concurring))); *accord United States v. Miller*, 307 U.S. 174, 180 (1939).

The common understanding of the words "component part" establishes the same conclusion. A "component" is a "part that combines with other parts to form something bigger." *Component*, CAMBRIDGE DICTIONARY, https://perma.cc/V4T7-4AA8. And a "part" is a "separate piece of something, or a piece that combines with other pieces to form the whole of something." *Part*, CAMBRIDGE DICTIONARY, https://perma.cc/2CY3-NTSA. Both a magazine and a grip combine with other parts to ultimately form part of a firearm, and they are both component parts. So intuitive are the commonly used meanings for component part, the Kentucky PLCAA Clarification Act explicitly incorporates them in including "magazines or clips, optical devices, or other products intended to be included in, attached to or used while attached to, or in conjunction with, a firearm or ammunition" within the definition of a "qualified product."[7] *See*, Ex. A. at 4.

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In sum, Plaintiffs have brought a qualified civil liability action as defined by the PLCAA—a suit from which federal and state law provide Magpul complete immunity.

3. The Complaints Do Not Satisfy Any Exceptions to the PLCAA

There are six narrow categories of claims that the PLCAA excludes from the definition of a qualified civil liability action and therefore does not bar. None apply here. These exceptions include:

> (i) an action brought against a transferor convicted under section 924(h) of title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

[7] The earlier decision from Division Three, which carved out magazines and grips from the protections of the PLCAA by referring to them as "accessories" – a term used nowhere in the PLCAA – did not have the benefit of the Kentucky PLCAA's later-in-time explanation for how these statutory terms should be interpreted.

> (ii) an action brought against a seller for negligent entrustment or negligence per se;
>
> (iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—
>
> > (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
> >
> > (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18;
>
> (iv) an action for breach of contract or warranty in connection with the purchase of the product;
>
> (v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or
>
> (vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26.

15 U.S.C. § 7903(5)(A). Subsection (i) does not apply as there are no allegations of criminal activity on behalf of Magpul. Similarly, subsection (ii) applies only to "sellers," not a

"manufacturer" such as Magpul. [8] The claims against Magpul do not involve breach of contract or warranty; design or defect of the products, required by subsections (iv) and (v), and this is not an action brought by the Attorney General required by subsection (vi).

4. Plaintiffs' KRS 411.150 Claims do Not Meet the Requirements for the Predicate Exception

Nor can Plaintiffs invoke the PLCAA's exception in Section 7903(5)(A)(iii) for knowing violations of laws related to the selling and marketing of firearms. Because this exception requires the violation of another predicate statute, this exception is often referred to as the "predicate exception." *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 403–04 (2d Cir. 2008). The logic of the predicate exception is that a firearm manufacturer that would be otherwise immune from suit under the PLCAA *may* face liability if the manufacturer has itself violated a law relating to the manufacture of firearms "and the violation was a proximate cause of the harm for which relief is sought…" 15 U.S.C. § 7903(5)(A)(iii). The predicate exception must be read "narrowly," and does not permit the Plaintiffs to pursue causes of action *unless* the state legislature has expressly permitted such a cause of action through "statutes that actually regulate the firearms industry." *Beretta*, 524 F.3d at 403-04. Courts have made clear that the PLCAA prohibits claims based on statutes of general applicability. *Id.* at 400–04.

Kentucky's PLCAA Clarification Act confirms the longstanding principle that the predicate exception is exceedingly narrow. The law specifies that "[a]ny public nuisance law" and "[a]ny general law of this Commonwealth" may *not* satisfy the predicate exception. Ex. A. at 6.

The PLCAA gives specific examples of the types of statutes that may apply to the sale or marketing of firearms and may be used to satisfy the predicate exception:

> (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or

[8] Plaintiffs assert their negligent entrustment claims only against River City, not Magpul.

> conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
>
> (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18[.]

15 U.S.C. § 7903(5)(A)(iii). Based on this text, federal appellate courts have held that the predicate exception may only be satisfied by the violation of statutes that specifically regulate the firearms industry, not general statutes that are applicable to the firearms industry along with everyone else.

In *Beretta*, the Second Circuit held that an alleged violation of a nuisance statute, N.Y. Penal Law § 240.45(1), could not satisfy the predicate exception to PLCAA. 524 F.3d 384. The court held that Section 240.45(1) is a "statute of general applicability that does not encompass the conduct of firearms manufacturers," and therefore could not be used to satisfy the predicate exception. *Beretta*, 524 F.3d at 400. The court explained that the predicate exception can be satisfied only by the violation of a statute that: (1) "expressly regulate firearms"; (2) "courts have applied to the sale and marketing of firearms"; or (3) "clearly can be said to implicate the purchase and sale of firearms." *Id.* at 404.

The PLCAA preempts any claims brought under a general negligence theory or requiring a showing of negligence. *See Ileto v. Glock, Inc.*, 565 F.3d 1126, 1135 (9th Cir. 2009) (PLCAA preempts general negligence claims); *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 322 (Mo. 2016) ("PLCAA expressly preempts all general negligence actions seeking damages resulting from the criminal or unlawful use of a firearm"); *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 386 (Alaska 2013) ("reading a general negligence exception into the statute would make the negligence per se and negligent entrustment exceptions a surplusage"). The opinion by the Ninth Circuit in *Ileto*, holding that the PLCAA barred claims by shooting victims against gun manufacturers, is particularly instructive. The *Ileto* court held that the PLCAA reflected that "Congress intended to preempt general tort law[.]" 565 F.3d at 1138. And a suit brought under a statute that merely codifies a tort claim cannot be a predicate statute under the PLCAA. *Id.* at 1136–38. Codified torts that remain subject to "the same 'judicial evolution' as ordinary common-law claims" are "precisely the target of the PLCAA," and must be dismissed. *Id*.

Both wrongful death claims (based on KRS 411.130) and loss of consortium claims (based on KRS 411.145) require proof of an underlying tort such as negligence. *See*, *e.g.*, *Pete v. Anderson*, 413 S.W.3d 291, 303 (Ky. 2013) ("All three claims—wrongful death, loss of spousal consortium, and loss of parental consortium—depend on proving that the death was negligently caused." (Noble, J., concurring in part and dissenting in part)); *Martin v. Ohio Cnty. Hosp. Corp.*, 295 S.W.3d 104, 107 (Ky. 2009) (noting that a loss of consortium claim must be based on negligent or wrongful conduct); *Johnson v. Basil as Next Friend of Johnson*, 584 S.W.3d 777, 781 (Ky. Ct. App. 2019) (explaining that the required elements of a wrongful death claim include "injury inflicted by the negligence or wrongful act"). Plaintiffs' claims for wrongful death and loss of consortium are premised on the alleged negligence of Magpul and similarly fail to satisfy an exception to the PLCAA.

The only other statute referenced in the Complaints is KRS 411.150, which governs a cause of action over those "aiding or promoting" a killing, discussed further *infra*. This is not a statute applicable to the sale or marketing of firearms and component parts for firearms and is therefore not capable of satisfying the predicate exception to the PLCAA. Simply put, there are no exceptions to the PLCAA that would allow the claims against Magpul to proceed.

B. ALTERNATIVELY, PLAINTIFFS' CLAIMS FOR NEGLIGENCE, WRONGFUL DEATH, AND LOSS OF CONSORTIUM SHOULD BE DISMISSED

In addition to being barred outright by the immunity provided by the PLCAA, Plaintiffs' claims for negligence, wrongful death, and loss of consortium should also be dismissed for another independent reason: Plaintiffs cannot establish duty or causation.

1. Plaintiffs Cannot Establish Duty or Causation as Required for their Negligence, Wrongful Death, and Loss of Consortium Claims

Under Kentucky law, a claim based on negligence requires proof that: the defendant owed a duty of care; the defendant breached that duty; and the breach caused the injury. *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 88 (Ky. 2003). Here, the Plaintiffs must make a threshold showing that Magpul owed them a duty. *Smith v. Smith*, 563 S.W.3d 14, 16 (Ky. 2018) ("The first step in proving negligence is determining what duty, if any, the defendant owed the plaintiff."). Whether a duty exists is a question of law. *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 248 (Ky. 1992). The Plaintiffs claims rest on the notion that somehow Magpul had a duty to prevent a wholesale distributor from selling Magpul products to another retailer, who might legally sell Magpul products to a patron who in turn would use those products in a mass murder. That no duty exists in such circumstances has already been firmly decided by Kentucky's highest court. "As a general rule, an actor whose own conduct has not created a risk of harm has no duty to control the conduct of a third person to prevent him from causing harm to another." *Grand Aerie Fraternal Order of Eagles v. Carneyhan*, 169 S.W.3d 840, 849 (Ky. 2005).

Causation has two elements, but-for causation (cause in fact) and proximate causation (legal cause). *Howard v. Spradlin*, 562 S.W.3d 281, 287–88 (Ky. Ct. App. 2018). "But-for causation requires the existence of a direct, distinct, and identifiable nexus between the defendant's breach of duty (negligence) and the plaintiff's damages such that the event would not have occurred 'but for' the defendant's negligent or wrongful conduct in breach of a duty." *Patton v. Bickford*, 529 S.W.3d 717, 730 (Ky. 2016). In the present case, the allegations in the Complaints do not even establish but-for causation—there is nothing to indicate that the shooting would not have occurred if the murderer did not have the component parts.

Legal cause is a question of law for the Court in this case. "'Legal causation," which goes to degree of causation and includes an element of foreseeability, "presents a question of law when 'there is no dispute about the essential facts and [only] one conclusion may reasonably be drawn from the evidence.'" *Pathways*, 113 S.W.3d at 91–92 (quoting *McCoy v. Carter, Ky.*, 323 S.W.2d 210, 215 (1959)). Importantly, legal causation must be established by "sufficient proof to tilt the balance from *possibility* to *probability*." *Briner v. Gen. Motors Corp.*, 461 S.W.2d 99, 102 (Ky. 1970) (emphasis added).

Even if Plaintiffs had sufficiently alleged duty and breach, they cannot establish causation for two distinct reasons: (1) their conduct is not a legal cause of Plaintiffs' injuries; and (2) even if their conduct was a legal cause of Plaintiffs' injuries, the shooting was a superseding, intervening cause. Plaintiffs' claims for negligence, wrongful death, and loss of consortium against Magpul must be dismissed because Sturgeon's criminal murders were an intervening, superseding cause of Plaintiffs' harm. "The superseding intervening cause doctrine interplays with proximate causation in that a superseding cause breaks the chain of causation so that an otherwise negligent actor is relieved from liability." *Howard*, 562 S.W.3d at 288.

The Kentucky Court of Appeals has explained that a "superseding cause will possess the following attributes":

> 1) an act or event that intervenes between the original act and the injury;
>
> 2) the intervening act or event must be of independent origin, unassociated with the original act;

> 3) the intervening act or event must, itself, be capable of bringing about the injury;
>
> 4) the intervening act or event must not have been reasonably foreseeable by the original actor;
>
> 5) the intervening act or event involves the unforeseen negligence of a third party [one other than the first party original actor or the second party plaintiff] or the intervention of a natural force;
>
> 6) the original act must, in itself, be a substantial factor in causing the injury, not a remote cause. The original act must not merely create negligent condition or occasion; the distinction between a legal cause and a mere condition being foreseeability of injury.

NKC Hospitals, Inc. v. Anthony, 849 S.W.2d 564, 568 (Ky. Ct. App. 1993)

Sturgeon's criminal murders constitute an obvious superseding, intervening act that broke any causal chain that could potentially attribute the Plaintiffs' injuries to Magpul. First, Sturgeon's murders were an act or event that intervened between the original acts of Magpul manufacturing the component parts and selling them to a distributor. *Howard*, 562 S.W.3d at 288. Second, the murders were of independent origin, unassociated with Magpul and committed unilaterally by Sturgeon. *Id.* Third, Sturgeon's intentional crimes were not only capable of bringing about the injuries alleged in the Complaints—they were the direct and sole cause of those injuries. *Id.* Fourth, Magpul cannot be expected to foresee that its legal manufacture of legal products and sale to a wholesale distributor in accordance with the vast architecture of firearms regulations would result in products being used by a criminal to commit multiple murders. *Id.* Fifth, the shooting was caused by the unforeseen act of a third party, Sturgeon, which was not merely negligent, but intentionally criminal. *Id.* Plaintiffs' claims against Magpul for negligence, wrongful death, and loss of consortium fail for lack of causation.

C. PLAINTIFFS HAVE NOT ADEQUATELY PLEADED THEIR STATUTORY CLAIMS AGAINST MAGPUL

As discussed above, the statutory claims for wrongful death and loss of consortium rely on proof that the deaths were negligently caused. *Pete*, 413 S.W.3d at 303. Because the Plaintiffs cannot establish duty and causation, their negligence based statutory claims also fail. Plaintiffs' claims based on violation of KRS 411.150 for "aid[ing] or promot[ing]" Sturgeon's murder of their decedents should be dismissed for the reason that the facts alleged in the Complaints do not support a violation of that statute by Magpul. Mitchell Am. Compl. ¶¶ 161–64; Elliott Compl. ¶¶ 148–53.

It begs credulity to argue that Magpul aided or promoted Sturgeon's violent killings, and Plaintiffs cannot plausibly allege that it did. To be liable for "aiding or promoting" a killing "requires some active participation in the killing by the person so charged." *Self v. Mantooth*, No. 2011-CA-001161-MR, 2012 WL 4209929, at *6 (Ky. Ct. App. Sep. 21, 2012).[9] In *Mantooth*, the Court of Appeals examined the sparse caselaw interpreting this infrequently-applied provision, *Commonwealth v. Hurt*, 64 S.W. 911 (Ky. Ct. App. 1901), *Howard v. Caudill*, 15 S.W.2d 245 (1929), and *Casey v. Fidelity & Casualty Co. of New York*, 128 S.W.2d 939 (1939) in holding that KRS 411.150 only applies to active involvement in the actual killing, not merely furnishing a condition that allowed the person to commit the killing. *Mantooth*, 2012 WL 4209929, at *5–6.

As alleged by Plaintiffs, Magpul did nothing more than manufacture the component parts and sell them to a wholesale distributor who in turn sold the component parts to a firearm retailer who in turn sold the component parts to Sturgeon who in turn decided to use the legally manufactured parts in a violent criminal spree. There is no allegation that Magpul actively

[9] *Mantooth* is cited pursuant to RAP 41(A), as there is no published opinion of the Supreme Court or Court of Appeals that adequately addresses the point of law. It is not binding authority.

participated in Sturgeon's murders or had any interaction with him whatsoever. Plaintiffs' claims for violation of KRS 411.150 must be dismissed.

IV. CONCLUSION

For the foregoing reasons, this Court should grant judgment on the pleadings in Magpul's favor or, in the alternative, dismiss the Complaints with prejudice and grant such other relief as the Court deems just and proper.

Date: May 29, 2026

Respectfully submitted,

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I hereby certify that on May 29, 2026, a true and correct copy of the foregoing was filed via the Court's electronic filing system, which provides notice to all counsel of record and served upon the following counsel by email:

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EXHIBIT A

AN ACT relating to firearms liability protections and declaring an emergency.

WHEREAS, the Protection of Lawful Commerce in Arms Act, 15 U.S.C. secs. 7901 to 7903, provides essential protections to firearms manufacturers and sellers against certain lawsuits arising from criminal or unlawful use of their products; and

WHEREAS, recent litigation has demonstrated attempts to circumvent the protections afforded by the law through overly broad interpretations of the provided exceptions; and

WHEREAS, it is essential to ensure that firearms manufacturers and sellers are not unfairly held liable for the criminal misuse of their lawfully sold, legal products by defining terms and identifying when a claim may proceed under the laws of the Commonwealth of Kentucky;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Manufacturer" means any person engaged in the business of manufacturing a qualified product, including any and all owners, directors, officers, and employees of a manufacturer;

(b) "Negligent entrustment":

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

2. Does not include instances in which the harm was caused by a person who was not entrusted with the qualified product directly by the seller;

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(c) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity;

(d) "Proximate cause" means the requirement that the plaintiff was directly injured by the defendant's allegedly unlawful conduct;

(e) "Qualified civil liability action":

1. Means a civil action or proceeding, or an administrative proceeding, or any claim asserted in any action or proceeding, brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, including punitive damages, injunctive or declaratory relief, abatement, restitution, fines, penalties, or any other relief, resulting from, on the basis of, arising out of, or in relation to the criminal or unlawful misuse, alteration, or modification of a qualified product by the person or a third party, under any theory of liability, including but not limited to statutory claims, or claims arising from tort or contract; and

2. Does not include a claim:

a. Brought against a transferor convicted under 18 U.S.C. sec. 924(h), or a comparable or identical state felony law, by a party directly harmed by the conduct of which the transferee is convicted;

b. Brought against a seller for negligent entrustment or negligence per se;

c. In which a manufacturer or seller of a qualified product knowingly violated the Gun Control Act, 18 U.S.C. sec. 921 et seq., the National Firearms Act, 26 U.S.C. sec. 5801 et seq., the Arms Export Control Act, 22 U.S.C. sec. 2778 et seq., or the

Export Control Reform Act of 2018, 50 U.S.C. secs. 4801 to 4852, or any equivalent state statute that is intended to and exclusively does impose specific and concrete obligations on manufacturers and sellers regarding the manner in which qualified products are manufactured, distributed, or transferred to unlicensed persons, including the obligations in KRS Chapters 237 and 527, and the violation was the sole proximate cause of the harm for which relief is sought. This exception does not include claims premised on nuisance or negligence, whether based in statute or common law;

d. For breach of contract or warranty in connection with the purchase of the product; or

e. For death, physical injuries, or property damage resulting directly from a defect in design or manufacture of the product, when lawfully used as intended in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that meets the elements of a criminal offense, then the act shall be considered the sole proximate cause of any resulting death, personal injuries, or property damage.

The exceptions enumerated in this subparagraph shall not be construed to be in conflict, and this section shall not be construed to create a public or private cause of action, claim, or remedy. The enumerated exceptions in this subparagraph shall be construed to limit the scope of the claims available to the extent that they conflict with the statutory law or common law of this Commonwealth;

(f) "Qualified product" means a firearm as defined in KRS 237.060, ammunition as defined in KRS 237.060, or a component part of, or an

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accessory intended for use with, a firearm or ammunition, including but not limited to ammunition magazines or clips, optical devices, or other products intended to be included in, attached to or used while attached to, or in conjunction with, a firearm or ammunition;

(g) "Seller":

1. Means any person engaged in the business of selling a qualified product at wholesale or retail, including import and export, and includes all owners, directors, officers, and employees of the entity; and

2. Does not include entities that meet the definition of "manufacturer" in paragraph (a) of this subsection;

(h) "Trade association" means any corporation, unincorporated association, federation, business league, or professional or business organization:

1. That is not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

2. That is an organization described in 26 U.S.C. sec. 501(c)(6), and exempt from tax under 26 U.S.C. sec. 501(a); and

3. Two (2) or more members of which are manufacturers or sellers of a qualified product; and

(i) "Unlawful use" means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

(2) A qualified civil liability action shall not be brought against any manufacturer or seller of a qualified product, or trade association.

(3) This section expressly preempts any local statutes, laws, or regulations that specifically impose liability on qualified product manufacturers, sellers, or trade associations, or that attempt to do so in a generally applicable manner to the

extent the state or local law, statute, or regulation allows for civil actions, civil proceedings, and administrative proceedings for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, penalties, or other relief resulting from criminal misuse, alteration, or modification of a qualified product under any theory of liability, including but not limited to statutory claims or claims arising from tort or contract, except for causes of action expressly allowed in this section.

(4) (a) A claim premised on an exception to the immunity granted by this section shall plead with particularity the factual allegations providing the basis for the application of the exception, including but not limited to those necessary to establish scienter and proximate cause.

(b) Any qualified civil liability action or any action involving a claim premised on an exception to the immunity granted by subsection (1)(e)2. of this section shall allege particularized facts establishing that the manufacturer or seller of a qualified product, or trade association, was the proximate cause of the damages alleged. The court shall determine whether the particularized facts alleged by the plaintiff suffice to establish proximate cause as a matter of law.

(c) Any manufacturer or seller of a qualified product, or trade association, shall be permitted to make a special motion under this subsection for dismissal or for entry of summary judgment in any qualified civil liability action or any action involving a claim premised on an exception to the immunity granted by this section, which shall be heard within forty-five (45) days of the motion. If discovery is required to rule on the motion, the court may order a discovery period not to exceed sixty (60) days and the discovery shall be limited to the issues of whether the action is subject to dismissal under this section. Any denial of a special motion to dismiss or special

motion for summary judgment shall be immediately appealable, the appeal shall be expedited, and the timelines in this subsection shall be enforceable as of right by an action in mandamus in the Court of Appeals of Kentucky.

(5) Any manufacturer or seller of a qualified product, or trade association, harmed by a claim brought, maintained, or continued in violation of this section after the effective date of this Act may initiate a civil action in a court of competent jurisdiction and may seek against any party, or the party's attorney of record:

(a) Appropriate injunctive relief;

(b) Actual damages;

(c) Punitive damages if it is established that the defendant acted with actual malice or with willful misconduct;

(d) Costs; and

(e) Reasonable attorney's fees.

(6) Notwithstanding any other law to the contrary, the provisions of:

(a) KRS Chapter 367;

(b) Any public nuisance law; or

(c) Any general law of this Commonwealth;

shall not be considered as statutes intended to and exclusively imposing specific and concrete obligations on manufacturers and sellers regarding the manner in which qualified products are manufactured, distributed, or transferred to unlicensed persons for purposes of this section and shall not provide a basis to circumvent the explicit requirements of subsection (1)(e)2. of this section.

(7) A qualified civil liability action may not be brought in any court by a foreign state or government, and the exceptions to the immunity provided in this section shall not apply to claims brought by a foreign state or government.

(8) The Attorney General shall have authority to:

(a) Enforce the provisions of this section;

(b) Intervene in any civil action brought under this section; and

(c) Issue guidance to carry out the provisions of this section.

➔Section 2. This Act shall apply to any qualified civil liability actions, including any claims asserted in any qualified civil liability action, filed on or after the effective date of this Act against a manufacturer or seller of a qualified product, or trade association.

➔Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

➔Section 4. Whereas protection of the Second Amendment, and industries supporting the Second Amendment, is necessary and essential to fundamental liberty, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

EXHIBIT B

NO. 24-CI-0518

JEFFERSON CIRCUIT COURT
DIVISION THREE
JUDGE MITCH PERRY

DANA MITCHELL, et al. PLAINTIFFS

v.

RIVER CITY FIREARMS, INC., et al. DEFENDANTS

OPINION AND ORDER

This matter comes before the Court on Motions to Dismiss brought by all the Defendants. The parties have completed briefing, and the Court heard arguments from counsel. After careful consideration of the record and applicable law, the Court determines that the Defendants' Motion should be denied.

<u>Factual Background</u>

This case arises from one of the worst acts of mass violence this community has ever experienced. On April 10, 2023, five people were shot and killed at the Old National Bank building in downtown Louisville. Several others were seriously wounded. The shooter purchased the firearm he used, an AR-15, at River City Firearms six days beforehand on April 4, 2023. The shooter, who was allegedly a complete novice in regards to firearms, was additionally sold, during the same transaction, three large-capacity magazines, a red-dot sight, and a vertical grip to enhance his new firearm by River City.

The Plaintiffs have alleged in the Complaint that the shooter behaved erratically and suspiciously in River City Firearms such that another store patron contemplated calling the police. Instead of recognizing the outward manifestations of mental turmoil, the Plaintiffs allege that not only did River City sell the shooter a weapon not suited for his stated purpose of self-defense, but also upsold him enhancements to make the firearm even deadlier. The Plaintiffs further allege that Defendants Magpul, who manufactured the large-capacity magazine, and Defendant RSR, the distributor of the red-dot sight and vertical grip, incentivized upselling of these products by stores, regardless of the suitability or appropriateness for the customer.

The Plaintiffs contend that Magpul and RSR failed to adequately screen retailers who sell their products. The Plaintiffs assert that gun retailers are required to undergo training to recognize and identify individuals in distress who should not be allowed to purchase a firearm because they may be a threat to themselves or others. Specifically, the Plaintiffs allege that the store in this case, River City Firearms, was an irresponsible retailer. River City allegedly had an extensive history of regulatory issues with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as a disproportionate number of guns sold that were later recovered at crime scenes.

The Defendants have brought this Motion to Dismiss arguing that the Plaintiffs' claims are barred by federal law, the Protection of Lawful Commerce in Arms Act ("PLCAA"). The PLCAA provides immunity to manufacturers or sellers 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). The Defendants further argue that apart from the PLCAA, the Plaintiffs' claims are not recognized under state law. For the reasons discussed below, the Court disagrees with the Defendants' assertions here.

Legal Standard

In Kentucky, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief to which he deems himself to be entitled." CR 12.02(1). In deciding whether to grant a motion to dismiss, Kentucky trial courts must consider the pleadings in a light most favorable to the plaintiff and view the allegations set forth in the complaint as true. *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. App. 1987). The court should grant a motion to dismiss only when "it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Pari-Mutuel Clerks' Union v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977).

Legal Analysis

It is important at the outset to note the procedural posture of the case. This is a Motion to Dismiss brought before any discovery has been completed. As such, the bar for defense success is extremely high. "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). It is in that context that the Court proceeds with the analysis of the Defendants' Motion.

I. The PLCAA does not bar this action.

The PLCAA is a specialized federal law providing legal protection to the firearm industry. It bars lawsuits against a manufacturer or seller of a qualified product. 15 U.S.C. §§ 7902(a), 7903(5)(A). 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, the 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).

The Plaintiffs here have carefully crafted their Complaint to avoid the protections of the PLCAA. The Plaintiffs have brought a negligent entrustment claim against River City, which is one of the claims explicitly allowed under the PLCAA. Claims "brought against a seller for negligent entrustment" are one of the enumerated claims specifically exempted from PLCAA protection. *See* § 7903(5)(A)(ii). Further, the Plaintiffs' negligence claims are exclusively for the accessories sold to the shooter, not for the sale of the firearm itself. As explained further, none of the accessories are "qualified products" triggering PLCAA protection.

A. Negligent Entrustment specifically exempted from PLCAA protection.

As stated above, Negligent Entrustment actions are one of the few enumerated exceptions to the PLCAA. 15 U.S.C. § 7903(5)(A)(ii). The Defendants seem to take issue with the way the Plaintiffs have designed the Complaint to specifically avoid PLCAA protection. However, in Kentucky, a plaintiff is the master of his or her complaint. *Bradley v. Commonwealth ex rel. Cameron*, 653 S.W.3d 870, 879 (Ky. 2022). The Plaintiffs are free to craft their Complaint in whichever way they see fit, as long as it complies with the local and Civil Rules. It does so and is thus permissible.

B. Accessories are not "qualified products" under the PLCAA.

The more complex issue for the Court to resolve is whether the additional items sold with the firearm are qualified products under the PLCAA. Because they are accessories, and not component parts, they are not covered as qualified parts.

The PLCAA 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). *Green v. Kyung Chang Industry USA, Inc*., No. A-21-838762-C, 2022 WL 987555 (Nev. Dist. Ct. Mar. 23, 2022). The Plaintiffs contend, and the Court agrees, that the large-capacity magazines, the red-dot sight, and the vertical grip are all accessories rather than component parts.

The distinction between an "accessory" and a "component part" is a simple one. That is, whether the item in question enhances the firearm's effectiveness or aesthetics, or whether it is essential to the functioning of the firearm. *See, e.g.*, *Prescott*, 341 F. Supp. 3d at 1188. If it is the former it is an accessory, if the later, it is a component. Under this simple framework, it is plain that all the items in question here are accessories rather than component parts. The firearm can be fired and used without a large-capacity magazine, a red-dot sight, or a vertical grip. Those items instead only serve to augment the efficacy of the firearm.

The Defendants argue that the large-capacity magazines are component parts, and while it is a closer call than the other items the Court still disagrees. While it is true that courts have concluded that items that replace a part of the firearm become component parts, for example an aftermarket "bump" stock replacing the standard existing stock, the same does not hold true for this large-capacity magazine. *Prescott*, 341 F. Supp. 3d at 1189. This is largely because, as the Plaintiffs allege, the firearm in question here does not require any magazine in order to function and fire a shot. When, as here, the large-capacity magazine is sold separately, and the firearm does not even require a magazine to properly function, the Court cannot say that the large-capacity magazine is a component part.

In the Court's view, there is no question that both the sight and the grip are clearly accessories as well. The firearm plainly functions as intended without both. Instead, they make the firearm easier to use and more effective in that use. Therefore, as none of the items sold separately to the shooter are component parts, they are not eligible for protection under the PLCAA and the claims relating to those accessories may proceed against all Defendants.

II. The Plaintiffs have met the low bar to proceed under Kentucky law.

The Plaintiffs have brought claims under KRS 411.150, in addition to the negligent entrustment and general negligence claims against the Defendants. The Defendants have argued that the claim under KRS 411.150 against River City is precluded by the PLCAA, while the remaining state law claims are not cognizable.

A. KRS 411.150 Claim not precluded by PLCAA.

The Plaintiffs have brought a claim pursuant to KRS 411.150 against River City. KRS 411.150 states 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." River City contends that the PLCAA prevents this claim from preceding while the Plaintiffs assert that this claim meets the predicate exception of the PLCAA.

The 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). The Plaintiffs here are claiming that River City committed the predicate violation of KRS 411.150 by "aiding or promoting" the "malicious use of a deadly weapon" by supplying the allegedly disturbed shooter with the firearm and accessories to make the firearm even more deadly. The Court agrees with the Plaintiffs' reading of the law.

The Defendants' narrow reading of the predicate exception would effectively render it nonexistent. KRS 411.150 is clearly the type of statute envisioned when the predicate exception was codified. Whether River City knowingly violated KRS 411.150 through "aiding or promoting" the shooting is a fact question that must be decided after thorough discovery has occurred, and the record has been properly developed.

B. Negligence claims may proceed under state law.

The Plaintiffs have asserted claims of negligent entrustment against River City, general negligence against the remaining Defendants, the statutory KRS 411.150 claim previously discussed and seek punitive damages. The Court will briefly address each in turn.

1. Negligent Entrustment

Under the Restatement of Torts, which Kentucky courts have recognized, Section 390 explicitly provides that one who sells chattel to an unfit individual may be liable for negligent entrustment. Section 390 has been recognized as a basis for negligent entrustment liability by several Kentucky courts. *See Hercules Powder Co. v. Hicks*, 453 S.W.2d 583, 587 (Ky. 1970); *Burke Enters., Inc. v. Mitchell*, 700 S.W.2d 789, 793-94 (Ky. 1985). "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." *Hercules*, 453 S.W.2d at 587.

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The Plaintiffs argue that River City aided the shooter in his criminal actions by equipping him with a deadlier firearm than he needed, made even deadlier by the accessories they upsold him, even though they should have reasonably known through his demeanor, behavior, and statements at the store that he was likely to dangerously misuse the firearm. The Plaintiffs contend that the shooter's manner was so suspicious that a patron in the store at the time was seriously concerned enough to consider calling the police. As asserted by the Plaintiffs, these are signs that retailers like River City are trained to recognize and prevent. River City failed to do so in this case, to tragic results. When viewed in the light most favorable to the Plaintiffs, this is a viable claim of negligent entrustment.

2. General Negligence

The Court further finds that the Plaintiffs have demonstrated sufficient support to sustain their claims of negligence against the Defendants.

The Plaintiffs' allege that the distributor Defendants breached their duty of ordinary care by continuing to supply their products to allegedly irresponsible retailers, and failing to take reasonable steps to ensure their products were not being supplied to dangerous individuals through those retailers. Instead, the distributor Defendants incentivized upselling of these dangerous accessories. River City then allegedly breached its general duty of care by upselling these dangerous accessories to the shooter despite his allegedly open and obvious mental disturbance. It was thus foreseeable that through upselling and incentivizing the sale of these dangerous accessories through irresponsible retailers, these products were more likely to be used to injure and kill people.

Further, there is a sufficient connection between the Defendants' alleged breach of duty and the injuries sustained by the Plaintiffs, unbroken by any superseding actions. The Plaintiffs allege that the accessories were a substantial "but-for" cause of the scale of the injuries sustained as each accessory enhanced the lethalness of the firearm and enabled the shooter to wreak the havoc he did. Taking the allegations in the Complaint as true, the Court finds that there is a legally cognizable connection between the distributor Defendants incentivizing upselling of the accessories through irresponsible stores leading to an even deadlier catastrophe.

The Defendants argue that the criminal and intentional actions of the shooter are a superseding intervening cause that relieves them of liability. The Court disagrees. The fact that the shooter acted intentionally rather than negligently is not enough. "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)). Here, the hazard is that a noticeably disturbed person will be upsold dangerous accessories they do not need and embark on a murderous rampage, enabled and enhanced by those accessories. It was entirely foreseeable that this outcome would occur.

For these reasons, the Plaintiffs' general negligence claim may proceed as well.

C. KRS 411.150

The Plaintiffs' claims pursuant to KRS 411.150 have been discussed in greater depth previously, so the Court will not belabor the point here. The Court will add that an additional allegation in the Plaintiffs' Complaint relevant here is that River City did not merely provide the firearm and accessories to the shooter, but encouraged him to purchase those items. Taking the allegations in the Complaint as true, as this Court is required to do under this procedural posture, that is sufficient to establish "aiding or promoting" within the meaning of KRS 411.150.

D. Punitive Damages

It is plain that if a jury believes the allegations asserted by the Plaintiffs, then punitive damages are proper. The Plaintiffs appear to be proceeding under the gross negligence standard for punitive damages, and in the light most favorable to the Plaintiffs, they have clearly alleged a set of facts that a jury could find rise to the level of gross negligence. The Plaintiffs may therefore proceed with their claim for punitive damages as well.

E. Kentucky Product Liability Act

Finally, Defendant RSR has contended that the claims against it are barred by the Kentucky Product Liability Act. The Court respectfully disagrees that the KPLA is applicable to this case. The Plaintiffs are not alleging injury from a defect or flaw in the design or manufacture of the accessories here. Rather, the Plaintiffs are asserting claims for the harms caused by these properly functioning items being upsold to, and utilized by, a person who should not have had them. It is the business practices of the entities involved that is at issue here, not the design or manufacturing of the specific accessories themselves.

Conclusion

The Court again reiterates the procedural nature of the motion before it. The Court is required to take the allegations in the Complaint as true and view the record in the light most favorable to the Plaintiffs. That is what this Court has done here. The Plaintiffs have sufficiently pled their claims under the liberal pleading standards of this Commonwealth. The Court finds that the PLCAA does not provide immunity to the Defendants here, and that the Plaintiffs have appropriately pled and supported their claims under Kentucky law for negligence and statutory violations. As such, the litigation may continue in the ordinary course. The Court expects further well-developed dispositive motions as the record is established. Accordingly, with the Court being sufficiently advised;

IT IS ORDERED that the Defendants' Motion to Dismiss is **DENIED**.

HON. MITCH PERRY, JUDGE

CC: All counsel of record.

CASE NO: 24-CI-000518
(C/W CASE NO. 24-CI-002451 and 24-CI-002351)

JEFFERSON CIRCUIT COURT
DIVISION: SEVEN (7)
JUDGE MELISSA LOGAN BELLOWS

ELECTRONICALLY FILED

DANA MITCHELL, et al. PLAINTIFFS

vs. **ORDER**

RIVER CITY FIREARMS, INC., et al. DEFENDANTS

* * * * * * * *

This matter having come before the Court on the Motion of Magpul Industries Corporation ("Magpul"), for Judgment on the Pleadings pursuant to CR 12.03, the Court having reviewed the pleading filed herein, and the Court being otherwise duly advised;

IT IS HEREBY ORDERED that all claims asserted by Plaintiffs, Dana Mitchell, Julie Andersen, James E. Evans II, Stephanie Schwartz, Karen Tutt, Individually and as Administrator of the Estate of James Tutt, Jr., deceased, Jessica Barrick, Individually and as Next Friend and the Parent and Natural Guardian of C.G.B and J.P.B., and James M. Gilley, Jr., as Executor of the Estate of Joshua Barrick, deceased, in their Complaint filed on January 22, 224 and First Amended Complaint filed on April 8, 2024 against Magpul, be and hereby are dismissed with prejudice;

IT IS FURTHER ORDERED that all claims asserted by Plaintiffs, Maryanne Elliott, Individually and as the Executrix of the Estate of Thomas K. Elliott, A'Lia Tazhia Chambers and J'Yeon Christopher Chambers, as the Administrators of the Estate of Juliana Marie Farmer, and Michael Eckert, Individually and as Administrator of the Estate of Judy Dean "Deana" Eckert in their Complaint filed on April8, 2024 against Magpul, be and hereby are dismissed with prejudice;

IT IS FINALLY ORDERED that all claims asserted by Plaintiff, Zurich American Insurance Company, as subrogee of The Estate of Thomas Elliott, deceased, The Estate of Juliana

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Farmer, deceased, Dana Mitchell, Julie Anderson, The Estate of Judy Eckert, deceased, James Evans, Stephanie "Dallas" Schwartz, The Estate of James Tutt Jr., deceased, and The Estate of Joshua Barrick, deceased in the Complaint filed on April 3, 2024, be and hereby are dismissed with prejudice.

SO ORDERED THIS _____ DAY OF ______________, 2026.

____
JUDGE, JEFFERSON CIRCUIT COURT

Tendered by:

/s/ Michael P. Foley
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