

**CITY OF PHILADELPHIA LAW DEPARTMENT  
RENEE M. GARCIA, ACTING CITY SOLICITOR**

Attorney I.D. No. 315622  
By: Benjamin H. Field, Chief Deputy City Solicitor  
Attorney I.D. No. 204569  
Lydia M. Furst, Divisional Deputy City Solicitor  
Attorney I.D. No. 307450  
Aimee D. Thomson, Deputy City Solicitor  
Attorney I.D. No. 326328  
Ryan B. Smith, Assistant City Solicitor  
Attorney I.D. No. 324643  
1515 Arch Street, 15<sup>th</sup> Floor  
Philadelphia, PA 19102-1595  
Tel (215) 683-3573  
Lydia.Furst@phila.gov

**EVERYTOWN LAW**

Eric Tirschwell\*  
James E. Miller\*  
Eugene Nam\*  
450 Lexington Ave., P.O Box # 4184  
New York, NY 10017  
Phone: (646) 324-8222  
etirschwell@everytown.org

**EVERYTOWN LAW**

Alla Lefkowitz \*  
P.O. Box 14780  
Washington, DC 20044  
Phone: 202-545-3257  
alefkowitz@everytown.org

**KRAMER LEVIN NAFTALIS & FRANKEL LLP**

Jordan Estes\*  
Andrew Zagami\*  
1177 Avenue of the Americas  
New York, NY 10036  
(212) 715-9100  
JEstes@kramerlevin.com

**KRAMER LEVIN NAFTALIS & FRANKEL LLP**

Chloe Bootstaylor\*  
2000 K Street NW, 4th Floor  
Washington, DC 20006  
(202) 775-4500  
CBootstaylor@kramerlevin.com

*Attorneys for the City of Philadelphia*  
*\*Admitted pro hac vice*

---

CITY OF PHILADELPHIA, a municipal  
corporation,

*Plaintiff,*

v.

WRT MANAGEMENT, INC. f/k/a  
TANNER’S SPORT CENTER INC., et al.,

*Defendants.*

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

Civil Action No. 230702394

CIVIL DIVISION

---

**PLAINTIFF’S OPPOSITION TO DEFENDANT WRT MANAGEMENT, INC.’S  
PRELIMINARY OBJECTIONS TO THE FIRST AMENDED COMPLAINT**

**I. MATTER BEFORE THE COURT**

Plaintiff, the City of Philadelphia, has sued three local gun stores that it contends have repeatedly and illegally diverted firearms to the criminal market, creating a public nuisance and causing a variety of harms to the City and its residents. One of these gun stores, Defendant WRT Management, Inc. (formerly known as Tanner’s Sport Center Inc., hereinafter, “Tanner’s”) now asks to be dismissed from the lawsuit under Rule 1028(a)(2), on the basis that the City’s pleading contains “impertinent and scandalous” allegations. Specifically, Tanner’s contends that the Amended Complaint unfairly attributes *all* of the City’s gun violence to “only one cause”—Tanner’s improper sales. Tanner’s Mem. at 3-4. This, Tanner’s contends, unfairly “demonizes” the store and prevents it from receiving a fair trial. *See id.*

But Tanner’s is objecting to a straw man of its own creation. In reality, the Amended Complaint never alleges that “all” gun violence in the City comes from “only one” source (or even from the three Defendants collectively). Instead, it pleads that Tanner’s and the other Defendants each *contribute* to gun violence in Philadelphia and seeks to hold each responsible for its own role in sustaining this public nuisance. And the descriptions of gun violence that Tanner’s objects to

articulate required elements of the City’s claims: that gun violence interferes with public rights, that this injures the City, and that Defendants’ illegal gun sales are a proximate cause. Under controlling Commonwealth law, allegations pleading elements of a party’s claims are not a proper basis for objections under Rule 1028(a)(2). Moreover, Tanner’s makes only conclusory allegations of prejudice that are predicated entirely on its own distorted reading of the complaint. Finally, even if Tanner’s objections had merit (which they do not), the appropriate remedy would be to suppress or strike the particular language found objectionable, not to dismiss the entire lawsuit. Tanner’s objections are groundless and should be denied.

## **II. QUESTION INVOLVED**

1. Should the Amended Complaint be dismissed as to WRT Management, Inc. based on the inclusion of scandalous or impertinent matter?

*Suggested answer: No.*

## **III. STATEMENT OF FACTS**

Tanner’s is an active Pennsylvania corporation that, until late 2022, operated a federally licensed retail firearm store located in Jamison, Pennsylvania. Am. Compl. ¶ 12. Like the other two defendants, Frank’s Gun Shop & Shooting Range LLC (“Frank’s”) and Mad Minute Enterprises, LLC d/b/a Delia’s Gun Shop and Delia’s Gun Shop, Inc. (together, “Delia’s”), Tanner’s was one of the largest single sources of crime guns recovered in Philadelphia between 2015 and 2019 (the last years for which data is available). *Id.* ¶ 28. The City alleges this is not an accident, but rather is the product of the store’s repeated and knowing gun sales to illegal “straw purchasers,” who are individuals buying guns for others. *See e.g., id.* ¶¶ 4, 6.<sup>1</sup>

---

<sup>1</sup> A fuller recitation of the facts can be found at pages 5-9 of Plaintiff’s Memorandum of Law in Support of its Opposition to Defendants Frank’s and Delia’s Preliminary Objections to the First Amended Complaint. These facts are incorporated herewith.

To date, the City has catalogued at least 79 guns that Tanner’s sold to straw purchasers between April 2019 and May 2021, many in brazen circumstances that a reasonable gun dealer would immediately have recognized as an illegal transaction. *See id.* ¶ 49. The Amended Complaint details a number of these flagrant straw sales at Tanner’s gun store, along with the crimes these guns were used to perpetrate—often mere days or weeks later. *See id.* ¶¶ 50-64. The illegal diversion of firearms by Tanner’s and the other Defendants helps create and sustain an illegal, unregulated secondary market that supplies firearms to individuals that the law deems too dangerous or irresponsible to possess them. *Id.* ¶¶ 23, 25. These diverted firearms are then supplied through this illegal black market to criminals and other prohibited purchasers who use them to commit crimes in the City. *See id.* ¶ 26, 50-64. The City must then expend resources to respond to this violence, *see id.* ¶ 22, and to prevent it, *id.* ¶ 21. To address these harms, the City brings claims against Tanner’s for creating a public nuisance, for negligence, negligence per se, negligent entrustment, and for violation of Section 6111(g)(6) of the Uniform Firearms Act. *Id.* ¶¶ 96-112 (public nuisance); ¶¶ 113-119 (negligence); ¶¶ 120-126 (negligence per se); ¶¶ 127-136 (negligent entrustment); ¶¶ 137-145 (violation of 18 Pa.C.S. § 6111(g)(6)).

#### **IV. ARGUMENT**

As an initial matter, Tanner’s preliminary objections are premised entirely on a mischaracterization of the City’s Amended Complaint. Tanner’s objections focus on the supposed allegation that “the violence in the city can come from only one cause and that is WRT’s alleged improper sales.” Tanner’s Mem. at 3-4; *see also id.* (contending that the City attributes gun violence to “only one source[:] guns sold by WRT”); *see also* Tanner’s POs ¶ 7 (contending that the City blames gun violence on “the actions of the Defendants and [] no other causes”). But the Amended Complaint plainly does not say that Tanner’s is—or Defendants collectively are—solely responsible for gun violence in Philadelphia. Instead, it alleges that Defendants’ illegal gun sales

cause *some* of the City’s gun violence—specifically, the gun violence that is perpetrated using the guns that Defendants have illegally sold. For example, paragraph 27 of the Amended Complaint explains how Philadelphia’s gun violence is driven “in significant part” by the diversion of firearms to criminals via straw purchases, and that a “disproportionate share” of these illegal straw purchases occur at just a handful of licensed dealers. Am. Compl. ¶ 27. Then, it explains that around “a third of the crime guns recovered” by Philadelphia Police between 2015 and 2019 came from just 10 gun dealers, of which the three Defendants are “among the principal sources.” *Id.* ¶¶ 27-28; *see also, e.g., id.* ¶¶ 2-3, 20, 26 (using qualified language for attribution, like “in significant part,” “in large part,” “fuel and exacerbate,” and “outsize role”—none of which means “all”).

Tellingly, nowhere in Tanner’s preliminary objections or supporting brief does it point to a single instance where the Amended Complaint says that Tanner’s causes (or the three Defendants collectively cause) “all” of the City’s gun violence. Tanner’s has lodged preliminary objections to a strawman of its own creation, and the objections should be denied on this basis alone.

**a. The Allegations in the Amended Complaint Are Neither Impertinent Nor Scandalous**

A pleading is objectionable under Rule 1028(a)(2) for including scandalous and impertinent matter only to the extent it contains allegations that are “immaterial and inappropriate to the proof of the cause of action.” *Com., Dep’t of Env’t Res. v. Peggs Run Coal Co.*, 55 Pa. Cmwlth. 312, 320 (1980). Tanner’s appears to object to Amended Complaint paragraphs 1-2, 5, 9, and 18-29. *See* Tanner’s POs ¶¶ 16-18, 20, 22-23. Tanner’s contends that these paragraphs, which describe how Defendants’ illegal gun sales lead to gun violence that harms the City, are “immaterial to proof of the elements of Public Nuisance, Negligence, or a violation of [UFA Section 6111(g)(6)].” Tanner’s Mem. at 3-4. Not so.

To the contrary, these paragraphs allege elements of the City’s claims, including specifically the elements of causation and damages that are a component of each cause of action, and the interference with a public right that is an element of the City’s public nuisance claim. Paragraphs 1 and 5 describe specific crimes involving guns that Defendants sold to straw purchasers (like a home invasion robbery, a domestic violence incident, a pair of shootings, recovery from minors and other prohibited possessors, and guns that were illegally modified to be machine guns or to have obliterated serial numbers). Am. Compl. ¶¶ 1, 5.<sup>2</sup> Paragraphs 2 and 3 speak to causation—providing an overview of how Defendants’ illegal gun sales to straw purchasers supply the criminal gun market in Philadelphia (which in turn leads to gun violence), and quantifying the volume of each Defendant’s known illegal transactions. *Id.* ¶ 2-3. Paragraph 9 describes how straw-purchased guns that have not yet been recovered by police nonetheless harm the City while they remain in circulation. *Id.* ¶ 9.

Paragraphs 18-22 articulate other forms of harm to the City and describe how those harms interfere with public rights such as the right to safety in public spaces and the right to access public services. For example, gun violence—including violence perpetrated with firearms illegally sold by Tanner’s and the other Defendants—harms the City and its residents through violent crimes (*id.* ¶ 18-20), emotional harm to victims and survivors (*id.* ¶ 20), interference with public spaces and the delivery of City services (*id.* ¶ 21), expenditure of City resources on prevention and

---

<sup>2</sup> Notably, Tanner’s makes no mention whatsoever—and thus concedes the propriety of—numerous other paragraphs that detail specific instances of harm flowing from illegal guns sold at its gun counter and recovered in crimes on City streets. *See, e.g., id.* ¶¶ 4 & 53 (recovery of three guns sold to straw purchaser Nafez Hutchings, including two with obliterated serial numbers, one from a minor, and one from a felon); ¶¶ 57-58 (recovery of eight firearms sold to straw purchaser Joshua Morales, including two from convicted felons, one from a drug bust, one with an illegal machine gun modification, and one with an obliterated serial number); ¶ 60 (recovery of two guns sold to straw purchaser Quinn Whisted, including one recovered from home invasion robbery); ¶ 64 (gun sold to straw purchaser Shanea Patterson recovered from 16-year old fleeing police after car chase).

response measures (*id.* ¶ 22), and the economic burden of lost wages and diminished property values and tax revenues (*id.*).

The other paragraphs referenced in Tanner’s POs likewise go to other required elements of the City’s claims, including causation. Paragraphs 23-28 elaborate how Defendants’ illegal straw sales transgress both the law and public interest of the Commonwealth (*see id.* ¶¶ 23-25), and how guns recovered at City crime scenes originate disproportionately from just a small number of local dealers including the Defendants (*id.* ¶¶ 26-28). Paragraph 29 explains that many of the crime guns sold by Defendants take only a short time to travel from store to crime scene, indicating that they are being straw purchased and illustrating how gun crime is the direct, proximate, and foreseeable result of Defendants’ illegal behavior. *Id.* ¶ 29. In sum, these paragraphs allege how Defendants’ misconduct causes the City’s harms—thus they are pled to establish causation, another required element of the City’s claims.

Allegations like these that bear on elements of a party’s claim are not immaterial and inappropriate and thus cannot be struck under Rule 1028(a)(2), as Tanner’s own cases recognize. For example, in *Legion Ins. Co. v. Doeff*, the court declined to strike allegations of improper attorney contact with a represented party, because the “allegation forms part of the basis for [plaintiff’s] claims against [defendant] for infliction of emotional distress.” No. 100536, 2001 WL 1807931, at \*5 (Pa. Com. Pl. Dec. 18, 2001); *see also* Tanner’s Mem. at 3 (citing *Legion*).

Similarly, in *MacLeod v. Russo*, the court drew a distinction based on whether the allegations were relevant to plaintiff’s malpractice claim against a doctor who was abusing drugs and alcohol. The court did not strike allegations of defendant’s “drug addiction establishing impairment and state of mind at the time of decedent’s treatment” because these were “relevant to plaintiff’s cause of action and claims for punitive damages.” No. 11689 CIVIL 2008, 2010 WL

3491515, 13 Pa. D & C 5th 110, 115 (Pa. Com. Pl. May 6, 2010); *see also* Tanner’s Mem. at 3 (citing *MacLeod*). But allegations about *how* the doctor obtained his drugs, or that he abused drugs “outside of decedent’s treatment dates,” had no bearing on whether he was impaired when treating plaintiff and were struck. *Id.* at 114.<sup>3</sup>

Tanner’s final case, *Common Cause/Pennsylvania v. Com.*, simply underscores this rule that where allegations are “immaterial to Petitioners’ cause of action” they may be improper under Rule 1028(a)(2). 710 A.2d 108, 115 (Pa. Commw. Ct. 1998) (striking down, in lawsuit challenging one specific piece of legislation, allegations describing enactment of “other pieces of legislation, not here before us”), *aff’d*, 562 Pa. 632, 757 A.2d 367 (2000).

Where, as here, the contested allegations go directly to the elements of the City’s claims, they are neither impertinent nor scandalous under Rule 1028(a)(2). *See, e.g., Com., Dep’t of Env’t Res. v. Peggs Run Coal Co.*, 55 Pa. Cmwlth. 312, 320-21 (1980) (allegations about shareholder misconduct went to elements of claim to pierce corporate veil and were not scandalous and impertinent); *see also Commonwealth v. RBC Cap. Markets Corp.*, 264 A.3d 825, 2021 WL 4096634, at \*27 (Pa. Commw. Ct. 2021) (unpublished) (declining to strike allegations of “specific actions on the part of each Defendant...which collectively resulted in the alleged harms,” because these allegations were not “disconnected from the proof of the claims”). Indeed, it is reversible error to strike as scandalous and impertinent allegations that bear on an element of a party’s claims. *See Breslin v. Mountain View Nursing Home, Inc.*, 2017 PA Super 308, 171 A.3d 818, 829 (2017) (reversing and finding that trial court erred when it struck allegations that “may bear upon

---

<sup>3</sup> The portions of the complaint struck in *MacLeod* are also distinguishable because they went solely to an issue of uncontested fact: “defendant[’s] *admitted* drug abuse and addiction.” *Id.* Here, by contrast, Tanner’s has not admitted that it engaged in illegal transactions with straw purchasers and thus that issue is contested and an appropriate subject for the City’s pleadings.

[defendant's] non-delegable duties" to care for patients, in lawsuit alleging negligence by nursing home). The Court should reject Tanner's preliminary objections on this basis as well.

**b. Tanner's Cannot Affirmatively Show Prejudice**

Tanner's preliminary objections should be rejected for a third reason too: Tanner's fails to "affirmatively show prejudice" from the contested allegations. *Com., Dep't of Env't Res. v. Hartford Acc. & Indem. Co.*, 40 Pa. Cmwlth. 133, 138 (1979). This burden falls exclusively on Tanner's because "the right of a court to strike impertinent matter should be sparingly exercised and only when a party can affirmatively show prejudice." *Id.* Here, Tanner's only claim of harm is that the Amended Complaint will somehow improperly "sway a trier of fact" and make it "impossible for WRT to receive a fair trial." Tanner's Mem. at 4.

This conclusory statement does not explain how or why Tanner's will supposedly suffer prejudice and is wholly inadequate to carry its burden. While guidance in Commonwealth courts is sparse, cases applying the analogous federal rule make clear that conclusory allegations of prejudice like these are insufficient to strike a pleading. *See, e.g., Chan v. Barbour, Inc.*, 263 F. Supp. 3d 521, 525 (E.D. Pa. 2017) (rejecting motion to strike allegations based on defendant's "conclusory assertion that they 'will only cause prejudice to Defendant and/or will only serve to confuse the issues'"); *Marsden v. Select Med. Corp.*, No. CIV.A. 04-4020, 2006 WL 891445, at \*19 (E.D. Pa. Apr. 6, 2006) (denying motion to strike allegations in complaint where defendant "merely offer[ed] conclusory statements that various allegations will be prejudicial"), *vacated in part on other grounds*, No. CIV.A. 04-4020, 2007 WL 518556 (E.D. Pa. Feb. 12, 2007); *Divine Equal. Righteous v. Overbrook Sch. for the Blind*, No. CV 23-846, 2023 WL 4763994, at

\*12 (E.D. Pa. July 26, 2023) (denying motion to strike that “stat[ed] in conclusory fashion that the [allegations] are irrelevant and prejudicial” (cleaned up)).<sup>4</sup>

Moreover, a party is not prejudiced by having to answer a pleading that lays out the elements of a cause of action against it; instead it must show that the allegations are both irrelevant *and scandalous*—that is, “derogatory” in some way. *See Common Cause/Pennsylvania*, 710 A.2d at 115 (striking recitation of lawmaking process that was irrelevant *and* “improperly cast a derogatory light on the legislative and executive branch leadership”); *see also Goehring v. Harleysville Mut. Cas. Co.*, 73 Pa. D. & C.2d 784, 788-89 (Pa. Com. Pl. 1976) (declining to strike portions of complaint that were only challenged as irrelevant, not “injurious”).

Here, Tanner’s carries neither part of its burden. As explained above, allegations describing gun violence traceable to illegal firearms sold by Tanner’s and the other Defendants are not irrelevant but instead plead core elements of the City’s claims. Nor are the Amended Complaint’s frank, evidence-based descriptions of gun violence in Philadelphia “derogatory” in a way that is comparable to allegations maligning lawmakers in *Common Cause/Pennsylvania* or allegations detailing an addict’s “conspiratorial means” of obtaining prescription drugs in *MacLeod*. *See Common Cause/Pennsylvania*, 710 A.2d at 115; *MacLeod*, 2010 WL 3491515, 13 Pa. D & C 5th 110, 114. And because Tanner’s cannot point to any genuinely “scandalous” allegation within the meaning of Rule 1028(a)(2), the store instead resorts to obvious mischaracterizations of the Amended Complaint—claiming that it “demonizes” the store by laying every act of “past, present, and future” gun crime in the City on its doorstep. *See Tanner’s Mem.* at 4; Tanner’s POs ¶ 14.

---

<sup>4</sup> Tanner’s supposed concern about the Amended Complaint prejudicing a jury is likewise unfounded, and not a basis to strike the City’s pleading. *See, e.g., Lifetouch Nat’l Sch. Studios Inc. v. Roles*, No. 3:15-CV-234, 2016 WL 3440620, at \*3 (W.D. Pa. June 20, 2016) (denying Rule 12(f) motion to strike pleading for lack of prejudice, and finding “[t]his argument meritless...in light of the fact that the pleadings...are not read to jurors”); *see also Ratvasky v. Citizens Nat’l Bank*, No. 05CV1056, 2005 WL 3289343, at \*2 (W.D. Pa. Dec. 5, 2005) (denying Rule 12(f) motion to strike predicated on concern that allegations would taint jury, and finding “no real concern for prejudice here” because pleadings are not read to the jury).

Tanner’s misguided and conclusory assertions of prejudice fail to carry its burden, and the Court should not strike the allegations. *See Breslin*, 2017 PA Super 308, 171 A.3d 818, 829 (2017) (reversing trial court decision to strike paragraphs of complaint where defendant had not “affirmatively shown any prejudice resulting from these allegations”); *see also, e.g., Legion*, 2001 WL 1807931, at \*5 (declining to strike allegation where defendant “has failed to show how this allegation prejudices it”).

**c. Dismissal is Not a Proper Remedy Under Rule 1028(a)(2)**

The final flaw in Tanner’s request is that even if its objections had merit (which they do not), it would not be entitled to dismissal. Instead, when courts find portions of a pleading to be impertinent or scandalous, the remedy is to either treat the offending portions as “mere surplusage” and ignore them, or to strike the particular portions found to violate Rule 1028(a)(2). *See Hartford Acc. & Indem. Co.*, 40 Pa. Cmwlth. 133, 137 (“[E]ven if the pleading of damages was impertinent matter, that matter need not be stricken but may be treated as ‘mere surplusage’ and ignored.”). In both cases that Tanner’s relies on that found a violation of Rule 1028(a)(2), the remedy was to surgically excise the objectionable material, not to dismiss the movant from the lawsuit. *See Common Cause/Pennsylvania*, 710 A.2d 108, 115 (striking only introductory statement found to contain scandalous and impertinent material, but declining to strike or dismiss rest of pleading); *MacLeod*, 2010 WL 3491515, \*115 (striking 10 paragraphs of complaint). Tanner’s requested remedy is particularly extraordinary and inappropriate here, where it objects principally to allegations that articulate the forms of damages suffered by the City. *See Hartford Acc. & Indem. Co.*, 40 Pa. Cmwlth. 133, 137 (“We do not believe, however, that the possible pleading of improper damages justifies striking the entire complaint.”). Tanner’s does not cite a single reported decision where a party’s entire complaint was dismissed for including scandalous and impertinent material,

and the City is aware of none. Tanner's request for relief is unprecedented, contrary to law, and should be rejected.

**V. CONCLUSION**

For the foregoing reasons, the City respectfully asks that Tanner's Preliminary Objections to the Amended Complaint be denied.

Respectfully submitted this 10th day of January, 2024.

Eric Tirschwell\*  
James E. Miller\*  
Eugene Nam\*  
**EVERYTOWN LAW**  
450 Lexington Ave.  
P.O Box # 4184  
New York, NY 10017  
Phone: (646) 324-8222  
etirschwell@everytown.org

By: Lydia M. Furst, Divisional Deputy  
City Solicitor  
Attorney I.D. No. 307450  
*/s/ Lydia M. Furst*  
**CITY OF PHILADELPHIA DEPT. OF LAW**  
Renee M. Garcia, Acting City Solicitor  
Attorney I.D. No. 315622  
Benjamin H. Field, Chief Deputy City  
Solicitor  
Attorney I.D. No. 204569  
Aimee D. Thomson, Deputy City Solicitor  
Attorney I.D. No. 326328  
Ryan B. Smith, Assistant City Solicitor  
Attorney I.D. No. 324643  
1515 Arch Street, 15<sup>th</sup> Floor  
Philadelphia, PA 19102-1595  
Tel (215) 683-3573  
Lydia.Furst@phila.gov

Alla Lefkowitz \*  
**EVERYTOWN LAW**  
P.O. Box 14780  
Washington, DC 20044  
Phone: 202-545-3257  
alefkowitz@everytown.org

Jordan Estes\*  
**KRAMER LEVIN NAFTALIS &  
FRANKEL LLP**  
1177 Avenue of the Americas  
New York, NY 10036  
(212) 715-9100  
JEstes@kramerlevin.com

Chloe Bootstaylor\*  
**KRAMER LEVIN NAFTALIS &  
FRANKEL LLP**  
2000 K Street NW, 4th Floor  
Washington, DC 20006  
(202) 775-4500  
CBootstaylor@kramerlevin.com

\*Admitted *pro hac vice*

**ATTORNEYS FOR PLAINTIFF  
CITY OF PHILADELPHIA**

**CERTIFICATE OF SERVICE**

I, Lydia Furst, hereby certify that on the date below, the foregoing response in opposition to Preliminary Objections and accompanying Memorandum of Law was served on all counsel of record by electronic filing and is available for viewing and downloading.

Dated: January 10, 2024

/s/ Lydia Furst  
Lydia Furst  
Divisional Deputy City Solicitor