

NO. 24-CI-000518

JEFFERSON CIRCUIT COURT  
DIVISION SEVEN (7)  
JUDGE MELISSA LOGAN BELLOWES

DANA MITCHELL, et al.,

PLAINTIFFS

V.

RIVER CITY FIREARMS, INC., et al.,

DEFENDANTS

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**MITCHELL AND ELLIOTT PLAINTIFFS' RESPONSE IN OPPOSITION TO  
RSR GROUP, INC.'S MOTION FOR JUDGMENT ON THE PLEADINGS**

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For the reasons set forth herein, Plaintiffs Dana Mitchell, Julie Andersen, James E. Evans II, Stephanie Schwartz, Karen Tutt, Jessica Barrick, James M. Gilly, Jr., Maryanne Elliott, A'lia Tazhia Chambers, J'yeon Christopher Chambers, and Michael Eckert hereby request that this Court deny the Motion for Judgment on the Pleadings brought by RSR Group, Inc.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to rule 401 of the Jefferson Rules of Practice, Plaintiffs hereby request oral argument on the subject motion, to occur on August 19, 2026.

**INTRODUCTION**

Plaintiffs—victims and survivors of the April 2023 mass shooting at Old National Bank in Louisville—filed these consolidated lawsuits against Defendants RSR Group, Inc., Magpul Industries Corp., and River City Firearms, Inc., in April 2024, for the role they played in bringing about Plaintiffs' injuries and the deaths of their loved ones. RSR and Magpul moved to dismiss the lawsuits in June 2024, making the same arguments that RSR makes here. On May 19, 2025, their motion was denied in full. Since then, the parties have been engaging in discovery and gradually building a record for trial.

But now this case has a new judge, and Defendants want a second bite at the apple. Never mind that Judge Mitch Perry already heard, and rejected, all their arguments. And never mind that (1) there has been no change in applicable law; (2) the pleadings today are exactly the same as they were the last time around, and (3) the standard of review is identical. Nevertheless, RSR brings its motion on the purported basis of an irrelevant Supreme Court decision from 2025 and the passage of a Kentucky statute, the “PLCAA Clarification Act of 2026,” which Defendants concede is not retroactive and is thus inapplicable here. *See* Ch. 177, 2026 Ky. Acts 2300, 2303 (stating that statute applies to “actions ... filed on or after the effective date of this Act”); *see also* Mem. Ex. 2, at 3; *infra* Section I.C.

In truth, RSR’s motion, like Magpul’s parallel one, is nothing more than an attempt to use this case’s transfer as an opportunity to revisit arguments that have already been soundly and persuasively rejected. But “a successor judge should use the greatest restraint and caution in reversing the judgment of a predecessor.” *Herring v. Moore*, 561 S.W.2d 95, 97 (Ky. Ct. App. 1977). This motion is not a worthy use of judicial resources, and the Court should deny it outright.

The motion also fails on the merits, as did Defendants’ motion to dismiss. As Judge Perry already found, the federal Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. §§ 7901-7903, does not shield RSR from this lawsuit because the products at issue are not covered by PLCAA. And as Judge Perry also found, Plaintiffs have adequately pleaded, under state law, that RSR’s negligent conduct foreseeably led to Plaintiffs’ injuries in the Old National Bank shooting. Because Judge Perry got it right in denying RSR’s original motion to dismiss, and because RSR offers no new persuasive argument to the contrary, the Court should deny the motion.

## STATEMENT OF THE CASE

### Factual Background

On April 4, 2023, a disturbed young man showing signs of a mental breakdown entered a gun store in Louisville because he wanted to obtain the firepower necessary to carry out a mass shooting. Am. Compl. ¶¶ 3, 5, 50-51; Elliott Compl. ¶¶ 9, 49-50. Inside the store, he behaved so suspiciously that another patron standing near him became concerned and contemplated calling the police. Am. Compl. ¶¶ 5, 55; Elliott Compl. ¶¶ 9, 54. A week later, when she heard about the shooting at Old National Bank, the patron correctly surmised that the shooter, Connor Sturgeon, had been the young man she had seen, even before he had been identified. Am. Compl. ¶ 59; Elliott Compl. ¶ 58.

The store that sold the gun to Sturgeon, River City Firearms, had repeatedly been identified by federal regulators as one of the top sellers of guns used in crime nationwide. Am. Compl. ¶¶ 43, 48; Elliott Compl. ¶¶ 42, 47. And despite the red flags exhibited by Sturgeon's behavior, the store readily sold him the weaponry he would need to carry out his plan. Am. Compl. ¶ 59; Elliott Compl. ¶ 58. But not only did it sell him the AR-15-style rifle he sought, it also encouraged him to enhance his firearm with an array of accessories favored by mass shooters, including three additional large-capacity magazines, a red-dot sight, and a vertical grip, all of which had been provided to River City by RSR. Am. Compl. ¶¶ 7, 60-61, 67; Elliott Compl. ¶¶ 11, 60-61, 67. The store also sold Sturgeon just enough ammunition to fill each of his magazines once. Am. Compl. ¶ 3; Elliott Compl. ¶ 6.

Just six days later, on April 10, 2023, Sturgeon carried his fully equipped AR-15 into his workplace, Old National Bank. Am. Compl. ¶ 86; Elliott Compl. ¶ 85. He encountered Dallas Schwartz in a hallway and shot her in the leg before proceeding to a conference room and massacring his colleagues while they began their Monday morning meeting. Am. Compl. ¶¶ 2, 10-11, 86-91; Elliott Compl. ¶¶ 6, 15-17, 85-90. Despite his total inexperience with firearms, Sturgeon was able to shoot and kill Jim Tutt, Josh Barrick, Tommy Elliott, Juliana Farmer, and Deana Eckert and shoot and

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wound Dana Mitchell and Julie Andersen. Am. Compl. ¶¶ 11, 19-20, 23-24, 74, 88, 90; Elliott Compl. ¶¶ 5, 16, 74, 88-90. After his initial assault, Sturgeon reloaded his weapon with a second large-capacity magazine and engaged in a firefight with responding law enforcement, during which he shot and wounded Jimmy Evans, as well as two police officers. Am. Compl. ¶¶ 15, 75, 92, 94-96; Elliott Compl. ¶¶ 74, 91, 93-95.

The deadly accessories distributed by RSR worsened the devastation at Old National Bank. Am. Compl. ¶¶ 68-69, 74-75, 77, 140-41; Elliott Compl. ¶¶ 68-69, 74, 76, 137. While AR-15s, which were designed for combat, are deadly enough on their own, accessories like red-dot sights, vertical grips, and large-capacity magazines make them even more lethal. *See* Am. Compl. ¶¶ 35, 60; Elliott Compl. ¶¶ 34, 60. A red-dot sight sits atop the AR-15 and superimposes a red dot over the rifle's target, giving a shooter much greater accuracy. Am. Compl. ¶ 65; Elliott Compl. ¶ 65. Because of their simplicity and effectiveness, red-dot sights are frequently used by AR-15-wielding mass shooters. *See* Am. Compl. ¶¶ 65-66; Elliott Compl. ¶¶ 65-66. A vertical grip gives the shooter greater control over the AR-15, and thus greater accuracy, when firing multiple shots in quick succession. Am. Compl. ¶¶ 63-64; Elliott Compl. ¶¶ 63-64. And a large-capacity magazine (i.e., a magazine that can hold more than ten rounds of ammunition) allows a shooter to keep firing for longer without reloading. Am. Compl. ¶¶ 70-72; Elliott Compl. ¶¶ 70-72. What's more, having multiple large-capacity magazines allows a shooter to fire hundreds of rounds with only a few quick magazine changes. *See* Am. Compl. ¶¶ 70-71, 74-75; Elliott Compl. ¶¶ 70-71, 74. From 2015 to 2022, mass shootings carried out with large-capacity magazines resulted in, on average, twice as many people killed and nearly ten times as many people wounded. Am. Compl. ¶ 73; Elliott Compl. ¶ 73.

RSR knew, or should have known, all of this. *See* Am. Compl. ¶¶ 35-36, 79; Elliott Compl. ¶¶ 34-35, 78. Yet it took no action to prevent the all-too-foreseeable tragedies that are carried out on a regular basis with the products that it distributes. *See* Am. Compl. ¶ 80; Elliott Compl. ¶ 79. Indeed,

RSR is one of the largest firearm-accessory distributors in the country. Am. Compl. ¶ 27. But it failed to exercise reasonable care to ensure that its lethal products are not sold to dangerous individuals. *Id.* ¶ 9; Elliott Compl. ¶¶ 13-14. Instead, RSR recklessly encouraged the retail sellers of its accessories to upsell to consumers—regardless of need or suitability—through incentives such as discounted pricing, dealer rebates, reward programs, and/or other terms contained in distributor or manufacturer agreements. Am. Compl. ¶ 127; Elliott Compl. ¶ 124. While upselling may be an innocuous sales practice in other industries, it is exceedingly dangerous when it involves products that enable the consumer to kill faster and more efficiently. Am. Compl. ¶ 8; Elliott Compl. ¶ 12. RSR also failed to screen out retailers like River City that have extensive histories of violating federal regulations and selling a large number of guns later recovered at crime scenes, and that fail to adequately train their employees to identify suspicious transactions. *See* Am. Compl. ¶¶ 9, 80; Elliott Compl. ¶¶ 13-14, 79. In sum, the scale of Plaintiffs' grievous injuries can be traced back to RSR's negligent business practices. *See* Am. Compl. ¶ 85; Elliott Compl. ¶ 84.

### **Procedural History**

Survivors Dana Mitchell, Dallas Schwartz, Julie Andersen, Jimmy Evans, and the families of Jim Tutt and Josh Barrick (collectively, the Mitchell Plaintiffs) filed their operative amended complaint on April 8, 2024, and the families of Tommy Elliott, Juliana Farmer, and Deana Eckert (collectively, the Elliott Plaintiffs) filed their complaint on the same day. On June 14, 2024, Defendants RSR and Magpul filed joint motions to dismiss the two complaints. The Mitchell and Elliott cases were then consolidated, along with a third lawsuit, filed by Plaintiff Zurich American Insurance Co., and on February 28, 2025, the consolidated case was transferred to Division Three.

On May 19, 2025, Judge Mitch Perry denied the Defendants' motions to dismiss in their entirety. As relevant here, Judge Perry first held that Plaintiffs' claims against RSR were not preempted by PLCAA, a federal statute that forbids some—but by no means all—lawsuits against certain

members of the gun industry. Judge Perry held that Plaintiffs' claims against RSR survive PLCAA because the claims "are exclusively for the accessories sold to the shooter, not for the sale of the firearm itself." Op. 3. Because "none of the accessories are 'qualified products'" under PLCAA, and because "[c]laims that do not involve 'qualified products' are not affected by PLCAA," Judge Perry correctly held that Plaintiffs' claims against RSR could proceed. Op. 3-4.

Next, Judge Perry concluded that "Plaintiffs have demonstrated sufficient support to sustain their claims of negligence against the Defendants." Op. 6. Judge Perry found that, under the facts alleged in the complaints, it was "foreseeable that through upselling and incentivizing the sale of these dangerous accessories through irresponsible retailers, [RSR's] products were more likely to be used to injure and kill people." Op. 6. And he found "a legally cognizable connection between [Magpul and RSR] incentivizing upselling of the accessories through irresponsible stores leading to an even deadlier catastrophe." Op. 6. Judge Perry also held that the conduct of the shooter, Sturgeon, was not a superseding cause of the Plaintiffs' injuries because it was "entirely foreseeable" that a "disturbed person [would] be upsold dangerous accessories they do not need and embark on a murderous rampage, enabled and enhanced by those accessories." Op. 6-7.

Because Plaintiffs "clearly alleged a set of facts that a jury could find rise to the level of gross negligence," Judge Perry ruled that Plaintiffs' claim for punitive damages could also proceed. Op. 7. And finally, Judge Perry held that the Kentucky Product Liability Act was inapplicable to this case because "Plaintiffs are not alleging injury from a defect or flaw in the design or manufacture of the accessories here." Op. 7.

The case then proceeded to discovery, which continues. On April 20, 2026, this case was reassigned to Division Seven. On May 29, 2026, Magpul filed a motion for judgment on the pleadings, reasserting arguments that had previously been rejected in Division Three. Plaintiffs responded to Magpul's motion on July 2, 2026. Then, on July 6, 2026, RSR filed its own motion for judgment on

the pleadings, which largely repeats the arguments from Magpul's motion and from Defendants' denied motion to dismiss.

### LEGAL STANDARD

A motion for judgment on the pleadings under CR 12.03 is designed to dispose of cases where "the ultimate and controlling facts are not in dispute." *City of Pioneer Village v. Bullitt County ex rel. Bullitt Fiscal Ct.*, 104 S.W.3d 757, 759 (Ky. 2003). It provides a "method of disposing of cases where the allegations of the pleadings are admitted and only a question of law is to be decided." *Id.* "When a party moves for judgment on the pleadings, he admits for the purposes of his motion ... the truth of all of his adversary's well-pleaded allegations of fact and fair inferences therefrom ...." *Archer v. Citizens Fid. Bank & Tr. Co.*, 365 S.W.2d 727, 729 (Ky. 1962). "The judgment 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." *City of Pioneer Village*, 104 S.W.3d at 759. Critically, this is the same as the standard employed on a motion to dismiss:

When considering a motion for failure to state a claim upon which relief could be granted or motion for judgment on the pleadings, all facts set forth in the complaint are accepted as true, and all inferences are to be construed in favor of plaintiff. And, it must be demonstrated that plaintiff is not entitled to relief upon the facts as set forth in the complaint or upon any facts that could be proved in support of plaintiff's claims.

*Catchen v. City of Park Hills*, 356 S.W.3d 131, 133 (Ky. Ct. App. 2011) (citation omitted).<sup>1</sup>

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<sup>1</sup> RSR asserts that "[f]ederal law requires a different standard of review for purposes of the PLCAA," Mem. 5, but never explains what that standard of review would be, states how it would differ from the customary standard of review on a motion under CR 12.03, or provides any legal support for its argument. And to the contrary, *Smith & Wesson*, the case RSR seemingly relies on, says that claims under PLCAA should be analyzed "in accord with usual pleading rules." *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 291 (2025). In any event, PLCAA is inapplicable to Plaintiffs' claims against RSR for the reasons set forth herein. See *infra* Section II.A.

## ARGUMENT

### I. This Court should not overturn Judge Perry's decision.

#### A. Motions to reconsider are disfavored.

“[A] successor judge should use the greatest restraint and caution in reversing the judgment of a predecessor.” *Herring v. Moore*, 561 S.W.2d 95, 97 (Ky. Ct. App. 1977). Although a successor judge *may* review a predecessor's judgment, the judge should exercise “extreme caution” in doing so. *Id.* at 98. “For a judge of coordinate jurisdiction to reverse a judgment of a fellow judge ... is to do disservice to the law and create disrespect for it.” *Id.* at 97 (citation omitted). For this reason, a judge should reexamine a prior decision of a fellow judge only “where there is a patent error.” *Id.* (citation omitted).

What RSR really seeks here is reconsideration of its previously rejected legal arguments. *See* Mem. 4 n.1 (“It is appropriate for this Court to reconsider the arguments originally raised in the motion to dismiss ....”). RSR's instant motion is branded as a motion for “judgment on the pleadings” under CR 12.03, while its June 2024 dispositive motion, which Judge Perry denied in its entirety, was styled as a motion to dismiss under CR 12.02. Nevertheless, RSR's new motion simply repeats its arguments, sometimes verbatim, from its previous motion, and does so under an identical legal standard. The Kentucky Supreme Court has cautioned parties against filing such frivolous and vexing motions seeking reconsideration of previously resolved issues:

The Commonwealth appeals the denial of a so-called motion to reconsider, which the circuit court noted “recite[d] arguments that ... [it had] rejected on two prior occasions and the [c]ourt [wa]s not inclined to re-visit ... without case law authorizing it to do so.” Motions such as this merely asking the trial court to change its mind have become a very common practice in the circuit courts of this Commonwealth, and indeed several such motions, from both sides, were filed in this case.

*Such repetitious motions are improper.* While it is true that under CR 54.02 the trial court retains broad discretion to revisit its interlocutory rulings at any time prior to the entry of a final judgment, that discretion is properly invoked only when there is a *bona fide* reason for it, *i.e.*, a reason the court has not already considered. Otherwise a motion to reconsider amounts to no more than *badgering the court*, a practice that could well be

deemed a violation of Civil Rule 11. The bench and bar are admonished to take notice that this practice of *filing multiple vexatious motions to reconsider is not supportable under the Civil Rules and should be discontinued.*

*Moore v. Commonwealth*, 357 S.W.3d 470, 496-97 (Ky. 2011) (alterations in original) (emphases added) (citations omitted). Because RSR asks this Court to reconsider previously rejected legal arguments with no *bona fide* reason for doing so, its motion should be denied.

**B. The *Smith & Wesson* decision is irrelevant here.**

RSR argues to no avail that this Court should reconsider its arguments for dismissal because of a fourteen-month-old decision by the U.S. Supreme Court, *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025).<sup>2</sup> RSR asserts, without citation, that *Smith & Wesson* held that “the applicability of [PLCAA] should be determined at the earliest available opportunity, and cannot be deferred until after the completion of discovery when it can be determined on the pleadings.” Mem. 5. While Plaintiffs do not dispute the point that PLCAA should be applied where it is applicable, nothing in *Smith & Wesson*’s holding relates to the allegations in this case, nor does it impose any sort of heightened or accelerated standard, as RSR implies. *See Smith & Wesson*, 605 U.S. at 291; *supra* n.1 (claims under PLCAA should be analyzed “in accord with usual pleading rules”).

What *Smith & Wesson* actually held was that the claims in that case, which depended on the federal aiding-and-abetting statute, 18 U.S.C. § 2(a), were inadequately pleaded and thus could not satisfy PLCAA’s “predicate exception,” 15 U.S.C. § 7903(5)(A)(iii). *See Smith & Wesson*, 605 U.S. at 286, 291. Plaintiffs’ claims against RSR, by contrast, do not involve either the federal aiding-and-abetting statute or PLCAA’s predicate exception. As Plaintiffs explain below and as Judge Perry already determined, PLCAA’s exceptions are irrelevant here because Plaintiffs’ claims against RSR fall

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<sup>2</sup> Notably, although *Smith & Wesson* was issued just a few weeks after Judge Perry denied the motions to dismiss, RSR did not argue that *Smith & Wesson* merited reconsideration of its arguments until this case was reassigned.

outside of PLCAA's scope in the first place. *See* Op. 3-4; *infra* Section II.A. In short, nothing that the Supreme Court said bears on Plaintiffs' claims against RSR.

Second, the applicability of PLCAA to Plaintiffs' claims against RSR *was* determined at the earliest available opportunity. Shortly after Plaintiffs filed their complaints, RSR moved to dismiss them, on the theory that Plaintiffs' claims were barred by PLCAA. *See* Mot. to Dismiss 5-14. Judge Perry considered, and rejected, these arguments. *See* Op. 3-4. Thus, even if RSR were correct that its PLCAA arguments had to be considered at the outset, that would not mean that those same arguments need to be *reconsidered* now—especially since nothing pertinent in the case has changed.

**C. The new Kentucky statute is not retroactive, cannot amend federal law, and is not a reason to overturn Judge Perry's opinion.**

The other justification that RSR offers for why this Court should reconsider Judge Perry's decision is the enactment of a new statute by the Kentucky General Assembly, the PLCAA Clarification Act of 2026, ch. 177, 2026 Ky. Acts 2300. *See* Mem. 4, 11-12 & Ex. 2. Under this statute, new lawsuits may not be brought in Kentucky against certain members of the firearm industry arising out of the misuse of firearms and certain firearm-related products; but the statute applies only to lawsuits filed *after* the date of the statute's passage. *See* 2026 Ky. Acts at 2301-03; *see also* Mem. Ex. 2, at 1-3. The law is expressly modeled after—and more expansive than—PLCAA, the federal law that it is named for. *See* 2026 Ky. Acts at 2300-02; *see also* Mem. Ex. 2, at 1-2. *Compare, e.g.*, 15 U.S.C. § 7903(4) (defining “qualified product” in PLCAA to include only “a firearm ..., or ammunition ..., or a component part of a firearm or ammunition”), *with* 2026 Ky. Acts at 2302 (defining “qualified product” in Kentucky statute to include “a firearm ..., ammunition ..., or a component part of, or an 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 ... attached to or used while attached to, or in conjunction with, a firearm or ammunition”).

According to its plain language, the Kentucky statute does not apply to this case. *See* Mem. 11 n.10 (observing that the statute “require[s] the dismissal of only cases filed after its effective date, instead of applying to pending cases in which final judgment had not been entered”); *see also* Magpul Reply 8 (acknowledging that “the Kentucky Act does not apply retroactively”). Section 2 of the Act expressly states that it applies to “actions ... *filed on or after* the effective date of this Act.” 2026 Ky. Acts at 2303 (emphasis added); *see also* Mem. Ex. 2, at 3. The Act overcame a gubernatorial veto and took effect on April 14, 2026, more than two years after this case was filed. *See* 2026 Ky. Acts at 2303; *see also* Mem. Ex. 2, at 4. The Act, therefore, plainly has no effect on this case. Indeed, the enactment history of the statute confirms the legislature’s intent not to cover preexisting lawsuits. As originally introduced, the Act stated that it would “apply to any action filed on or after the effective date of this Act ... *and* to any actions that are pending without a final adjudication on the effective date of this Act.” H.B. 78 (as introduced), 2026 Gen. Assem., Reg. Sess. (Ky. 2026) (emphasis added). The legislature’s decision to take out this language makes clear that the Act does *not* apply to actions, like this one, that were already pending on the Act’s effective date. *See* Mem. 11 n.10. Whether or not *future* plaintiffs are foreclosed from bringing similar suits, it is clear that *this* case is not foreclosed.

Even if the Kentucky statute were retroactive, RSR’s suggestion that the statute “clarif[ies] that the Component Parts at issue in this case are considered to be qualified products [under] PLCAA,” Mem. 4, would still fail, because a state statute cannot “clarify” a federal law. *See United States v. Trevino*, 7 F.4th 414, 427 (6th Cir. 2021) (“[I]t is an elementary feature of our federal system that a state statute cannot override or amend federal law.” (citing U.S. Const. art. VI, cl. 2)). Nor do federal laws mean different things in different states. *See Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 43 (1989) (observing that, “in the absence of a plain indication to the contrary,” Congress intends federal statutes “to have uniform nationwide application” (citation omitted)). If Plaintiffs’ lawsuit is permitted by PLCAA, as Judge Perry correctly held, no act of the Kentucky Legislature can change

that. *See, e.g., Smallwood v. Jefferson Cnty. Gov't*, 753 F. Supp. 657, 659 n.7 (W.D. Ky. 1991) (“The Court does not believe that a state legislature can overrule the United States Supreme Court or change the meaning of a federal statute.”).<sup>3</sup>

Accordingly, because RSR offers this Court no legitimate reason to reconsider Judge Perry’s decision, this Court can and should deny RSR’s motion without reaching the merits.

## **II. RSR’s motion fails on the merits.**

If this Court does reach the merits, however, it should still deny RSR’s motion, for the reasons set forth in Judge Perry’s decision and discussed further below. First, this lawsuit is not barred by PLCAA because, as Judge Perry found, the RSR products at issue in this case are firearm accessories, to which PLCAA has no application. *See infra* Section II.A.1. It is also not barred for the independent reason that RSR is not a licensed dealer of these products, which is a necessary precondition for PLCAA protection. *See infra* Section II.A.2. Because PLCAA does not apply, all that remains is whether Plaintiffs have stated claims under Kentucky law. As Judge Perry already found, they have. Plaintiffs’ complaints allege that RSR’s conduct breached its duty of ordinary care, *see infra* Section II.B.1, and foreseeably caused Plaintiffs to suffer injuries, *see infra* Section II.B.2. Moreover, Plaintiffs have stated a claim under KRS 411.150, *see infra* Section II.B.3, and for punitive damages, *see infra* Section II.B.4. Finally, because this is not a product-liability case, the Kentucky Product Liability Act does not apply. *See infra* Section II.C. The motion should be denied.

### **A. Plaintiffs’ claims are not affected by PLCAA.**

PLCAA is a federal law that protects certain members of the firearm industry from certain types of lawsuits. Specifically, it provides that claims that arise out of the “criminal or unlawful misuse

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<sup>3</sup> In fairness to the General Assembly, it did not purport to amend the federal PLCAA—contrary to what RSR suggests, *see* Mem. 4, 11. Rather, the Commonwealth enacted its own, standalone law that has its own, standalone effects. *See* 2026 Ky. Acts 2300, 2301-03. But because this law applies only prospectively, it is irrelevant to this preexisting lawsuit.

of a qualified product” may not be brought “against a manufacturer or seller of a qualified product.” 15 U.S.C. §§ 7902(a), 7903(5)(A); *see* Op. 3. The statute defines “qualified product” to include firearms, ammunition, and “component part[s]” of firearms and ammunition. § 7903(4); *accord* Op. 3. Claims that do not involve “qualified products” are not barred by PLCAA and may proceed. *See* § 7903(4), (5)(A). Additionally, claims against entities who are not “manufacturers,” “sellers,” or “trade associations” as defined by the statute may proceed. *See* § 7903(2), (5)(A), (6), (8).

PLCAA’s provision of immunity only for claims that involve “qualified products” is no accident—it is the very bargain that was built into the legislation. As Congress noted in PLCAA’s preamble, “The manufacture, importation, possession, sale, and use of *firearms and ammunition* in the United States are heavily regulated by Federal, State, and local laws.” § 7901(a)(4) (emphasis added); *accord* Mem. 6. Manufacturers and sellers of guns and ammunition bear the cost of “heav[y] regulat[ion]” in return for reduced liability. In contrast, Congress determined that manufacturers and sellers of more lightly regulated products—like the accessories at issue here—should not receive the same benefit. Indeed, manufacturing or selling magazines, optical sights, and vertical grips requires no license at all. *See infra* Section II.A.2.

That balance struck by Congress explains why RSR does not get the benefit of PLCAA’s protection here. As Judge Perry noted, “[c]laims that do not involve ‘qualified products’ are not affected by PLCAA,” and PLCAA bars only those claims that are brought against “a manufacturer or a seller of a qualified product.” Op. 3. While some aspects of this case involve the criminal misuse of a qualified product—namely, an AR-15-style rifle (and the rifle’s ammunition)—and some claims are brought against a licensed firearm seller, River City, the claims against RSR do not meet either of those qualifications for immunity, let alone both.<sup>4</sup> Plaintiffs’ claims against RSR may thus proceed for two

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<sup>4</sup> Although PLCAA does apply to the negligent-entrustment and statutory claims against River City, those claims may proceed under PLCAA’s exceptions, as Judge Perry found. *See* Op. 3-5.

independent reasons: (1) the claims against RSR do not involve qualified products, and (2) RSR is not a “manufacturer” or “seller” under PLCAA.

1. *The claims against RSR do not involve qualified products.*

Plaintiffs are suing RSR for its role in this mass shooting—that is, for the negligent distribution of the three additional large-capacity magazines, the red-dot sight, and the vertical grip that were sold to and used by Sturgeon in the shooting. *See* Am. Compl. ¶¶ 127-28, 130, 132, 140-41, 143; Elliott Compl. ¶¶ 124-25, 127, 129, 137, 139. Plaintiffs’ claims against RSR thus do not involve qualified products, because large-capacity magazines, red-dot sights, and vertical grips are not firearms, ammunition, or component parts of firearms or ammunition. *See* § 7903(4). Instead, they are merely firearm accessories.

As Judge Perry recognized, “a ‘mere firearm accessory,’ not constituting a ‘component part,’ is not covered by PLCAA.” Op. 3-4 (quoting *Prescott v. Slide Fire Sols., LP*, 341 F. Supp. 3d 1175, 1187 (D. Nev. 2018)). And as Judge Perry explained, “[t]he 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.” Op. 4 (citing *Prescott*, 341 F. Supp. 3d at 1188).<sup>5</sup> “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.” Op. 4; *see* Am. Compl. ¶ 133; Elliott Compl. ¶ 130; *see also Green v. Kyung Chang Indus. USA, Inc.*, No. A-21-838762-C, 2022 WL 987555, at \*1 (Nev. Dist. Ct. Mar. 23, 2022)

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<sup>5</sup> RSR states that Judge Perry cited “dicta” from the *Prescott* decision that “was not in the context of qualified products for purposes of the PLCAA.” Mem. 11. That is false. *See Prescott*, 341 F. Supp. 3d at 1187-89 (considering “whether [product at issue] is a component part of a firearm, and thus a qualified product under the PLCAA” and consulting dictionary definitions “[b]ecause the PLCAA does not define ‘component part’”).

(concluding that large-capacity magazine was not a “component part” under PLCAA because firearm to which it was attached could operate without it);<sup>6</sup> *Prescott*, 341 F. Supp. 3d at 1190 (explaining that sights are accessories because “a rifle is fully functional[]” without one).

In arguing to the contrary, RSR relies on a particular dictionary definition of the words “component part,” arguing that a part is “a piece that combines with other pieces to form the whole of something.” Mem. 9. But even the definition cherry-picked by RSR to best make its case does not support its point.<sup>7</sup> The large-capacity magazines, red-dot sight, and vertical grip at issue in this case are not “pieces” that “form” the gun. As Judge Perry recognized, “the firearm in question here does not require any magazine in order to function and fire a shot,” and “[t]he firearm plainly functions as intended without both [the sight and the vertical grip].” Op. 4. In other words, the firearm was already “whole” when it was sold to Sturgeon; it did not require additional “pieces” from RSR in order to work. *Cf.* Mem. 8-9. RSR seems to be arguing that these accessories became “component parts” of the firearm when Sturgeon “installed [them] on the Subject Rifle.” Mem. 8 n.4. But that can’t be right: that would mean that any number of firearm attachments, no matter how extraneous—like flashlights, bayonets, or even shoulder straps—would be considered “component parts” of a firearm once attached, even though no reasonable speaker of English (or member of Congress) would describe them that way.

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<sup>6</sup> RSR baselessly insinuates that the *Green* decision is somehow less than a valid court order. Mem. 11 n.8. But in addition to being a perfectly valid court order in the first place, it was reviewed and left undisturbed by both the Nevada Supreme Court and the U.S. Supreme Court. *See* 525 P.3d 836 (Nev.), *cert. denied*, 144 S. Ct. 98 (2023).

<sup>7</sup> Other dictionaries make clear that a component part is a necessary part of an object, rather than an add-on. *See, e.g., Component*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/component> (last visited July 1, 2026) (defining component as “a constituent part” or “ingredient”); *see also Prescott*, 341 F. Supp. 3d at 1188 (adopting this definition); *cf. Component Part*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/component%20part> (last visited July 1, 2026) (“something ... that cannot be removed without substantial damage to itself or to the immovable property to which it is attached”).

RSR attempts to challenge Judge Perry's (and *Prescott's*) "essential to the functioning" test with analogies, arguing that passenger jets, cars, dryers, and freezers "can function without" seats, speedometers, lint traps, and ice makers, respectively. Mem. 10-11. But can they? Seats are essential to a passenger jet's function of transporting passengers; without it, they would be cargo jets. And lint traps are essential for anyone who wants to dry their laundry without risking a fire. More to the point, the federal definition of "firearm" that is referenced in PLCAA, *see* 15 U.S.C. § 7903(4), includes "any weapon ... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive." 18 U.S.C. § 921(a)(3)(A).<sup>8</sup> In other words, firearms are defined by their function, and their function is to fire a shot. *See id.* Because a "component" is "an essential part," *Prescott*, 341 F. Supp. 3d at 1188, a "component part" of a "firearm" is something that is essential to the firearm's function of firing a shot.<sup>9</sup>

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<sup>8</sup> RSR seeks to rely on a different definition, of the term "semiautomatic rifle," Mem. 9 n.7 (citing 27 C.F.R. § 478.11), but that definition is irrelevant, as PLCAA says nothing about "semiautomatic rifles." This definition therefore sheds no light on what constitutes "a component part of a firearm" under PLCAA, § 7903(4). As RSR concedes, a semi-automatic rifle without a magazine simply becomes a different type of firearm; it does not cease to be a firearm. *See* Mem. 9 n.7 ("Without a magazine . . . the "semi-automatic" . . . rifle simply becomes a single shot rifle.").

<sup>9</sup> To the extent that RSR's analogies have some superficial appeal, that is likely because the listed items come prepackaged from the manufacturer (e.g., freezers with internal ice makers, etc.). But being prepackaged with the item does not make that element a component. For example, some semiautomatic rifles are sold with waterproof pouches, which are surely not components. *See e.g.* Daniel Defense V9 Crocodile, described at <https://danieldefense.com/limited-series-may-2025-crocodile.html>. Moreover, if that is the test for what constitutes a component part—i.e., if a component part is something that comes included from the manufacturer—then RSR's argument still fails, because all the accessories at issue here were not preinstalled but were sold separately from the firearm. *See* Am. Compl. ¶¶ 7, 60; Elliott Compl. ¶¶ 11, 60.

Notably, this alternative test is the test employed by 27 C.F.R. § 53.61, which RSR cites, Mem. 11 n.9. *See* § 53.61(b)(2) ("Component parts are items that would ordinarily be attached to a firearm during use *and, in the ordinary course of trade, are packaged with the firearm at the time of sale by the manufacturer or importer.* All component parts are includible in the price for which the article is sold." (emphasis added)); *cf.* § 53.61(b)(5)(iv) ("accessories also include optional items purchased by the customer at the time of retail sale"). No court has adopted this tax-specific definition of "component parts" when interpreting PLCAA, but even if they had, none of the products at issue in *this* case would be

RSR cites three cases in support of its position, all of which were also cited in briefs to Judge Perry, and none of which justify overturning his decision. *See* Mem. 9 (citing *In re Academy, Ltd.*, 625 S.W.3d 19 (Tex. 2021); *Lowy v. Daniel Defense, LLC*, No. 23-CV-1338, 2024 WL 3521508 (E.D. Va. July 24, 2024), *rev'd in part, vacated in part*, 167 F.4th 175 (4th Cir. 2026); and *Prescott*, 341 F. Supp. 3d 1175).<sup>10</sup>

In *Prescott*, the district court decided that a bump stock was a component part of a firearm because it replaces the firearm's original stock, which the parties did not dispute was a component part. *See* 341 F. Supp. 3d at 1189.<sup>11</sup> But the logic and conclusion of *Prescott* have no applicability to this case, which does not involve stocks or bump stocks or the replacement of any original parts. Indeed, Judge Perry explicitly agreed with Plaintiffs on this point. *See* Op. 4 (distinguishing products at issue in this case from bump stock at issue in *Prescott*).

In *Academy*, the product in question was an AR-style rifle that was bundled and packaged together with a large-capacity magazine, and the parties did not dispute that PLCAA applied. *See* 625 S.W.3d at 23, 26. Thus, the *Academy* court was not asked to determine whether PLCAA applied to the product at issue or whether PLCAA would apply to large-capacity magazines sold separately, as are at

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considered “component parts” under it, because all were purchased separately, for an additional price. *See* Am. Compl. ¶ 60; Elliott Compl. ¶ 60.

<sup>10</sup> In a footnote, RSR also cites additional case law for the proposition that magazines are “arms” within the meaning of the Second Amendment. Mem. 9 n.7. But other courts have held to the contrary. *See, e.g., Duncan v. Bonta*, 133 F.4th 852, 865 (9th Cir. 2025) (en banc) (“we conclude that large-capacity magazines are not ‘Arms’ within the meaning of the Second Amendment”), *petition for cert. filed*, No. 25-198 (U.S. Aug. 15, 2025). This Court need not weigh in on this ongoing debate, since even if RSR's reading of the Second Amendment was correct, it would not help answer the PLCAA question. There is no reason to think that the definition of “arms” in the Second Amendment—which includes non-firearm weapons, like knives and batons, *see, e.g., State v. DeCiccio*, 105 A.3d 165, 190, 198 (Conn. 2014)—matches the definition of “component part of a firearm” under PLCAA, § 7903(4). The questions are distinct.

<sup>11</sup> “A bump stock is a modified type of rifle stock that replaces the existing stock” and causes the rifle to “fire at a rate comparable or equivalent to a fully automatic weapon.” *Prescott*, 341 F. Supp. 3d at 1180, 1189.

issue here. Indeed, RSR cited *Academy* in service of this same point in its motion to dismiss, *see* Mot. to Dismiss 8, and Judge Perry was not convinced by it. As Judge Perry recognized, magazines standing alone are not component parts. *See* Op. 4.

To be sure, the district court in *Lony* took the opposite view, concluding that the large-capacity magazines in that case were component parts. *See* 2024 WL 3521508, at \*3.<sup>12</sup> But this Court should not follow that mistaken ruling, for two reasons. First, the ruling no longer stands, having been vacated by the Fourth Circuit in an opinion that described the district court's determinations as "improvident." *Lony*, 167 F.4th at 203-04. Second, the district court's logic was faulty. The district court purported to follow the logic of *Prescott* when it concluded that a substitute magazine is a component part because it replaces the original magazine. *Lony*, 2024 WL 3521508, at \*3. But the court failed to grapple with the question whether the original magazine was a component part to begin with. *See id.* If the original magazine is not a component part, then neither would any replacement magazine be. Under Judge Perry's clear reasoning, original large-capacity magazines are not component parts either. *See* Op. 4 (concluding that large-capacity magazine is not a component part "largely because, as the Plaintiffs allege, the firearm in question here does not require any magazine in order to function and fire a shot"); *see also Green*, 2022 WL 987555, at \*1 (finding that large-capacity magazine "is not a 'component part' within the PLCAA because it is not required for the subject gun to operate and fire projectiles[ and] the subject firearm is capable of firing without any magazine inserted"). Moreover, the magazines at issue in this case did not *replace* the original magazine but were used in addition, to supplement it. *See* Am. Compl. ¶¶ 3, 7; Elliott Compl. ¶¶ 6, 11.

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<sup>12</sup> The *Lony* court also referenced "grips," 2024 WL 3521508, at \*3, but the grips at issue in that case are fundamentally different from the vertical grip at issue here. *Lony* involved grips for the shooting (dominant) hand, which are far more essential for firing a rifle than is the optional vertical grip in this case, which is designed for the non-dominant hand, *see* Am. Compl. ¶¶ 63-64, 87, 133; Elliott Compl. ¶¶ 63-64, 86, 130.

Next, RSR turns to an irrelevant regulation. *See* Mem. 9-10. RSR cites 27 C.F.R. § 478.39, which is unrelated to PLCAA and does not even use the term “component part.” Instead, it offers a definition of “imported parts.” *Id.* This regulation—which also does not mention sights or vertical grips—cannot help interpret the plain meaning of PLCAA’s text when it does not even use the same words as PLCAA.

Finally, RSR dumps onto the docket two exhibits of nearly two hundred pages and asserts—without any page citations—that they contend show that the products at issue here are “component parts.” *See* Mem. 10 & Exs. 3, 4. This argument fails for a variety of reasons. First, these ATF guidebooks themselves explicitly reject the premise that they may be used for statutory interpretation. *See* Mem. Ex. 4 at i (“This guide ... should not be relied upon as an interpretation of any statute or regulation or used for evidentiary value.”). Second, RSR has forfeited its argument by failing to identify *where* these exhibits supposedly prove its point. *See Am. Coal Terminal, Inc. v. Etera, LLC*, 699 S.W.3d 204, 216 (Ky. Ct. App. 2024) (“It is not the responsibility of this Court to construct a party's arguments or search the record to find support for a party's contentions, even assuming support exists.”). Third, the exhibits actually support Plaintiffs’ position. *See* Mem. Ex. 4, at 64, 67-68 (including large-capacity magazines in list of “accessories”).<sup>13</sup>

Ultimately, RSR offers no reason for this Court to depart from Judge Perry’s prior decision. The large-capacity magazines, red-dot sight, and vertical grip at issue in this case are accessories, not

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<sup>13</sup> This exhibit also disproves RSR’s false assertion that “Accessories’ is a term that has been invented by plaintiffs seeking to avoid ... PLCAA,” Mem. 10. Not only does the ATF use the term “accessories,” Mem. Ex. 4, at 64, but so too do longstanding federal regulations, *see* 27 C.F.R. § 53.61(b); *supra* n.9, as does RSR’s co-Defendant Magpul, *see* Magpul, <https://magpul.com> (last visited July 1, 2026) (promoting the large-capacity magazines and vertical grip at issue in this case under the label “Firearm Accessories”); *PMAGs for AR15, M4, And M16 Rifles*, Magpul, <https://magpul.com/firearm-accessories/pmags/ar15-m4-m16.html> (last visited July 1, 2026); *Magpul Vertical Grip – Angled Fore Grip*, Magpul, <https://magpul.com/firearm-accessories/grips/vertical-fore-grips.html> (last visited July 1, 2026). (Magpul’s website is referenced in Plaintiffs’ complaints. *See* Am. Compl. ¶¶ 32, 63, 70; Elliott Compl. ¶¶ 31, 63, 70).

component parts of firearms, and for that reason PLCAA is inapplicable to Plaintiffs' claims against RSR.

2. *RSR is not a "seller" under PLCAA.*

Even if this Court disagrees with Judge Perry's analysis, Plaintiffs' claims against RSR nevertheless fall outside the scope of PLCAA for the independent reason that, contrary to RSR's argument, RSR is not a "seller" as defined by PLCAA, and thus Plaintiffs' claims against RSR are not "against a ... seller," as PLCAA requires, § 7903(5)(A), (6).

RSR claims PLCAA protection on the basis that it is a "seller" as defined by the statute. Mem. 7-8. As relevant here, "[t]he term 'seller' means, with respect to a qualified product ... a dealer ... who is engaged in the business as such a dealer in interstate or foreign commerce *and* who is licensed to engage in business as such a dealer under chapter 44 of title 18." § 7903(6)(B) (emphasis added); *accord* Mem. 7. In other words, PLCAA's protections for dealers of qualified products apply only to *licensed* dealers of those products. *See* Op. 3; *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1145 (9th Cir. 2009); Mem. 7. To be sure, RSR deals in, and sold to River City, the large-capacity magazines, red-dot sight, and vertical grip at issue in this case. But RSR has no license to deal in magazines, sights, or vertical grips. In fact, there *is* no license to deal in magazines, sights, or vertical grips. *See* 18 U.S.C. § 923(a) (requiring dealer license only for firearms). Therefore, even if this Court were to find that the large-capacity magazines, red-dot sight, and vertical grip at issue in this case were all qualified products, RSR still could not claim PLCAA protection because it is not a licensed dealer of them and thus is not a "seller" under PLCAA.

RSR's argument seems to be that it is a "seller" under PLCAA because it is a licensed dealer of *firearms*. *See* Mem. 7-8 ("[A] 'dealer' is defined as 'any person engaged in the business of selling *firearms* at wholesale or retail.' As a 'wholesale distributor,' RSR is a seller pursuant to the terms of the PLCAA." (emphasis added) (footnote omitted)). But that is irrelevant, because RSR did not sell or

distribute the firearm at issue in this case. “PLCAA preempts specified types of liability actions; it does not provide a blanket protection to specified types of defendants.” *Ileto*, 565 F.3d at 1145. RSR cannot claim protection as a firearm seller in a case where it did not sell any firearms. *See id.* at 1145-46 (holding that defendant could not claim PLCAA protection “as a seller of ammunition” when it was sued “as a manufacturer and seller of firearms”).

\* \* \*

RSR’s bid for immunity under PLCAA thus fails for two independent reasons: Plaintiffs’ claims against RSR do not involve qualified products, and RSR is not a “seller” under PLCAA anyway. Because Plaintiffs’ claims do not fall within PLCAA’s scope, it is irrelevant whether they satisfy any of PLCAA’s exceptions. *Cf.* Mem. 12-16.

**B. Plaintiffs have stated claims under Kentucky law.**

Because Plaintiffs’ claims are not barred by PLCAA, this Court may evaluate them under state law. RSR has presented no new arguments on this subject since it made them to Judge Perry in the motion to dismiss. And as Judge Perry correctly held, Plaintiffs have sufficiently alleged the elements of each of their claims, and those claims should be allowed to proceed.

*1. Plaintiffs have adequately alleged that RSR breached its duty of care.*

Every person, including corporations, owes a duty to exercise ordinary care in the course of their activities to prevent foreseeable injury. *See Shelton v. Ky. Easter Seals Soc’y, Inc.*, 413 S.W.3d 901, 908 (Ky. 2013); *Stiens v. Bausch & Lomb, Inc.*, 626 S.W.3d 191, 200 (Ky. Ct. App. 2020); Mem. 17. Here, Plaintiffs “allege that [RSR and Magpul] 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.” Op. 6. As Judge Perry recognized, it was a “foreseeable” consequence of RSR’s alleged conduct that its products would be “more likely to be used to injure and kill people.” Op. 6.

Section 302A of the Restatement is particularly helpful in explaining RSR's duty of care, and Plaintiffs' negligence claim contains clear parallels to an illustration within that section:

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

Restatement (Second) of Torts § 302A illus. 3 (A.L.I. 1965). In a similar way, RSR was negligent in failing to establish reasonable safeguards—constructing a “guardrail,” to borrow from the illustration—to prevent its products from falling into dangerous hands. *See* Am. Compl. ¶ 80; Elliott Compl. ¶ 79.

In its motion, RSR ignores Judge Perry's ruling and instead repeats the argument from its motion to dismiss that “Plaintiffs have failed to allege that RSR did not act as a ‘like business’ would ‘under the circumstances.’” Mem. 17 (quoting *T&M Jewelry, Inc. v. Hicks ex rel. Hicks*, 189 S.W.3d 526, 531 (Ky. 2006)); *accord* Mot. to Dismiss 15-16. That misstates the relevant test. The question is not whether a “like business” might do the same thing; the question is what “a *prudent* person engaged in a similar or like business” would do. *T&M Jewelry*, 189 S.W.3d at 531 (emphasis added). Plaintiffs' allegations that RSR engaged in “negligent and reckless conduct,” Am. Compl. ¶ 127; Elliott Compl. ¶ 124, certainly meet the standard. Indeed, the law is clear that “[e]ven an entire industry” may not “adopt[] careless methods to save time and effort or money.” *C.D. Herme, Inc. v. R.C. Tway Co.*, 294 S.W.2d 534, 537 (Ky. 1956) (quoting Prosser, Torts § 37 (1st ed.)). Plaintiffs have sufficiently alleged a breach of the duty of ordinary care.

2. *Plaintiffs have adequately alleged causation.*

“Except in such cases where reasonable minds could not differ,” the question whether negligent conduct was a legal cause of a plaintiff's injury is typically “for the jury.” *Grayson Fraternal Order of Eagles, Aerie No. 3738 v. Claywell*, 736 S.W.2d 328, 334 (Ky. 1987). As Judge Perry already found

based on these same arguments, Plaintiffs have adequately pleaded both but-for and proximate causation: “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.” Op. 6.

Yet RSR reasserts its motion-to-dismiss argument, that “the allegations in the Complaints do not even establish but-for causation.” Mem. 18; *accord* Mot. to Dismiss 16. That is wrong. Plaintiffs expressly alleged that: (1) “[t]he accuracy and control provided by the sight and grip helped Sturgeon overcome [certain] difficulties and cause greater carnage”; (2) Sturgeon’s possession of all the accessories “emboldened him to carry out his heinous act and resulted in more carnage at Old National Bank than [he] would have otherwise caused”; and (3) Sturgeon’s possession of the additional large-capacity magazines specifically resulted in the injury to Jimmy Evans, who was not shot until after Sturgeon had already exhausted his first magazine and loaded another. Am. Compl. ¶¶ 69, 75, 77; Elliott Compl. ¶¶ 69, 76. Accepting Plaintiffs’ allegations that “each accessory enhanced the lethality of the firearm and enabled the shooter to wreak the havoc he did,” Judge Perry found “a legally cognizable connection” between RSR’s conduct and the Plaintiffs’ injuries. Op. 6.

RSR asserts that “there is nothing to indicate that the Shooting would not have occurred if the Shooter did not have [RSR’s products],” Mem. 18, 19, but that is not what Plaintiffs have to prove. The relevant question is not whether RSR’s conduct caused the *shooting* but whether RSR’s conduct caused Plaintiffs’ *injuries*. As discussed above, Plaintiffs allege injuries that would not have occurred or would have been of lesser severity if Sturgeon did not have RSR’s products. In Judge Perry’s words, RSR’s actions, as alleged in the complaints, “[l]e[d] to an even deadlier catastrophe.” Op. 6. Plaintiffs have therefore alleged but-for and legal causation.

Next, RSR argues that “even if its conduct was a legal cause of Plaintiffs’ injuries, the shooting was a superseding, intervening cause.” Mem. 19. That is incorrect. As the Supreme Court of Kentucky

has made clear, “If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the [defendant] negligent, such an act ... whether innocent, negligent, intentionally tortious, or criminal, does not prevent the [defendant] from being liable for harm caused thereby.” *Britton v. Wooten*, 817 S.W.2d 443, 449 (Ky. 1991); *accord* Op. 6-7. Here, as Judge Perry explained, “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.” Op. 7. That is precisely what ended up happening. Sturgeon’s foreseeable criminal conduct thus does not supersede RSR’s negligence.

Section 448 of the Restatement, which RSR relies on, Mem. 20, confirms that a third party’s criminal act is not “a superseding cause of harm” when “the [defendant] at the time of his negligent conduct ... should have realized the likelihood that such a situation might be created.” Restatement (Second) of Torts § 448 (A.L.I. 1965). RSR insists that it “cannot be expected to foresee that its [conduct] would result in the Shooter using [its products] in the Shooting,” Mem. 21, but there is nothing novel or unforeseeable about the facts of this case. As Plaintiffs alleged, in the years leading up to the conduct here, there were numerous high-profile mass shootings carried out across the country with AR-15-style rifles equipped with large-capacity magazines and red-dot sights. Am. Compl. ¶¶ 35-36, 66; Elliott Compl. ¶¶ 34-35, 66. And Plaintiffs alleged that RSR was well aware of that. Am. Compl. ¶ 79; Elliott Compl. ¶ 78. For RSR to suggest that it was not foreseeable that such shootings would continue is nothing short of fanciful. In the words of Judge Perry, “It was entirely foreseeable that this outcome would occur.” Op. 7. In short, the Plaintiffs have adequately alleged causation, and the shooting was not a superseding cause.

3. *Plaintiffs have adequately alleged a claim under KRS 411.150.*

Section 411.150 of the Kentucky Revised Statutes provides that “[t]he surviving spouse ... of a person killed by the careless, wanton or malicious use of a deadly weapon, not in self-defense, may

have an action against the person who committed the killing *and all others aiding or promoting*, or any one (1) or more of them.” KRS 411.150 (emphasis added). In the context of this statute, the Court of Appeals of Kentucky has recognized that the plain meaning of aiding includes “furnishing strength or means to effect a purpose.” *Self v. Mantooth*, No. 2011-CA-001161, 2012 WL 4209929, at \*5 (Ky. Ct. App. Sep. 21, 2012). Here, Plaintiffs Tutt, Barrick, Elliott, and Eckert are the surviving spouses of deceased victims of Sturgeon’s wanton and malicious use of a deadly weapon. *See* Am. Compl. ¶¶ 23-24, 74; Elliott Compl. ¶¶ 24, 26, 74. RSR aided this killing by negligently distributing the large-capacity magazines, red-dot sight, and vertical grip that Sturgeon would employ to make his AR-15 even deadlier. *See* Am. Compl. ¶¶ 127, 163-64; Elliott Compl. ¶¶ 124, 151-52. In short, RSR furnished means to effect a purpose. Plaintiffs’ allegations thus fall within the plain text of KRS 411.150.

RSR argues, as it did in its motion to dismiss, that liability under KRS 411.150 “requires some active participation in the killing” and that its own conduct does not meet that standard. Mem. 22 (quoting *Self*, 2012 WL 4209929, at \*6); *accord* Mot. to Dismiss 20. This argument lacks any support in either the text of the statute or other binding authority. Indeed, precedential case law points the other way: In *Commonwealth v. Hurt*, the widow of a man who was maliciously shot and killed by a sheriff’s deputy sued the sheriff under KRS 411.150, on the theory that the sheriff aided or promoted the killing by appointing an unfit deputy. 64 S.W. 911, 911-12 (Ky. 1901). The court rejected the claim but did so specifically because the deputy was not “doing anything in his official capacity, at the time of the killing.” *Id.* at 912. In other words, “the Court implied that, if [the deputy] had been acting in an official capacity, it might have found that [the sheriff], by appointing [the] deputy, had aided and promoted [the] killing.” *Self*, 2012 WL 4209929, at \*5. The Kentucky Court of Appeals’ analysis makes clear that KRS 411.150 does not require the defendant’s active involvement in the killing itself; prior wrongful conduct that helped bring about the shooting may suffice.

4. *Plaintiffs have sufficiently alleged entitlement to punitive damages.*

Punitive damages may be awarded upon a showing of gross negligence. *Williams v. Wilson*, 972 S.W.2d 260, 262-65 (Ky. 1998); *accord* Mem. 23. RSR asserts that Plaintiffs' claims for punitive damages "amount to nothing more than conclusory labels" and lack "factual support." Mem. 23. Not so. Plaintiffs allege that RSR was grossly negligent in recklessly failing to implement reasonable controls on the sale of its products. *See* Am. Compl. ¶¶ 9, 78-85; Elliott Compl. ¶¶ 13-14, 77-84. Indeed, Plaintiffs allege that, instead of instituting controls, RSR incentivized dealers to sell as many products as possible, regardless of whether it was safe to do so. *See* Am. Compl. ¶¶ 81-82; Elliott Compl. ¶¶ 80-81. These are factual allegations that amount to gross negligence—a "wanton or reckless disregard for the lives, safety, or property of others," *Gibson v. Fuel Transp., Inc.*, 410 S.W.3d 56, 59 (Ky. 2013) (citation omitted). Accordingly, as Judge Perry found, "if a jury believes the allegations asserted by the Plaintiffs, then punitive damages are proper." Op. 7.

**C. The Kentucky Product Liability Act does not apply to this case.**

Finally, RSR asserts, as it did in its motion to dismiss, that Plaintiffs' claims against it are barred by "the middleman provision of the Kentucky Product Liability Act [KPLA]," KRS 411.340. *See* Mem. 23-25; *see also* Mot. to Dismiss 22-25. As Judge Perry held, that is incorrect, because the KPLA does not apply to this case. *See* Op. 7.

The KPLA's middleman provision applies in a "product liability action," KRS 411.430, which is defined to include claims for injury or death "caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, certifying, warning, instructing, marketing, advertising, packaging, or labeling of any product," KRS 411.300(1). Although the KPLA can apply to negligence claims, it applies only to actions alleging "that the product was defective and was the legal cause of the injury," *Primal Vantage Co. v. O'Bryan*,

677 S.W.3d 228, 245-6 (Ky. 2022); *see also* KRS 411.340 (stating that middleman can be held liable if it “knew or should have known ... that the product was in a defective condition”); Mem. 24 (same).

That is not Plaintiffs’ claim. As Judge Perry recognized, the products at issue here were “properly functioning.” Op. 7. “Plaintiffs are not alleging injury from a defect or flaw in the design or manufacture of the accessories here. ... It is the business practices of the entities involved that is at issue here, not the design or manufacturing of the specific accessories themselves.” Op. 7; *see* Am. Compl. ¶¶ 126-27; Elliott Compl. ¶¶ 123-24. Because the KPLA does not apply to this case, RSR’s KPLA defense fails.<sup>14</sup>

### CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court deny RSR’s motion for judgment on the pleadings.

Respectfully Submitted,

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<sup>14</sup> In a footnote, RSR cites several cases that stand for the proposition that *if* a case is a product-liability action, then the KPLA applies to it. *See* Mem. 24 n.14 (citing *Warren v. Lowe’s Home Centers, LLC*, No. CV 0:21-085-DCR, 2024 WL 420108 (E.D. Ky. Feb. 5, 2024), *Monsanto Co. v. Reed*, 814 (Ky. 1997), *Davis v. Sig Sauer, Inc.*, No. 3:22- CV-00010-GFVT, 2024 WL 54595 (E.D. Ky. Jan. 4, 2024), and *Stiens v. Bausch & Lomb Inc.*, 626 S.W.3d 191 (Ky. Ct. App. 2020)). These cases do not help RSR here, because, as explained above, this is not a product-liability action in the first place.

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**CERTIFICATE OF SERVICE**

It is hereby certified that on August 7, 2026, a true and correct copy of the foregoing was filed using the Court's E-filing system, which will provide electronic service all counsel of record.

/s/ Kirk A Laughlin  
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