IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

RADMILO STANISIC, EXECUTOR OF THE ESTATE OF NEVIN STANISIC, ET AL *Plaintiff*, v. STURM, RUGER & COMPANY, INC., *Defendant.*	Civil Action No. 3:23-cv-01340-RNC **November 13, 2023**

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION TO REMAND

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

BACKGROUND 2

A. Ruger Evaded Federal Regulation in Designing, Manufacturing, Marketing and Selling the "AR-556 Pistol." 2

B. Plaintiffs' Initial Complaint Alleged That Ruger's Conduct Was Intended to Evade Federal Firearm Regulations. 3

ARGUMENT 4

I. THE REMOVAL STATUTE IS STRICTLY CONSTRUED AND THE BURDEN IS ON DEFENDANT TO ESTABLISH THAT REMOVAL IS PROPER 4

II. REMAND IS REQUIRED BECAUSE DEFENDANT'S NOTICE OF REMOVAL IS UNTIMELY UNDER 28 U.S.C. § 1446(b) 5

A. The Initial Complaint Implicated a Federal Question on Its Face, and Thus the Notice of Removal Is Untimely. 6

B. The Law of the Case Doctrine Precludes Defendant's Attempt to Relitigate Its Objection to Plaintiffs' Amended Complaint. 8

III. THIS CASE DOES NOT FIT WITHIN THE "SPECIAL AND SMALL" CATEGORY OF CASES REMOVABLE UNDER *GRABLE* 10

A. Ruger's Alleged Violations Of The National Firearms Act and The Gun Control Act Do Not Present a Sufficiently "Substantial" Federal Issue. 11

1. The Federal Issue Here is Fact-Bound and Not "A Nearly Pure Issue of Law." 11

2. The Federal Issue Raised by Plaintiffs' Claims Are Not Sufficiently Important to the Federal System as a Whole. 15

B. Exercising Federal Jurisdiction Would Disrupt The Federal-State Balance. 19

C. The *Fleet Farm* and *Arm or Ally* Cases Do Not Support Removal Here. 20

CONCLUSION 22

TABLE OF AUTHORITIES

Page(s)

Cases

Abbo-Bradley v. City of Niagara Falls,
73 F.4th 143 (2d Cir. 2023) 6

Ali v. Mukasey,
529 F.3d 478 (2d Cir. 2008).....8

Barone v. Bausch & Lomb, Inc.,
372 F. Supp. 3d 141 (W.D.N.Y. 2019).....16

Broder v. Cablevision Systems Corp.,
418 F.3d 187 (2d Cir. 2005).....16

Cenatiempo v. Bank of Am., N.A.,
333 Conn. 769 (Conn. 2019).....19

Congregation Machna Shalva Zichron Zvi Dovid v. U.S. Dep't of Agric.,
557 Fed. Appx. 87 (2d Cir. 2014).....11

Corporan v. Wal-Mart Stores E., LP,
194 F. Supp. 3d 1128 (D. Kan. 2016).....14, 18, 20

Cutillo v. Wellmore Behav. Health,
No. 3:15-CV-01174 (VAB), 2016 WL 3976543 (D. Conn. July 22, 2016).....19

DeWeerth v. Baldinger,
38 F.3d 1266 (2d Cir. 1994).....8

Empire Healthchoice Assurance v. McVeigh,
547 U.S. 677 (2006).....11, 12, 15, 19

Erie Conduit Corp. v. Metro. Asphalt Paving Ass'n,
560 F. Supp. 305 (E.D.N.Y. 1983) 10

Fed. Ins. Co. v. Tyco Int'l Ltd.,
422 F.Supp.2d 357 (S.D.N.Y. 2006) 5

Fracasse v. People's United Bank,
747 F.3d 141 (2d Cir. 2014).....11, 15

Franco v. Bunyard,
261 Ark. 144 (Ark. 1977) (en banc) 18

In re Fugazy Express, Inc.,
159 B.R. 432 (Bankr. S.D.N.Y. 1993) 10

Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.,
545 U.S. 308 (2005) ..... *passim*

Gunn v. Minton,
568 U.S. 251 (2013) ..... *passim*

Jefferson v. Rossi,
No. 01-CV-2536, 2002 WL 32154285 (E.D. Pa. Jan. 22, 2002) 18

K-Mart Enters. of Fla., Inc. v. Keller,
439 So. 2d 283 (Fla. Dist. Ct. App. 1983) 19

Kalina v. Kmart Corp.,
No. CV-90-269920 19

Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.,
397 F.3d 77 (2d Cir. 2005) 8

Lupo v. Hum. Affs. Int'l, Inc.,
28 F.3d 269 (2d Cir.1994) 5

Martin v. Schroeder,
209 Ariz. 531 (Ariz. Ct. App. 2005) 19

Merrell Dow Pharms., Inc. v. Thompson,
478 U.S. 894 (1986) 15, 17, 18

MHA LLC v. HealthFirst, Inc.,
629 F. App'x 409 (3d Cir. 2015) 15

Mihok v. Medtronic, Inc.,
119 F. Supp. 3d 22 (D. Conn. 2015) ..... *passim*

Minnesota v. Fleet Farm LLC,
No. CV 22-2694, 2023 WL 4203088 (D. Minn. June 27, 2023) 20, 22

NASDAQ OMX Grp., Inc. v. UBS Sec., LLC,
770 F.3d 1010. (2d Cir. 2014) 16

Nasso v. Seagal,
263 F.Supp.2d 596 (E.D.N.Y. 2003) 10

Nettelton v. Astrue,
No. 3:11-cv-1357, 2013 WL 1390042 (D. Conn. Apr. 4, 2013) 8

New York v. Arm or Ally, LLC,
644 F. Supp. 3d. 70 (S.D.N.Y. 2022) 21, 22

Peek v. Oshman's Sporting Goods, Inc.,
768 S.W.2d 841 (Tex. Ct. App. 1989) 19

Phx. Glob. Ventures, LLC v. Phx. Hotel Assocs., Ltd.,
422 F.3d 72 (2d Cir. 2005) 5

Pritika v. Moore,
91 F. Supp. 3d 553 (S.D.N.Y. 2015) 15

Ramos v. Wal-Mart Stores, Inc.,
202 F. Supp. 3d 457 (E.D. Pa. 2016) 20

Roberts v. Smith & Wesson Brands, Inc.,
No. 22-CV-6169, 2023 WL 6213654 (N.D. Ill. Sept. 25, 2023) 20

Sig Sauer, Inc. v. Brandon,
826 F.3d 598 (1st Cir. 2016) 13

Smith v. Kan. City Title & Tr. Co.,
255 U.S. 180 (1921) 16

Soto v. Bushmaster Firearms Int'l, LLC,
139 F. Supp. 3d 560 (D. Conn. 2015) 5

Spencer v. Duncaster, Inc.,
54 F. Supp. 3d 171 (D. Conn. 2014) 4

In re Standard & Poor's Rating Agency Litig.,
23 F.Supp.3d 378 (S.D.N.Y. 2014) 13

Tisdale v. Pagourtzis,
No. 3:20-CV-140, 2020 WL 7170491 (S.D. Tex. Dec. 7, 2020) 18, 20

Torah Soft Ltd. v. Drosnin,
224 F.Supp.2d 704 (S.D.N.Y. 2002) 9

Vermande v. Hyundai Motor Am., Inc.,
352 F.Supp.2d 195 (D. Conn. 2004) 5

Walker v. Doe,
No. 3:17-cv-425, 2018 WL 4516672 (D. Conn. Sept. 20, 2018) 8

West v. Mache of Cochran, Inc.,
187 Ga. App. 365 (Ga. Ct. App. 1988) 19

Whitaker v. Am. Telecasting, Inc.,
261 F.3d 196 (2d Cir. 2001).....6, 7

Williams ex rel. Raymond v. Wal-Mart Stores E., L.P.,
99 So. 3d 112 (Miss. 2012).....18

Zhaoyin Wang v. Beta Pharma, Inc.,
No. 3:14-CV-01790 (VLB), 2015 WL 5010713 (D. Conn. Aug. 24, 2015) 5

Statutes

18 U.S.C. §§ 921–931..... *passim*

26 U.S.C. §§ 5801–5872.....7, 9, 12, 14, 21

26 U.S.C. § 6335.....16

28 U.S.C. § 1331.....1, 10

28 U.S.C. § 1446.....1, 4, 5

28 U.S.C. § 1447.....22

Other Authorities

88 Fed. Reg. 6,478 (Jan. 31, 2023) 17

PRELIMINARY STATEMENT

Defendant Sturm, Ruger & Company, Inc.'s ("Ruger") Notice of Removal is defective for two principal reasons. First, it is untimely. Ruger invokes this Court's federal question jurisdiction pursuant to 28 U.S.C. § 1331. ECF No. 1 ("Notice") ¶ 6. Plaintiffs do not contest that their state law claims raise a disputed federal issue—namely, whether the gun manufactured, marketed, and sold by Ruger and used by a shooter to kill their loved ones was a short-barreled rifle within the meaning of the federal National Firearms Act and Gun Control Act. But this disputed federal issue was apparent from the face of Plaintiffs' initial complaint, dated March 10, 2023, and served on Ruger on March 22, 2023. Ruger failed to file its Notice of Removal within 30 days of receiving that initial pleading, as required by 28 U.S.C. § 1446.

Second, even if Ruger's Notice were timely, Ruger cannot meet its burden to establish this Court's federal question jurisdiction. Plaintiffs have asserted solely state-law claims: negligence, negligence per se, public nuisance, common law recklessness, and a violation of the Connecticut Unfair Trade Practices Act ("CUTPA"). Thus, to establish the Court's subject matter jurisdiction, Ruger must demonstrate that this case fits within the "special and small" category of state law claims that "implicate significant federal issues." *Gunn v. Minton*, 568 U.S. 251, 258 (2013); *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). This Ruger cannot do. The federal issue disputed by the parties is almost entirely a question of fact; its resolution will involve a fact-intensive inquiry into the Ruger weapon's specific features and Ruger's intent in designing it. The Supreme Court has made clear that where a disputed federal issue is fact-bound and situation-specific, and would not have broad implications for the enforcement of federal law, the issue is simply not substantial enough to warrant federal court jurisdiction over state law claims. That is the case here. Additionally, Ruger cannot establish that Plaintiffs' claims are "capable of resolution in federal court without disrupting the federal-state

balance approved by Congress." *Mihok v. Medtronic, Inc.*, 119 F. Supp. 3d 22, 27 (D. Conn. 2015) (quoting *Gunn*, 568 U.S. at 258).

Therefore, for the reasons outlined herein, Plaintiffs respectfully request that the Court remand this matter to the Connecticut Superior Court.

BACKGROUND

A. Ruger Evaded Federal Regulation in Designing, Manufacturing, Marketing and Selling the "AR-556 Pistol."

The Plaintiffs are family members of the victims of the March 22, 2021, mass shooting at a King Soopers supermarket in Boulder, Colorado. A 21-year-old shooter killed ten people in a matter of minutes with a short-barreled rifle that the Plaintiffs allege was unlawfully designed, manufactured, marketed, and sold by Connecticut-based Ruger. The shooter had purchased the short-barreled rifle a mere six days earlier, on March 16, 2021. Amended Complaint ("Am. Compl.") ¶¶ 22-23, 100, attached as Exhibit B to Ruger's Notice of Removal (ECF No. 1-3).

Federal law—specifically, the National Firearms Act (the "NFA") and the Gun Control Act ("GCA")—imposes heightened regulation on manufacturers, sellers, and purchasers of short-barreled rifles, over and above the baseline federal regulation of all firearms. Am. Compl. ¶¶ 40–54. Rigorous oversight is commensurate with the elevated danger presented by short-barreled rifles. The Ruger weapon at issue here, for instance, resembles full-length AR-15-style rifles in function and firepower, but offers greater concealability and maneuverability due to its shorter barrel. Am. Compl. ¶¶ 33–34, 44; *see also* Initial Compl.[1] ¶¶ 10–13, attached as Exhibit A to

[1] For the sake of clarity, this memorandum refers to the Complaint dated March 22, 2023, commencing this action in Connecticut state court as the "Initial Complaint." Following Ruger's Request to Revise and the court's associated order, Plaintiff made minor revisions—which are immaterial to the instant motion—and filed the pleading styled as the "Revised Complaint" on July 7, 2023, attached hereto as Exhibit 1. The Revised Complaint was the operative pleading until the Court granted Plaintiffs' Request to Amend on October 4, 2023.

Ruger's Notice of Removal (ECF No. 1-2). Notably, prospective civilian retail purchasers must complete a multi-step application process and receive approval from the Bureau of Alcohol, Tobacco, Firearms and Explosives (the "ATF") before buying a short-barreled rifle, a process that takes approximately seven months to complete. Am. Compl. ¶¶ 52–54.

As alleged by Plaintiffs in both the Initial Complaint and their Amended Complaint, Ruger evaded increased regulatory obligations imposed by federal law by designing, marketing, and selling short-barreled rifles with alternative shoulder stocks and under the misleading model name "AR-556 Pistol."[2] Am. Compl. ¶¶ 9–15, 17-18, 22, 55–83; Initial Compl. ¶¶ 6–15. Had Ruger complied with federal law, the shooter would not have been able to purchase the weapon he used in time to commit this horrific mass shooting, and as a result, Ruger's conduct was a proximate cause of the death and related injuries of the Plaintiffs' loved ones and others. Am. Compl. ¶¶ 110, 149–153; *see also* Initial Compl. ¶¶ 40–44.

B. Plaintiffs' Initial Complaint Alleged That Ruger's Conduct Was Intended to Evade Federal Firearm Regulations.

Plaintiff filed the Initial Complaint, dated March 22, 2023, in the Connecticut Superior Court, District of Waterbury (the "Connecticut State Court"). The Initial Complaint included two intertwined sets of fact allegations: (a) Ruger evaded federal regulation of short-barreled rifles in designing, producing, and distributing its line of civilian short-barreled rifles, which it misleadingly labeled as AR-556 "Pistols," and (b) Ruger unfairly, deceptively, unscrupulously, and recklessly marketed the same. Plaintiffs then filed a request to amend their complaint. The Amended Complaint significantly expanded on the allegations made in the Initial Complaint (and the subsequent Revised Complaint) relating to Ruger's evasion of federal law. Whereas the Initial

[2] For ease of reference, Plaintiff refers to the weapon at issue throughout by the model name assigned to it by Ruger, "AR-556 Pistol." But as Plaintiff has alleged in each version of his complaint, and as discussed herein, the weapon is in fact a short-barreled rifle.

Complaint placed greater emphasis on Ruger's marketing conduct, the Amended Complaint expanded on the allegations relating to the ways in which Ruger circumvented federal regulation of short-barreled rifles. But neither the evasion theory nor the marketing theory was brand new or abandoned in the Amended Complaint, despite Ruger's assertions to the contrary. *See* Notice of Removal ("Notice") ¶ 3.

Ruger filed an objection to Plaintiffs' request to amend their complaint on the sole ground that Plaintiffs' new allegations did not relate back to the Initial Complaint and were time-barred. Plaintiffs filed a response to Defendant's objection. Judge Bellis of the Connecticut Superior Court entered an order on October 4, 2023 (the "Order"), denying Ruger's objection and granting Plaintiffs' request to amend his complaint. *See* Order, attached hereto as Exhibit 4. On October 13, 2023, Ruger filed the Notice of Removal, removing the action to this Court.

ARGUMENT

I. THE REMOVAL STATUTE IS STRICTLY CONSTRUED AND THE BURDEN IS ON DEFENDANT TO ESTABLISH THAT REMOVAL IS PROPER

Pursuant to 28 U.S.C. § 1446(b), "[t]he notice of removal of a civil action or proceeding ***shall be*** filed within [thirty] days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." (emphasis added). If the case stated in the initial pleading is not removable, a defendant may file a notice of removal within thirty days after receipt of an amended pleading, motion, order or other paper indicating, for the first time, that the case has become removable. 28 U.S.C. § 1446(b)(3). The 30-day window for removal contained in Section 1446(b) is "mandatory" and "rigorously enforced" by courts, absent a finding of waiver or estoppel. *Spencer v. Duncaster, Inc.*, 54 F. Supp. 3d 171, 174 (D. Conn. 2014) ("[T]he removal statute, like other jurisdictional

statutes, is to be strictly construed."); *see also Phx. Glob. Ventures, LLC v. Phx. Hotel Assocs., Ltd.*, 422 F.3d 72, 75 (2d Cir. 2005).

In considering a motion to remand, "it is well-established that courts 'treat all factual allegations in the Complaint as true.'" *Zhaoyin Wang v. Beta Pharma, Inc.*, No. 3:14-CV-01790 (VLB), 2015 WL 5010713, at *1 (D. Conn. Aug. 24, 2015) (quotation omitted); *see also Fed. Ins. Co. v. Tyco Int'l Ltd.*, 422 F.Supp.2d 357, 391 (S.D.N.Y. 2006) ("When considering a motion to remand, the district court accepts as true all relevant allegations contained in the complaint and construes all factual ambiguities in favor of the plaintiff."). And "[the Second Circuit has repeatedly cautioned that in light of the congressional intent to restrict federal court jurisdiction, as well as the importance of preserving the independence of state governments, federal courts construe the removal statute narrowly, *resolving any doubts* ***against removability***." *Vermande v. Hyundai Motor Am., Inc.*, 352 F.Supp.2d 195, 197 (D. Conn. 2004) (quoting *Lupo v. Hum. Affs. Int'l, Inc.*, 28 F.3d 269, 274 (2d Cir.1994)) (emphasis added); *see also Soto v. Bushmaster Firearms Int'l, LLC*, 139 F. Supp. 3d 560, 562 (D. Conn. 2015) (Chatigny, J.) ("Any doubts must be resolved in favor of remand."). As the party seeking to remove this case, Defendant has "the burden of establishing that federal jurisdiction exists, and the burden is a heavy one." *Id.* Defendant cannot meet this burden.

II. REMAND IS REQUIRED BECAUSE DEFENDANT'S NOTICE OF REMOVAL IS UNTIMELY UNDER 28 U.S.C. § 1446(b)

There can be no dispute that Ruger filed its Notice of Removal well over 30 days after Plaintiff served his Initial Complaint on March 13, 2023. Instead, Ruger attempts to get this action into federal court several months past the prescribed deadline by arguing—wrongly—that Plaintiff raised federal questions for the first time in his Amended Complaint on October 4, 2023. Notice ¶ 3. Ruger's attempt should be denied for at least two reasons.

First, remand is required because the federal question identified in Ruger's Notice of Removal was clear on the face of Plaintiffs' Initial Complaint and the Notice of Removal is thus time-barred. *Second*, this exact issue was fully briefed by the parties and decided by the Connecticut Superior Court. That court rejected Ruger's argument that Plaintiffs' allegations related to federal firearm statutes were "new" and allowed Plaintiff to amend his complaint. *See* Exhibit 4, Order. Unhappy with the state court decision, Ruger now looks to this Court for a second bite at the apple. The Court should thus apply the law of the case doctrine, or otherwise defer to Judge Bellis's Order, and reject Defendant's Notice of Removal as untimely.

A. The Initial Complaint Implicated a Federal Question on Its Face, and Thus the Notice of Removal Is Untimely.

A case is removable when the initial pleading "enables the defendant to 'intelligently ascertain' removability from the face of such pleading." *Whitaker v. Am. Telecasting, Inc.*, 261 F.3d 196, 205–06 (2d Cir. 2001); *see also Abbo-Bradley v. City of Niagara Falls*, 73 F.4th 143, 150 (2d Cir. 2023) (affirming remand where changed facts in amended complaint did not affect whether federal jurisdiction could properly be asserted).

Defendant argues that this case first became removable only after Plaintiff filed his Amended Complaint, Notice ¶ 3, but Plaintiffs' Initial Complaint unambiguously implicated federal questions on its face. Specifically, the Initial Complaint included several allegations that, read together, made clear that Ruger's evasion of federal regulation of short-barreled rifles has been part of Plaintiffs' claim under the Connecticut Unfair Trade Practices Act (CUTPA) from the beginning. Specifically, Plaintiff alleged that "[t]he AR-556 pistol variant [of the full-length AR-556 rifle] featured the same rail system as other AR-15 style rifles while having an altered barrel and stock to ***evade federal classification as a rifle***," Initial Compl. ¶ 10; "Ruger designed the AR-556 such that it would utilize the same ammunition and magazines as the AR-15s," *id.* ¶ 11; and

"Ruger designed the AR-556 to be sold with stabilizing braces that essentially allowed the weapon to be ***converted to a rifle while still preserving its classification as a pistol for regulatory purposes***, *id.* ¶ 13.[3] Plaintiffs' CUTPA claim has, from the start, encompassed these allegations. *See* Initial Compl. ¶ 37 (CUTPA claim alleging that "Ruger marketed in the above manner," which included marketing the AR-556 as a pistol in order to evade federal classification as a rifle). This was sufficient to put Ruger on notice that Plaintiffs' Initial Complaint implicated questions of federal law.

Ruger argues that Plaintiffs alleged "for the first time" in their Amended Complaint "that Ruger's sale of the firearm violated both the National Firearms Act of 1934, 26 U.S.C. §§ 5801–5872 ("NFA"), and the Gun Control Act of 1968, 18 U.S.C. §§ 921–931 ("GCA")." Notice ¶ 3. But this improperly elevates form over substance. While it is true that Plaintiffs did not expressly name the NFA or the GCA in their Initial Complaint, they alleged that Ruger's misconduct was intended to "***evade federal classification as a rifle***" and that Ruger "designed the AR-556 to be sold with stabilizing braces that essentially allowed the weapon to be ***converted to a rifle while still preserving its classification as a pistol for regulatory purposes***." Together, these allegations clearly enabled Ruger, a sophisticated gun company, to "'intelligently ascertain'" (*Whitaker*, 261 F.3d at 205–06) that Plaintiff was alleging evasion of federal laws governing short-barreled rifles. By identifying the statutes in their Amended Complaint, Plaintiffs simply provided additional specificity as to their allegations; the federal questions underlying Plaintiffs' Initial Complaint did not change. Indeed, Defendant acknowledges as much in its formulation of the federal question at issue: "The federal question embedded in each of Plaintiffs' claims is what is a 'handgun' and

[3] Relatedly, Plaintiffs' Initial Complaint also alleged: "Ruger's marketing and sale of the AR-556 pistol with stabilizing arm braces allowed its weapon to function as a stock-stabilized AR-15 rifle, while evading regulations targeted at limiting AR-15-style rifles," *id.* ¶ 15.

what is a 'short-barreled rifle' subject to heightened restrictions and limited access under federal law." *Id.* ¶ 9. As detailed above, that question was raised and alleged in Plaintiffs' Initial Complaint. It was thus readily ascertainable on the face of the Initial Complaint that Plaintiffs' claim would require adjudication of whether Ruger designed the short-barreled AR-556 to evade federal classification as a rifle.

B. The Law of the Case Doctrine Precludes Defendant's Attempt to Relitigate Its Objection to Plaintiffs' Amended Complaint.

Because this issue was resolved in full by the state court, this Court need not even reconsider the state court's prior ruling and should instead apply the law of the case doctrine. The law of the case doctrine counsels a court against revisiting prior rulings in subsequent stages of the same case absent "compelling reasons" that are not present here, such as "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Ali v. Mukasey*, 529 F.3d 478, 490 (2d Cir. 2008); *see also Walker v. Doe*, No. 3:17-cv-425, 2018 WL 4516672, at *4 (D. Conn. Sept. 20, 2018) ("Although not binding, the law of the case doctrine provides that a court should adhere to its earlier decisions in later stages of litigation unless compelling reasons counsel otherwise."). Although discretionary, courts are "reluctant to reopen a ruling once made, especially when one judge or court is asked to consider the ruling of a different judge or court." *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 94 (2d Cir. 2005).

The law of the case doctrine has been applied broadly "to all matters decided by necessary implication as well as those addressed directly." *Nettelton v. Astrue*, No. 3:11-cv-1357, 2013 WL 1390042, at *2 (D. Conn. Apr. 4, 2013); *see also DeWeerth v. Baldinger*, 38 F.3d 1266, 1271 (2d Cir. 1994) (doctrine "applies to issues that have been decided either expressly or by necessary implication"). The doctrine applies equally to state court decisions made prior to removal to federal

court. *See Torah Soft Ltd. v. Drosnin*, 224 F.Supp.2d 704, 710 (S.D.N.Y. 2002) ("The law of the case doctrine generally applies to decisions made by a state court prior to removal to federal district court.").

Here, the state court has already ruled that the allegations in Plaintiffs' Amended Complaint relate back to the allegations in his Initial Complaint, and by extension, that Ruger was on notice that Plaintiffs' Initial Complaint implicated questions of federal law. Through its Notice of Removal, Defendant effectively ignores its prior objection to Plaintiffs' Amended Complaint, and the state court's Order rejecting it, and asks this Court to decide the same issue again, this time in its favor. The Court should not do so.

Ruger raised a single objection to Plaintiffs' request to amend their complaint—that the proposed amendments contain new causes of action that do not relate back to the Initial Complaint and are therefore time-barred. *See* Exhibit 3, Pl.'s Response to Obj. to Am. Compl. Specifically, Ruger argued that Plaintiffs "abandoned" their "marketing cause of action" in favor of "an entirely new cause of action based on firearm's design, which [they] claim violates both the Gun Control Act, 18 U.S.C. §§ 921–931, and the National Firearms Act, 26 U.S.C. §§ 5801–5872." Exhibit 2, Objection to Am. Compl. at 3; *see also id.* at 6 (arguing Plaintiffs' allegations that Ruger violated the National Firearms Act and the Gun Control Act "have no relevance to, nor bearing on" Plaintiffs' Initial Complaint). This was a blatant mischaracterization of both Plaintiffs' Initial Complaint and his Amended Complaint. Indeed, far from abandoning their marketing claim, Plaintiffs' Amended Complaint maintains and expands their allegations with respect to Ruger's unlawful marketing. *See, e.g.*, Am. Compl. ¶¶ 22, 34, 112–13, 123. Likewise, the Initial Complaint alleged that Ruger designed, produced, and sold the AR-556 Pistol in a manner intended to evade

federal regulations relating to classification of firearms as rifles or pistols. *See, e.g.*, Initial Compl. ¶¶ 10, 15.

In order to rule on Ruger's objection to Plaintiffs' amendments, the state court necessarily had to decide whether Plaintiffs' Amended Complaint did in fact raise such claims implicating federal law for the first time. By permitting Plaintiffs to amend their complaint, that court necessarily concluded that the expanded allegations regarding federal firearm law violations in Plaintiffs' Amended Complaint related back to the Initial Complaint and were not raised for the first time in the Amended Complaint. That the court did not issue a written opinion with its order makes no difference. *See In re Fugazy Express, Inc.*, 159 B.R. 432, 438 (Bankr. S.D.N.Y. 1993) (argument that decision issued without opinion did not constitute law of the case was "contrary to well settled authority in this circuit"); *Erie Conduit Corp. v. Metro. Asphalt Paving Ass'n*, 560 F. Supp. 305, 307 n.2 (E.D.N.Y. 1983) (applying law of the case doctrine to decisions issued without written opinions). Thus, this Court should apply the law of the case doctrine and defer to that court's order. *See Nasso v. Seagal*, 263 F.Supp.2d 596, 608 (E.D.N.Y. 2003) ("Upon removal, the orders entered by the state court are treated as though they had been entered by the federal court.")

III. THIS CASE DOES NOT FIT WITHIN THE "SPECIAL AND SMALL" CATEGORY OF CASES REMOVABLE UNDER *GRABLE*

Even if Ruger's Notice of Removal were timely filed, which it was not, Ruger cannot establish this Court's federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331. Ruger does not claim that this case features a federal cause of action. Plaintiffs have brought solely state-law claims: negligence, negligence per se, public nuisance, common law recklessness, and a violation of CUTPA. *See* Am. Compl. ¶¶ 111–148. Instead, Ruger invokes the *Grable* doctrine, which recognizes that "in certain cases federal-question jurisdiction will lie over state-law claims that implicate significant federal issues." *Grable*, 545 U.S. at 312; *see* Notice ¶¶ 11–12. The

Supreme Court has found that only a "special and small" number of cases fall within this doctrine. *Gunn*, 568 U.S. at 258; *Fracasse v. People's United Bank*, 747 F.3d 141, 144 (2d Cir. 2014) (quoting *Gunn* and describing federal question jurisdiction pursuant to the *Grable* doctrine as the "'extremely rare exception'").

"[F]ederal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Mihok*, 119 F. Supp. 3d at 27 (quoting *Gunn*, 568 U.S. at 258) (hereinafter "*Grable* factors"). This is a conjunctive test and thus all four factors must be met. *See Gunn*, 568 U.S. at 258. Plaintiffs acknowledge that their claims necessarily raise a federal issue that is actually disputed. But Ruger cannot establish the third or fourth *Grable* factor, and each of those failures is independently sufficient to establish that federal question jurisdiction does not lie.

A. Ruger's Alleged Violations Of The National Firearms Act and The Gun Control Act Do Not Present a Sufficiently "Substantial" Federal Issue.

1. The Federal Issue Here is Fact-Bound and Not "A Nearly Pure Issue of Law."

In order to qualify as sufficiently "substantial," the Supreme Court has made clear that a federal issue necessarily raised by a state law claim must be "a nearly pure issue of law, one that could be settled once and for all and thereafter would govern numerous [similar] cases," rather than one that is "fact-bound and situation-specific." *Empire Healthchoice Assurance v. McVeigh*, 547 U.S. 677, 700–01 (2006) (citation omitted). *See, e.g., Congregation Machna Shalva Zichron Zvi Dovid v. U.S. Dep't of Agric.*, 557 Fed. Appx. 87, 90 (2d Cir. 2014) (affirming district court's refusal to exercise federal jurisdiction over a New York state law claim because "the determination at issue here is a fact-specific application of [federal] regulations to [plaintiff] that does not implicate the validity of the regulations themselves, or have any other broader effect on federal

interests"); *Mihok*, 119 F. Supp. 3d at 31 (remanding case because, among other reasons, "the court's analysis of the FDA regulations will take the form of a highly 'fact-specific application' of the regulations to Medtronic's conduct that is unlikely to substantially impact the federal system").

Here, Plaintiffs do not dispute that their state law claims implicate Ruger's alleged noncompliance with the federal NFA and GCA. But that issue is not one of pure law; quite the contrary, it is largely and almost entirely a series of factual questions that will require the application of federal standards to the specific facts of this case. Under *Empire Healthchoice* and its progeny, this is dispositive on the *Grable* "substantiality" factor and requires remand.

More specifically, Plaintiff alleges that Ruger unlawfully manufactured and distributed a short-barreled rifle that was ultimately used by the shooter to kill Suzanne Fountain. *See, e.g.*, Am. Compl. ¶¶ 94–110. No party disputes the *legal* question of whether the NFA (and GCA) govern the manufacture and sale of short-barreled rifles. The parties instead dispute the *factual* question of whether the shooter's AR-556 Pistol, equipped by Ruger with an SBA3 stabilizing brace, met the NFA's and GCA's parallel statutory definitions of short-barreled rifles. *See* 26 U.S.C. § 5845(a)(3)–(4), (c) (NFA definition of short-barrel rifle); 18 U.S.C. § 921(a)(7)–(8) (GCA definition of short-barrel rifle); Am. Compl. ¶¶ 44–46 (outlining the NFA and GCA definitions); Notice ¶ 15. The factfinder in this case thus will be required to determine whether the weapon at issue met the enumerated statutory elements—that is, whether Ruger's AR-556 Pistols equipped with SBA3 braces: (a) have rifled bores, through which one round of ammunition will be fired for each trigger pull; (b) have a barrel length of less than 16 inches; and (c) were "designed or redesigned," (d) "made or remade," and (e) "intended" by Ruger "to be fired from the shoulder." 26 U.S.C. § 5845(a)(3)–(4), (c); 18 U.S.C. § 921(a)(7)–(8); Am. Compl. ¶¶ 44–46. These five inquiries are all factual, not legal, questions, to be decided by a trier of fact. *See* Am. Compl. ¶¶

55–93 (alleging facts specific to Ruger and its AR-556 Pistols to establish that they are short-barreled rifles); *cf. Sig Sauer, Inc. v. Brandon*, 826 F.3d 598 (1st Cir. 2016) (engaging in fact-intensive review of the ATF's classification of a silencer under a similar NFA standard).

Stated differently, deciding whether the weapon was a short-barreled rifle under federal law will involve factual questions such as: whether the SBA3 stabilizing brace is functionally a shoulder stock and whether the specific design features of Ruger's AR-556 Pistol—including, but not limited to, its weight, the distance between its trigger and the rear of the SBA3 brace, and the method by which the SBA3 brace attaches to the back of the gun—indicate that Ruger designed and intended the gun be fired with two hands while braced against the shoulder, as a rifle. Am. Compl. ¶¶ 73, 76. And Plaintiffs' proof on this point is likely to rely heavily on *factual* information obtained in discovery and introduced through expert testimony. Intent, for instance, is an issue of fact, and documents, communications, and testimony obtained from Ruger will shed significant light on whether Ruger intended (and designed) the AR-556 Pistol to be fired from the shoulder.

Mihok v. Medtronic, Inc. is instructive. There, "the Complaint allege[d] that the Defendants violated the Connecticut Products Liability Act by (or as evidenced by) manufacturing, marketing, selling or implanting a device placed into the stream of commerce without complying with the applicable FDA regulations." 119 F. Supp. 3d at 26. The court granted the Plaintiffs' remand motion, finding that the federal question raised was not "substantial" enough to support federal jurisdiction. *Id.* at 39. "That the application of the [FDA] regulations may require a state court to 'grapple with federal law' and perform 'an individualized assessment of both the scope of the [federal regulation] at issue and the particular conduct alleged to fall within (or without) that [regulation]' is not alone sufficient to 'warrant federal jurisdiction.'" *Id.* at 31 (quoting *In re Standard & Poor's Rating Agency Litig.*, 23 F.Supp.3d 378, 398 (S.D.N.Y. 2014) (granting motion

to remand)). The *Mihok* court explained that its "analysis of the FDA regulations will take the form of a highly 'fact-specific application' of the regulations to Medtronic's conduct that is unlikely to substantially impact the federal system." *Id.* A similar fact-intensive inquiry is required here with regard to the application of the federal standard for short-barreled rifles. *See also Corporan v. Wal-Mart Stores E., LP*, 194 F. Supp. 3d 1128, 1132–34 (D. Kan. 2016) (ordering remand of case against Wal-Mart arising from alleged violation of the Gun Control Act and stating: "[E]ven if defendants' alleged violation of the Gun Control Act were deemed a necessary element to plaintiffs' [state negligence per se] claim … the federal issue is not sufficiently substantial. … [The] petition reveals a fact-bound, private dispute between parties with no direct interest by the United States," and "[i]n such circumstances, the exercise of federal question jurisdiction is not appropriate.").

Contrary to Ruger's suggestion (Notice ¶ 17), the application of the NFA and GCA statutory standard for short-barreled rifles to Ruger and its AR-556 pistols will not result in a legal rule that can be applied wholesale by other courts applying the same federal standards to different weapons or different manufacturers. Instead, it is a weapon-by-weapon and company-by-company inquiry. Whether Ruger "designed or redesigned, made or remade, and intended" the AR-556 Pistols to be fired from the shoulder (26 U.S.C. § 5845(c)) is an individualized question of fact; a jury's determination in this case, with regard to this specific weapon, would not control another jury (much less any federal regulator or prosecutor) considering another weapon in a different case. As for other individuals who own AR-556 Pistols, nothing a fact-finder determines in this case would bind or otherwise interfere with any federal enforcement of existing federal law.

Here, simply put, Plaintiffs' claims do not present a "a nearly pure issue of law, one that could be settled once and for all and thereafter would govern numerous [similar] cases." *Empire*

Healthchoice, 547 U.S. at 700. For that reason, *Grable's* "substantiality" prong cannot be met, and the Court need go no further in remanding this case to state court.

2. **The Federal Issue Raised by Plaintiffs' Claims Is Not Sufficiently Important to the Federal System as a Whole.**

Ruger's removal further falters on the third *Grable* prong because "the 'substantiality inquiry ... looks [] to the importance of the issue to the federal system as a whole.'" *Fracasse*, 747 F.3d at 144 (quoting *Gunn*, 568 U.S. at 260). Notably "[i]t is not enough that the federal issue be significant to the particular parties in the immediate suit; that will *always* be true when the state claim 'necessarily raise[s]' a disputed federal issue, as *Grable* separately requires." *Gunn*, 568 U.S. at 260. Nor, as both *Merrell Dow* and *Gunn* demonstrate, is it the case that any federal issue involved in a complex regulatory scheme is substantial enough for federal question jurisdiction under *Grable*. *See Gunn,* 568 U.S. at 252, 259–60 (finding federal patent question necessary and actually disputed but not within the jurisdiction of the federal court because "the federal issue does not carry the necessary significance"); *Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 806–07 (1986) (finding no federal jurisdiction for negligence claims based on mislabeling in violation of the Federal Food Drug and Cosmetic Act); *see also Pritika v. Moore*, 91 F. Supp. 3d 553, 559 (S.D.N.Y. 2015) (granting remand on the *Grable* substantiality prong "[a]lthough Avon's compliance with the FCPA [Foreign Corrupt Practices Act] will be one of the critical issues in this litigation"); *MHA LLC v. HealthFirst, Inc.*, 629 F. App'x 409, 414 (3d Cir. 2015) (rejecting argument that claim based on Medicare reimbursements under the Medicare Act raised substantial federal question: "A state court is the appropriate forum for this 'fact-bound and situation-specific' case involving the application of Medicaid and Medicare laws").[4]

[4] Ruger incorrectly cites *Broder v. Cablevision Systems Corp.*, 418 F.3d 187, 195 (2d Cir. 2005), for the proposition that "federal issues are substantial when they involve complex federal regulatory schemes." Notice ¶ 16. The idea that mere involvement in a complex regulatory

Moreover, this case lacks indicia of federal importance of the kind that courts have considered relevant in determining that a federal question supports federal jurisdiction. While none of these elements are strictly required for subject matter jurisdiction, their absence in this case is telling.

First, unlike the leading cases in which the Supreme Court has found *Grable*'s substantiality prong to be satisfied, Plaintiffs' claims here do not implicate the validity of the NFA, the GCA, their implementing regulations, or any enforcement or other action by the federal government. *See Grable*, 545 U.S. at 315 (federal question jurisdiction appropriate where the "meaning of [26 U.S.C. § 6335]" and whether the Internal Revenue Service had complied with it "appears to be the only legal or factual issue contested in the case"); *Smith v. Kan. City Title & Tr. Co.*, 255 U.S. 180, 201 (1921) (finding federal question jurisdiction where a bank questioned "the constitutional validity of an act of Congress" in the course of arguing that the government bonds it had purchased were unconstitutionally issued).

As noted above, the outcome of Plaintiffs' case will not affect the federal government's power to regulate weapons subject to the NFA. *See* Am. Compl. ¶¶ 47–53, 88 (describing part of the ATF's existing scheme for regulating weapons subject to the NFA). Ruger points to a rule promulgated by the ATF earlier this year to clarify the NFA's statutory definition of short-barreled

---

scheme is sufficient for federal question jurisdiction is outdated in the wake of the Supreme Court's 2016 decision in *Gunn*, and courts in this Circuit have recognized as much. *See Mihok*, 119 F. Supp. 3d at 33, n.6 (distinguishing *Broder* and noting: "Moreover, as has been pointed out by other courts, *Broder* was decided without the benefit of *Gunn*, which clarified the substantiality prong of the *Gunn–Grable* test"); *Barone v. Bausch & Lomb, Inc.*, 372 F. Supp. 3d 141, 154 (W.D.N.Y. 2019) (describing reliance on *Broder* as "inapposite, outdated, and otherwise unpersuasive" in light of *Gunn*). The Second Circuit itself has clarified, post-*Broder*, that the fact that a claim may concern a federal issue "does not necessarily render every federal question pertaining thereto sufficiently substantial." *NASDAQ OMX Grp., Inc. v. UBS Sec., LLC*, 770 F.3d 1010, 1025. (2d Cir. 2014).

rifles as evidence of the "need for a uniform interpretation and application" of federal firearms law. Notice ¶ 16 n.1 (referencing 88 Fed. Reg. 6,478 (Jan. 31, 2023)). But remanding Plaintiffs' claims to state court will not undermine any such need or implementation of the new rule (which in any event is tied up in legal challenges, as Ruger concedes). Resolution by the finder of fact of the federal issue raised by Plaintiffs' claims will not create a legal rule that controls the resolution of other hypothetical future cases. Nor will resolution of Plaintiffs' state law claims by the state courts alter the federal government's power and discretion to federally regulate or prosecute (or not) individuals who unlawfully possess short-barreled rifles in violation of the NFA or GCA—whether the possession is of the AR-556 or other short-barreled rifles. Instead, this case is fundamentally a dispute between the estates of victims who were murdered and a private company, concerning the company's production, marketing, and distribution of the gun used to kill their decedents.

Second, the Supreme Court has stated that, in assessing whether a claim has the "sort of significance for the federal system" that confers federal-question jurisdiction, the lack of a remedy under the relevant federal statute "is tantamount to a congressional conclusion that the presence of a claimed violation of the statute as an element of a state cause of action is insufficiently 'substantial'". *Merrell Dow*, 478 U.S. at 814 (finding no federal jurisdiction for negligence claims based on mislabeling in violation of the Federal Food Drug and Cosmetic Act). *Grable* confirmed that the lack of a private right of action, though not dispositive, is "relevant" to an inquiry into federal-question jurisdiction. *Grable*, 545 U.S. at 318 ("The [*Merrell Dow*] Court saw the missing cause of action not as a missing federal door key, always required, but as a missing welcome mat.").

Here too, there is a "missing welcome mat" into federal court because the NFA and GCA lack a private right of action. This Court should follow the lead of other courts that have found this absence to be important in determining that state-law claims citing violations of the GCA do not raise federal questions fit to be heard in federal court and should be remanded the back to state court. *See Tisdale v. Pagourtzis*, No. 3:20-CV-140, 2020 WL 7170491, at *4, *6 (S.D. Tex. Dec. 7, 2020) (finding no *Grable* substantiality for plaintiffs' state law tort claims that necessarily raised a disputed question of defendants' compliance with the GCA, emphasizing that the GCA "does not create a private right of action," and stating that "the plaintiffs' allegations here are among the 'garden-variety tort claims' that are simply unimportant to the federal system as a whole." (citation omitted)); *Corporan*, 194 F. Supp. 3d at 1133 ("The Gun Control Act referenced by plaintiffs in their petition does not create a private, federal cause of action and the petition reveals a fact-bound, private dispute between parties with no direct interest by the United States."); *Jefferson v. Rossi*, No. 01-CV-2536, 2002 WL 32154285, at *4 (E.D. Pa. Jan. 22, 2002) (finding that even if violations of the Gun Control Act were essential elements of some of Plaintiffs' tort claims, the case did not present a federal question for the purposes of removal jurisdiction because the GCA did not have a private right of action).

Finally, the fact that Plaintiffs' tort claims refer to the NFA and the GCA for a standard of conduct does not automatically confer federal jurisdiction. In fact, state courts commonly adjudicate negligence per se claims that allege a violation of the federal firearms laws. *Williams ex rel. Raymond v. Wal-Mart Stores E., L.P.*, 99 So. 3d 112, 116 (Miss. 2012); *Franco v. Bunyard*, 261 Ark. 144, 145–47 (Ark. 1977) (en banc); *Martin v. Schroeder*, 209 Ariz. 531, 537 (Ariz. Ct. App. 2005); *Peek v. Oshman's Sporting Goods, Inc.*, 768 S.W.2d 841, 844 (Tex. Ct. App. 1989); *West v. Mache of Cochran, Inc.*, 187 Ga. App. 365, 368 (Ga. Ct. App. 1988); *K-Mart Enters. of*

Fla., Inc. v. Keller, 439 So. 2d 283, 285 (Fla. Dist. Ct. App. 1983); *see also Kalina v. Kmart Corp.*, No. CV-90-269920 S, 1993 WL 307630, at *7 (Conn. Super. Ct. Aug. 5, 1993) (denying summary judgment and stating that claim alleging violation of the Gun Control Act is actionable under theory of statutory negligence). Likewise, Connecticut courts are equipped to hear CUTPA claims predicated on violations of federal law. *See, e.g.*, *Cenatiempo v. Bank of Am., N.A.*, 333 Conn. 769, 773, 797 (Conn. 2019) (reversing lower court dismissal of CUPTA claim based on violation of federal Real Estate Settlement Procedures Act). This case is no different, and its proper place is in state court.

B. Exercising Federal Jurisdiction Would Disrupt The Federal-State Balance.

Even if Ruger could satisfy the third *Grable* factor—which it cannot, especially given that factual and not legal issues are the central questions to be litigated here—it cannot satisfy the fourth one. Under that fourth factor, a federal court cannot "entertain" the Plaintiffs' claims against Ruger in this action "without disturbing any congressionally approved balance of federal and state judicial responsibilities." *See Gunn*, 568 U.S. at 258 (2013). "Where state legal claims implicate federal issues, '[f]ederal courts should await a clear signal from Congress before treating such auxiliary claims as 'arising under' the laws of the United States.'" *Cutillo v. Wellmore Behav. Health*, No. 3:15-CV-01174 (VAB), 2016 WL 3976543, at *6 (D. Conn. July 22, 2016) (quoting *Empire Healthchoice*, 547 U.S. at 683, 701).

That Plaintiffs' state law claims incorporate alleged violations of federal law does not, standing alone, tip the federal-state balance toward federal jurisdiction. "The violation of federal statutes and regulations is commonly given negligence per se effect in state tort proceedings. . . . A general rule of exercising federal jurisdiction over state claims resting on federal mislabeling and other statutory violations would thus [] herald[] a potentially enormous shift of traditionally state cases into federal courts." *Grable*, 545 U.S. at 318–19 (citations omitted); *see also Corporan*,

194 F. Supp. 3d at 1132 (stating that state-law negligence claims "in which a violation of a federal statute is asserted merely as an element of a negligence per se theory" are "unmistakably" the type that "belong[] in state court so as not to 'materially affect, or threaten to affect, the normal currents of litigation.'"). Keeping this case, with its state-law negligence claims, in federal court threatens that federal-state balance.

Ruger is wrong that a federal forum is "vital to uniform resolution" of the NFA and GCA issues. Notice ¶ 18. Federal courts around the country frequently remand cases involving federal firearms regulation back to state court. *See Roberts v. Smith & Wesson Brands, Inc.*, No. 22-CV-6169, 2023 WL 6213654 (N.D. Ill. Sept. 25, 2023) (granting remand on case featuring a theory that gun company manufactured weapons in violation of the NFA), *appeal docketed*, No. 23-2992 (7th Cir. Oct. 17, 2023); *Tisdale*, 2020 WL 7170491, at *1 (granting remand on a case with a necessarily raised federal question concerning the Gun Control Act on the basis that the question was not "substantial" enough to the federal system); *Corporan*, 194 F. Supp. 3d at 1132; *Ramos v. Wal-Mart Stores, Inc.*, 202 F. Supp. 3d 457, 470 (E.D. Pa. 2016) (granting remand and noting numerous fact-specific considerations in deciding whether Gun Control Act had been violated). Deciding issues of duty, breach, causation, and damages are "issue[s] squarely within the purview of state courts." *Mihok*, 119 F. Supp. 3d at 31. This Court should follow the lead of other federal courts and remand Plaintiffs' case back to state court.

C. The *Fleet Farm* and *Arm or Ally* Cases Do Not Support Removal Here.

Defendant highlights two decisions in the firearms context—*Minnesota v. Fleet Farm LLC*, ---F. Supp. 3d. ---, No. CV 22-2694 (JRT/JFD), 2023 WL 4203088, at *7 (D. Minn. June 27, 2023), and *New York v. Arm or Ally, LLC*, 644 F. Supp. 3d 70 (S.D.N.Y. 2022)—in support of its removal petition. Both are distinguishable, and both are contrary to the weight of authority cited above.

Arm or Ally is a wide-ranging litigation against 10 different defendants who manufacture and sell unfinished firearm frames and receivers used to build so-called "ghost guns," in which the plaintiff was the state of New York seeking broad prospective injunctive relief. *Id.* at 73. This case, by contrast, involves only a single manufacturer sued by a private plaintiff concerning a firearm the manufacturer has discontinued (Am. Compl. ¶ 55) and seeks only backward-looking damages for past conduct. Critically, the *Arm or Ally* court concluded that—as in *Grable*—the "meaning of the federal statute" (545 U.S. at 315, quoted at 644 F. Supp. 3d at 77) was centrally at issue—specifically, "defining" the Gun Control Act's use of the terms "firearm" and "component part." 644 F. Supp. 3d at 78–80. As the Court wrote, "defining the terms 'firearm' and 'component part' is plainly a substantial issue," and the plaintiff apparently conceded the point in that case, "not even attempt[ing] to argue otherwise." *Id.* at 79. Here, by contrast, a fact-finder's decision as to whether the now-discontinued AR-556 Pistol meets the five key requirements under federal law for a short-barreled rifle—including its size, construction, and whether the weapon was "designed or redesigned, made or remade, and intended to be fired from the shoulder" (26 US.C. §§ 5845(a)(3)–(4), (c); 18 U.S.C. § 921(a)(7)–(8)) —will not "'have sweeping consequences" for the federal government's powers to regulate or prosecute the manufacture, sale, or possession of these or other weapons. *See supra* at Part III(A)(2). Additionally, the *Arm or Ally* court's decision to uphold removal was reinforced by the facts that (a) the United States had filed a "Statement of Interest" in a parallel companion case, reinforcing the substantial federal interest (644 F. Supp. 3d at 80), and (b) the state law at the heart of the case had "incorporate[d] a federal definition" from the Gun Control Act and thus had "piggyback[ed] on federal law" (*id.* at 83). Neither is the case here.

As for *Fleet Farm*, that litigation centered on licensed federal firearms retailers violating federal law by selling firearms to straw purchasers (i.e., a person knowingly purchasing a firearm at the request of someone else who typically is not eligible to possess the firearm). *Id.* at *2–3. The court found a substantial federal issue because "[t]he resolution of this case is likely to have a substantial impact on how future firearm retailers—in and out of Minnesota—act in similar circumstances." *Id.* at *1, *7. While the *Fleet Farm* court acknowledged that a substantial federal issue needs to be "a nearly pure issue of law," *id.* at *7, the court failed to analyze whether the issues in Fleet Farm met that standard (other than to repeatedly note that Fleet Farm's alleged "duties [as a licensed gun seller] are largely established at the federal level"). *Id. Fleet Farm* is thus both (a) distinguishable from the case at bar in its unexplained (and likely erroneous) assumption that the case presented a "nearly pure issue of law" that would broadly impact behavior of federally licensed gun dealers going forward (neither of which, in any event, is true here) and (b) contrary to the larger body of better-reasoned decisions cited above holding that state court is the proper place for cases—like this one—where traditional state law claims are predicated on federal gun law violations. *See* supra at Parts III(A)(2), (B).

CONCLUSION

For the reasons outlined above, Plaintiffs respectfully request that the Court remand this matter pursuant to 28 U.S.C. § 1447.

THE PLAINTIFFS

By: */s/ Andrew B. Ranks*

Andrew B. Ranks, Esq. [ct28751]
Connecticut Trial Firm, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033
Tel: (860) 471-8333
Fax: (860) 471-8332
ranks@cttrialfirm.com

CERTIFICATION

This is to certify that a copy of the foregoing was served electronically on the above captioned date and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail at the addresses shown below to anyone unable to accept electronic filing as indicated by the Notice of Electronic Filing. Parties may access filing through the Court's CM/ECF System.

Robert Carl Eric Laney
Ryan Ryan Deluca LLP
1000 Lafayette Boulevard, Suite 800
Bridgeport, CT. 06604
roblaney@ryandelucaw.com

James Vogts
Swanson, Martin & Bell, LLP
330 North Wabash, Suite 3300
Chicago, Illinois 60611
jvogts@smbtrials.com

DOCKET NO. FBT-CV-23-6123659-S	:	SUPERIOR COURT
ESTATE OF NEVEN STANIŠIĆ ET AL.	:	J.D. OF FAIRFIELD
V.	:	AT BRIDGEPORT
STURM, RUGER & COMPANY, INC.	:	JULY 7, 2023

REVISED COMPLAINT

COUNT ONE: General Statutes § 52-555 Wrongful Death / Violation of Connecticut Unfair Trade Practices Act (Estate of Neven Stanišić v. Sturm, Ruger & Company, Inc.)

1. This is a civil action for damages stemming from the shooting at King Soopers supermarket in Boulder, Colorado on March 22, 2021.
2. Defendant Sturm, Ruger & Company, Inc. (hereinafter "Ruger"), also known as B.F.I. and B.F.I., Inc., is a Connecticut corporation created in 1969 and located in Southport, Connecticut. At all relevant times, Ruger manufactured, marketed and sold AR-556s.
3. Upon information and belief, Ruger manufactured the AR-556 that was used in the shooting at King Soopers supermarket on March 22, 2021, resulting in the deaths of ten people, including Neven Stanišić.
4. At all relevant times, the plaintiff, Radmilo Stanišić, was the appointed Representative of the Estate of Neven Stanišić.

RUGER'S MARKETING AND PROMOTION OF ITS AR-556S VIOLATED THE CONNECTICUT UNFAIR TRADE PRACTICES ACT

5. Ruger designed the AR-556 in 2014 as an entry-level AR-15 style rifle.
6. In the weeks leading up to the mass shooting at the King Soopers supermarket in Boulder, Colorado, Ruger marketed its AR-556 rifle with the following photograph:

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 · 860.471.8333 · Facsimile: 860.471.8332
Juris No. 436558

7. The AR-556 was designed with features that were chosen to maximize casualties and engineered to deliver maximum carnage with extreme efficiency.

8. In 2019, Ruger designed a variant AR-556 "pistol" and marketed it in the weeks leading up to the mass shooting at the King Soopers supermarket in Boulder, Colorado with the following photograph:

9. The AR-556 pistol variant featured the same rail system as other AR-15 style rifles while having an altered barrel and stock to evade federal classification as a rifle.

10. Ruger designed the AR-556 such that it would utilize the same ammunition and magazines as the AR-15s.

11. As a result of Ruger's design choice, the AR-556 is more deadly than other pistols on the market.

12. Ruger designed the AR-556 to be sold with stabilizing braces that essentially allowed the weapon to be converted to a rifle while still preserving its classification as a pistol for

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 • 860.471.8333 • Facsimile: 860.471.8332
Juris No. 436558

regulatory purposes.

13. In the weeks before the shooting, Ruger marketed and sold the AR-556 pistol with a lower receiver "fitted with an adjustable SB Tactical® SBA3® Pistol Stabilizing Brace® to aid in accuracy, balance and recoil management."
14. Ruger's marketing and sale of the AR-556 pistol with stabilizing arm braces allowed its weapon to function as a stock-stabilized AR-15 rifle, while evading regulations targeted at limiting AR-15-style rifles.
15. AR-15s and AR-15-style weapons have become the weapon of choice for mass shooters and, since their introduction to the market, AR-15-style pistols, like the AR-556, have been used in several mass shootings, including the shooting that is the subject of this action.
16. Ruger marketed its AR-556s by promoting their militaristic and assaultive uses.
17. Ruger's militaristic marketing promoted the image of its AR-556s as combat weapons used for the purpose of waging war and killing human beings.
18. Ruger's marketing glorified the lone gunman.
19. Ruger's marketing promoted lone gunman assaults.
20. Ruger's marketing materials include such phrases as: "Anything else would be un-American."
21. Ruger promoted its brand to children, including acting as a sponsor of Junior Shooters Magazine.
22. Ruger's marketing glorified the military design, functionality and appearance of its AR-556s.
23. Ruger's marketing promoted its AR-556s for mass casualty assaults.
24. Ruger marketed its AR-556 as an affordable, "entry-level" AR-15-style weapon.
25. Ruger's marketing promoted criminal use of its AR-556s by its target market.

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 · 860.471.8333 · Facsimile: 860.471.8332
Juris No. 436558

26. Ruger marketed its AR-556s knowing that they would be accessed by unscreened consumers.
27. Ruger continued to market AR-556s in the manner set forth in this complaint despite evidence of their increasing use in mass shootings.
28. Ruger continued to market AR-556s in the wake of the Sandy Hook Elementary School shooting and during the subsequent litigation involving Remington's similar marketing of AR-15-style weapons in the lead up to that shooting.
29. As a result of its marketing campaigns, Ruger's gross earnings from AR-15-style rifles nearly tripled from 2019 to 2021, increasing from $39 million to over $103 million.
30. Ruger marketed its AR-556s without regard for public safety.
31. Ruger's marketing was unethical.
32. Ruger's marketing was immoral.
33. Ruger's marketing was unscrupulous.
34. Ruger's marketing was oppressive.
35. Ruger's marketing was reckless.
36. Ruger marketed in the above manner directly and through third parties.
37. Ruger's conduct, as set forth above, occurred prior to and continued through March 22, 2021, and after.
38. Ruger's conduct as previously alleged, in whole or in part, constituted a knowing violation of the Connecticut Unfair Trade Practices Act, Connecticut General Statutes § 42-110a *et seq*.
39. Ruger's conduct as previously alleged was a substantial factor resulting in the injuries, suffering, and death of Neven Stanišić.

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 · 860.471.8333 · Facsimile: 860.471.8332
Juris No. 436558

40. On March 22, 2021, Neven Stanišić suffered the following injuries and losses:

    a. terror;

    b. ante-mortem pain and suffering;

    c. destruction of the ability to enjoy life's activities;

    d. destruction of earning capacity; and

    e. death.

41. As a further result of Ruger's conduct, Neven Stanišić has been permanently deprived of his ability to carry on and enjoy life's activities and his earning capacity has been forever destroyed.

42. As a further result of Ruger's conduct, Neven Stanišić suffered great physical, mental and emotional suffering including the emotional distress with the contemplation of his death.

43. As a result of the injuries and death of Neven Stanišić, the Estate of Neven Stanišić incurred funeral expenses to its financial loss.

COUNT TWO: General Statutes § 52-555 Wrongful Death / Violation of Connecticut Unfair Trade Practices Act (Estate of Denny Stong v. Sturm, Ruger & Company, Inc.)

1. This is a civil action for damages stemming from the shooting at King Soopers supermarket in Boulder, Colorado on March 22, 2021.

2. Defendant Sturm, Ruger & Company, Inc. (hereinafter "Ruger"), also known as B.F.I. and B.F.I., Inc., is a Connecticut corporation created in 1969 and located in Southport, Connecticut. At all relevant times, Ruger manufactured, marketed and sold AR-556s.

3. Upon information and belief, Ruger manufactured the AR-556 that was used in the shooting at King Soopers supermarket on March 22, 2021, resulting in the deaths of ten people, including Denny Stong.

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 • 860.471.8333 • Facsimile: 860.471.8332
Juris No. 436558

4. At all relevant times, the plaintiff, Lisa Allen, was the appointed Representative of the Estate of Denny Stong.

5. – 38. Paragraphs 5 through 38 of Count One are hereby incorporated and made corresponding paragraphs of this Count as if fully set forth herein.

39. Ruger's conduct as previously alleged was a substantial factor resulting in the injuries, suffering, and death of Denny Stong.

40. On March 22, 2021, Denny Stong suffered the following injuries and losses:

    a. terror;

    b. ante-mortem pain and suffering;

    c. destruction of the ability to enjoy life's activities;

    d. destruction of earning capacity; and

    e. death.

41. As a further result of Ruger's conduct, Denny Stong has been permanently deprived of his ability to carry on and enjoy life's activities and his earning capacity has been forever destroyed.

42. As a further result of Ruger's conduct, Denny Stong suffered great physical, mental and emotional suffering including the emotional distress with the contemplation of his death.

43. As a result of the injuries and death of Denny Stong, the Estate of Denny Stong incurred funeral expenses to its financial loss.

COUNT THREE: General Statutes § 52-555 Wrongful Death / Violation of Connecticut Unfair Trade Practices Act (Estate of Lynn Murray v. Sturm, Ruger & Company, Inc.)

1. This is a civil action for damages stemming from the shooting at King Soopers supermarket in Boulder, Colorado on March 22, 2021.

2. Defendant Sturm, Ruger & Company, Inc. (hereinafter "Ruger"), also known as B.F.I. and

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 · 860.471.8333 · Facsimile: 860.471.8332
Juris No. 436558

B.F.I., Inc., is a Connecticut corporation created in 1969 and located in Southport, Connecticut. At all relevant times, Ruger manufactured, marketed and sold AR-556s.

3. Upon information and belief, Ruger manufactured the AR-556 that was used in the shooting at King Soopers supermarket on March 22, 2021, resulting in the deaths of ten people, including Lynn Murray.

4. At all relevant times, the plaintiff, Olivia Mackenzie, was the appointed Representative of the Estate of Lynn Murray.

5. – 38. Paragraphs 5 through 38 of Count One are hereby incorporated and made corresponding paragraphs of this Count as if fully set forth herein.

39. Ruger's conduct as previously alleged was a substantial factor resulting in the injuries, suffering, and death of Lynn Murray.

40. On March 22, 2021, Lynn Murray suffered the following injuries and losses:

    a. terror;

    b. ante-mortem pain and suffering;

    c. destruction of the ability to enjoy life's activities;

    d. destruction of earning capacity; and

    e. death.

41. As a further result of Ruger's conduct, Lynn Murray has been permanently deprived of his ability to carry on and enjoy life's activities and his earning capacity has been forever destroyed.

42. As a further result of Ruger's conduct, Lynn Murray suffered great physical, mental and emotional suffering including the emotional distress with the contemplation of his death.

43. As a result of the injuries and death of Lynn Murray, the Estate of Lynn Murray incurred

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 • 860.471.8333 • Facsimile: 860.471.8332
Juris No. 436558

funeral expenses to its financial loss.

COUNT FOUR: General Statutes § 52-555 Wrongful Death / Violation of Connecticut Unfair Trade Practices Act (Estate of Jody Waters v. Sturm, Ruger & Company, Inc.)

1. This is a civil action for damages stemming from the shooting at King Soopers supermarket in Boulder, Colorado on March 22, 2021.
2. Defendant Sturm, Ruger & Company, Inc. (hereinafter "Ruger"), also known as B.F.I. and B.F.I., Inc., is a Connecticut corporation created in 1969 and located in Southport, Connecticut. At all relevant times, Ruger manufactured, marketed and sold AR-556s.
3. Upon information and belief, Ruger manufactured the AR-556 that was used in the shooting at King Soopers supermarket on March 22, 2021, resulting in the deaths of ten people, including Jody Waters.
4. At all relevant times, the plaintiffs, Charles Hunker and Corey Eheart, were the appointed Co-Representatives of the Estate of Jody Waters.
5. – 38. Paragraphs 5 through 38 of Count One are hereby incorporated and made corresponding paragraphs of this Count as if fully set forth herein.

39. Ruger's conduct as previously alleged was a substantial factor resulting in the injuries, suffering, and death of Jody Waters.

40. On March 22, 2021, Jody Waters suffered the following injuries and losses:

    a. terror;

    b. ante-mortem pain and suffering;

    c. destruction of the ability to enjoy life's activities;

    d. destruction of earning capacity; and

    e. death.

41. As a further result of Ruger's conduct, Jody Waters has been permanently deprived of

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 · 860.471.8333 · Facsimile: 860.471.8332
Juris No. 436558

his ability to carry on and enjoy life's activities and his earning capacity has been forever destroyed.

42. As a further result of Ruger's conduct, Jody Waters suffered great physical, mental and emotional suffering including the emotional distress with the contemplation of his death.

43. As a result of the injuries and death of Jody Waters, the Estate of Jody Waters incurred funeral expenses to its financial loss.

COUNT FIVE: General Statutes § 52-555 Wrongful Death / Violation of Connecticut Unfair Trade Practices Act (Estate of Kevin Mahoney v. Sturm, Ruger & Company, Inc.)

1. This is a civil action for damages stemming from the shooting at King Soopers supermarket in Boulder, Colorado on March 22, 2021.
2. Defendant Sturm, Ruger & Company, Inc. (hereinafter "Ruger"), also known as B.F.I. and B.F.I., Inc., is a Connecticut corporation created in 1969 and located in Southport, Connecticut. At all relevant times, Ruger manufactured, marketed and sold AR-556s.
3. Upon information and belief, Ruger manufactured the AR-556 that was used in the shooting at King Soopers supermarket on March 22, 2021, resulting in the deaths of ten people, including Kevin Mahoney.
4. At all relevant times, the plaintiff, Ellen Mahoney, was the appointed Representative of the Estate of Kevin Mahoney.
5. – 38. Paragraphs 5 through 38 of Count One are hereby incorporated and made corresponding paragraphs of this Count as if fully set forth herein.

39. Ruger's conduct as previously alleged was a substantial factor resulting in the injuries, suffering, and death of Kevin Mahoney.

40. On March 22, 2021, Kevin Mahoney suffered the following injuries and losses:

    a. terror;

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 · 860.471.8333 · Facsimile: 860.471.8332
Juris No. 436558

b. ante-mortem pain and suffering;

c. destruction of the ability to enjoy life's activities;

d. destruction of earning capacity; and

e. death.

41. As a further result of Ruger's conduct, Kevin Mahoney has been permanently deprived of his ability to carry on and enjoy life's activities and his earning capacity has been forever destroyed.

42. As a further result of Ruger's conduct, Kevin Mahoney suffered great physical, mental and emotional suffering including the emotional distress with the contemplation of his death.

43. As a result of the injuries and death of Kevin Mahoney, the Estate of Kevin Mahoney incurred funeral expenses to its financial loss.

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107, Glastonbury, CT 06033 • 860.471.8333 • Facsimile: 860.471.8332
Juris No. 436558

WHEREFORE, the plaintiffs claim:

1. Monetary damages;
2. Punitive damages;
3. Attorneys' fees;
4. Costs;
5. Such other relief as the court may deem appropriate.

THE PLAINTIFFS,

/s/ Andrew P. Garza
Andrew P. Garza, Esq.
Connecticut Trial Firm, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033
Tel: (860) 471-8333
Fax: (860) 471-8332
Juris No. 436558

DOCKET NO. FBT-CV-23-6123659-S	:	SUPERIOR COURT
ESTATE OF NEVEN STANIŠIĆ ET AL.	:	J.D. OF FAIRFIELD
V.	:	AT BRIDGEPORT
STURM, RUGER & COMPANY, INC.	:	JULY 7, 2023

STATEMENT OF AMOUNT IN DEMAND

The amount of money damages claimed is greater than Fifteen Thousand Dollars ($15,000.00) exclusive of interest and costs.

THE PLAINTIFFS,

/s/ Andrew P. Garza
Andrew P. Garza, Esq.
Connecticut Trial Firm, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033
Tel: (860) 471-8333
Fax: (860) 471-8332
Juris No. 436558

CERTIFICATION

I certify that a copy of these documents were mailed or delivered electronically or non-electronically on the above date to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

Joseph G. Fortner, Jr.
Halloran & Sage, LLP
225 Asylum Street
Hartford, CT. 06103
fortner@halloransage.com

/s/ Andrew P. Garza
Andrew P. Garza, Esq.

DOCKET NO: FBT-CV 23-6123659-S	:	SUPERIOR COURT
ESTATE OF NEVEN STANSIC ET AL.	:	J.D. OF FAIRFIELD
VS.	:	AT BRIDGEPORT
STURM, RUGER & COMPANY, INC.	:	AUGUST 23, 2023

DEFENDANT'S OBJECTION TO PLAINTIFFS' REQUEST TO AMEND

Defendant, Sturm, Ruger & Company, Inc. ("Ruger") objects to Plaintiffs' Request to Amend their Complaint dated August 8, 2023 (Getz/Stanisic Entry No. 120.00) in its entirety on the ground that the Proposed Amended Complaint sets forth an entirely new cause of action, based on five theories of liability (four of which were not previously pled), that is barred by the applicable two-year statute of limitations. The new cause of action is not saved by the relation-back doctrine because it is based on entirely new facts, none of which were pled by Plaintiffs in their original Complaint or their Revised Complaint (the "Operative Complaint").[1]

A "cause of action" is the group of facts claimed to have caused a plaintiff's injury and which is alleged to entitle the plaintiff to relief. *See Wagner v. Clark Equipment Co.*, 259 Conn. 114, 129 (2002). Connecticut law is clear that, even when based upon the same legal theory, an amended complaint does not relate back to the original complaint when it is premised on an entirely new set of facts. Plaintiffs' Proposed Amended Complaint does exactly that. Because Plaintiffs' new cause of action does not relate back to the original Complaint, they are time-barred from

[1] On July 14, 2023, the Court consolidated *Getz v. Sturm, Ruger & Company, Inc.*, FBT-CV-23-6123457-S, and *Stanisic, et. al. v. Sturm, Ruger & Company, Inc.*, FBT-CV23-6123659S, for pretrial purposes only. All references to Plaintiffs in this pleading refer to all Plaintiffs in both cases, and all references to the Revised Complaint or Operative Complaint refer to the operative Revised Complaints in both cases, which set forth identical claims and allegations. (*See Getz* Entry No. 114.00 and *Stanisic* Entry No. 114.00).

asserting it, and the Court should deny Plaintiffs' motions for leave to amend their Complaints. *See Dimmock v. Lawrence Memorial Hospital. Inc.*, 286 Conn. 789, 796 (2008) (affirming trial court's denial of request for leave to amend complaint on ground that new allegations did not relate back and the claims were time-barred).

I. Introduction

This lawsuit arises from a tragic criminal event that occurred in Boulder, Colorado on March 22, 2021 in which ten people, including Plaintiffs' decedents, were killed. On March 14, 2023 and April 5, 2023, respectively, Plaintiffs Getz and Stanisic filed their original Complaints, alleging wrongful death based on Ruger's marketing of the firearm used by the criminal assailant. Specifically, in their original Complaints, Plaintiffs alleged that Ruger promoted the firearm for "mass casualty assaults" through the words and images it used in its marketing materials, and that Ruger's alleged "unscrupulous" marketing practices violated the Connecticut Unfair Trade Practices Act ("CUTPA").

Ruger promptly filed requests to revise the Complaints, mostly seeking more complete or particular statements of Plaintiffs' allegations, which failed to identify with specificity any of the marketing materials about which they complained. With the exception of agreeing to revise a Scrivener's Error in the Complaint, Plaintiffs objected to Ruger's requested revisions, arguing that the Complaint "adequately and succinctly pled the material facts in support of [their] claim" and "fairly and sufficiently put the defendant on notice of the claims being asserted against them [*sic*]." (Getz/Stanisic Entry No. 111.00, p. 3). On July 7, 2023, Plaintiffs filed a Revised Complaint, correcting only the Scrivener's Error and deleting the request for injunctive relief, as ordered by the Court.

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

Now, despite their prior protestation to this Court that they had pled "the material facts in support of their claims" necessary "to put the defendant on notice of the claims being asserted" against it, Plaintiffs seek to amend their Complaint, abandoning the claims in the Operative Complaint and instead asserting an entirely new set of facts and new legal theories. They no longer pursue their "unscrupulous" marketing cause of action, but rather present an entirely new cause of action based on the firearm's design, which they claim violates both the Gun Control Act, 18 U.S.C. §§ 921-931, and the National Firearms Act, 26 U.S.C. §§ 5801-5872. This cause of action is new and dramatically different from the "marketing" cause of action originally pled. It alleges entirely different conduct, involves an entirely different set of facts, and will require entirely different evidence and evaluation of entirely different laws. Relying upon this new factual predicate, Plaintiffs have entirely recast their CUTPA claim and added four new common law liability theories—negligence, public nuisance, negligence per se, and recklessness—all of which are subject to a two-year wrongful death statute of limitations and, as explained below, are untimely filed.

II. Comparison of the Revised Complaint to the Proposed Amended Complaint.

The complete and significant change from the allegations in the Operative Complaint to the allegations in the Proposed Amended Complaint cannot be overstated. The general theory upon which the Operative Complaint proceeds is summarized by Plaintiffs themselves in bold letters: "**Ruger's Marketing and Promotion of its AR-556 violated the Connecticut Unfair Trade Practice Act**." (Operative Complaint, p. 1.) These allegations follow:

- Ruger marketed its AR-556s by promoting their militaristic and assaultive uses.

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

- Ruger's militaristic marketing promoted the image of its AR-556s as combat weapons used for the purpose of waging war and killing human beings.
- Ruger's marketing glorified the lone gunman.
- Ruger's marketing glorified the military design, functionality and appearance of its AR-556s.
- Ruger's marketing promoted its AR-556s for mass casualty assaults.
- Ruger promoted criminal use of its AR-556s by its target market.

Revised Complaint, ¶¶ 16-18, 22-23, 25. Plaintiffs alleged that this marketing was unethical, immoral, unscrupulous, oppressive, and reckless. *See* Complaint ¶¶ 32-36. In short, Plaintiffs alleged that the content of Ruger's advertisements—words and images that purportedly promote violent and criminal use—violated CUTPA. These claims would necessarily have required Plaintiffs to produce evidence of these alleged advertisements. To defend against these allegations, Ruger was prepared to present evidence demonstrating that Ruger's advertisements and promotional materials did none of what Plaintiffs alleged.

Now, in their Proposed Amended Complaint, Plaintiffs have abandoned these claims. They instead allege a whole new set of facts and legal theories as the basis for liability. In stark contrast to the Operative Complaint's "unscrupulous" marketing cause of action, the Proposed Amended Complaint is focused exclusively on the firearm's design and regulatory classification. Plaintiffs now assert that the design and configuration of the firearm was not that of a pistol but of a "short-barreled rifle," which Ruger allegedly sold unlawfully in violation of the National Firearms Act and the Gun Control Act. Plaintiffs' new claims no longer require consideration of the words and images used in Ruger's marketing materials, but instead require a consideration of evidence concerning the firearm's design and the Federal statutory definitions of a "rifle," "pistol," and a

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

"short-barreled rifle." These claims also would require evidence concerning the activities of the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") in regulating the manufacture and sale of similarly designed firearms—evidence wholly irrelevant to the claims in the Operative Complaint. The Operative Complaint never provided Ruger notice that these claims would be asserted against it or would be issues at trial.

Even a cursory review of the redlined comparison of the Operative Complaint and the Proposed Amended Complaint (Getz/Stanisic Entry No. 121.00) reveals that the two documents have nothing in common. Nearly every paragraph in the Operative Complaint has been either stricken or heavily revised. The Proposed Amended Complaint adds *more than one hundred new paragraphs*—every one of which involves an entirely different set of facts than those alleged in the Operative Complaint. To wit: Plaintiffs added seven paragraphs under the heading "Short-Barreled Rifle Basics." *See* Proposed Amended Complaint, ¶¶ 44-50. Another fifteen paragraphs (with sub-paragraphs) appear under the heading "The National Firearms Act and the Gun Control Act Regulate Short-Barreled Rifles." *See id.* at ¶¶ 51-65. Next, Plaintiffs added a section with the conclusory title "Ruger Knowingly Violated the National Firearms Act and the Gun Control Act." Plaintiffs devote an additional 45 paragraphs to this section. *See id.* at ¶¶ 66-110. Then, in a section titled "Ruger's Unlawful Conduct was a Proximate Cause of the Deaths of Suzanne Fountain and the Nine Other Victims of the King Soopers Mass Shooting," 11 paragraphs of new claims allege that Ruger's purported violations of the National Firearms Act and the Gun Control Act were a proximate cause and substantial factor in the deaths arising out of the King Soopers shooting. *See id.* at ¶¶ 111-121.

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

These claims have nothing in common with the claims set forth in the Operative Complaint, which focused entirely on Plaintiffs' claim that Ruger's marketing of the AR-556 promoted militaristic and assaultive uses, glorified the lone gunman, appealed to children, glorified its military design, encouraged use for mass casualty assaults, and promoted criminal use. *See* Revised Complaint, ¶¶ 16-25. Indeed, while the Proposed Amended Complaint focuses solely on Ruger's alleged violation of the National Firearms Act and the Gun Control Act as being the proximate cause of the harms alleged, the words "National Firearms Act" and "Gun Control Act" never appear in the Operative Complaint. Nor would they. Those Acts have no relevance to, nor bearing on, the claim of "unscrupulous" marketing that forms the basis of the Operative Complaint. There can be no question that the allegations in the Operative Complaint and the Proposed Amended Complaint arise out of different sets of facts.

III. Law and Analysis

Practice Book § 10–60(a)(3) permits a plaintiff to seek the Court's permission to amend a complaint when the time by which it could be amended by right has passed by "filing a request for leave to file such amendment . . . If an opposing party shall have objection to any part of such request or the amendment appended thereto, such objection in writing specifying the particular paragraph or paragraphs to which there is objection and the reasons therefore, shall . . . be filed with the clerk . . . and placed upon the next short calendar list."

As set forth in more detail below, pursuant to Practice Book § 10-60 and the relevant decisional law, the Court should deny Plaintiffs' request to amend their Complaints because the Proposed Amended Complaints consist of new allegations that do not relate back to the allegations of the Operative Complaint. Amendment is futile because Plaintiffs make these allegations beyond

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

the applicable statutes of limitation.

A. Plaintiffs' Proposed Amendments are Barred by the Statute of Limitations

The statute of limitations for a wrongful death claim in Connecticut is two years from the date the cause of action accrues. Conn. Gen. Stat. § 52-555. This statute of limitations controls when the wrongful death claim is predicated on theories of liability arising out of the common law, such as negligence, negligence per se, public nuisance, and common law recklessness—as Plaintiffs have alleged in the Proposed Amended Complaint. *Cf. Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 102 (2019) ("in the ordinary case, § 52-555 (a) supplies the controlling statute of limitations regardless of the underlying theory of liability.").

Our Supreme Court has further made clear that wrongful death claims predicated on CUTPA must comply with both the two-year wrongful death statute of limitations and CUTPA's three-year limitation period. *See id.* at 105 ("It is clear, then, that the plaintiffs' wrongful death claims must comply not only with the statute of limitations that governs wrongful death actions but also with CUTPA's statute of limitations."). *Cf. Harvey v. Dep't of Correction*, 337 Conn. 291, 299–300 (2020) ("[W]e held in Soto that, because CUTPA created a right of action that did not exist at common law, the plaintiffs were required to comply with both the two-year limitation period under the wrongful death statute and the three year limitation period under CUTPA.").

Here, Plaintiffs' decedents died on March 22, 2021. The two-year wrongful death statute of limitations applicable to all of the counts in the Proposed Amended Complaint bars claims raised after March 22, 2023. The amendments sought by Plaintiffs in their Proposed Amended Complaints dated August 8, 2023 are thus untimely, unless the proposed amendments relate back to the allegations of the Operative Complaint under the relation back doctrine.

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

B. The Relation Back Doctrine

The "relation back doctrine provides that an amendment relates back when the original complaint has given the party fair notice that a claim is being asserted stemming from a particular transaction or occurrence, thereby serving the objectives of our statute of limitations, namely, to protect parties from having to defend against stale claims . . . . To relate back to an earlier complaint, the amendment must arise from a single group of facts." *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 559–60 (2012) (citation omitted; internal quotation marks omitted). *See also Alswanger v. Smego*, 257 Conn. 58, 64 (2001). "[A]n amendment cannot allege a new cause of action that would be barred by the statute of limitations if filed independently." *Miller v. Fishman*, 102 Conn. App. 286, 298 (2007). A "cause of action" is "a single group of facts which is claimed to have brought about an unlawful injury to the plaintiff and which entitles the plaintiff to relief." *Wagner*, 259 Conn. 114, 129 (2002). When "an entirely new and different factual situation is presented, a new and different cause of action is stated." *Id.*

"To summarize, in determining whether the relation back doctrine applies to an amended pleading, [the Court] inquire[s] whether the amendment expands or amplifies the original facts alleged in support of a cause of action, or whether the amendment presents a new and different factual situation that would require the presentation of different evidence." *Sherman v. Ronco*, 294 Conn. 548, 556 (2010). The analysis necessarily requires a comparison of "the allegations in the original complaint to those in the amended substitute complaint." *Id.* at 557.

Our Supreme and Appellate Courts have made clear that when the requested amendments present new and different factual situations, the relation back doctrine does not apply. *Compare Alswanger*, 257 Conn. at 61 (allegation of lack of informed consent regarding resident's

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

participation in surgery did not relate back to allegation that defendants had failed to disclose all material risks in connection with plaintiff's surgery, care and treatment), *Sandvig v. A. Dubreuil & Sons, Inc.*, 68 Conn. App. 79, 86 (2002) (allegation that defendant negligently damaged floor tiles when it installed handicap access ramp did not relate back to allegation that defendant negligently installed tile floor on which plaintiff fell), appeal dismissed, 270 Conn. 90 (2004), and *Patterson v. Szabo Food Service of New York, Inc.*, 14 Conn. App. 178, 183 (1988) (allegation that defendant installed or maintained highly polished and slippery terrazzo floor and employed method of food distribution that created dangerous condition on slippery floor did not relate back to allegation that defendant had failed to clean floor and keep it free of food deposits), cert. denied, 208 Conn. 807 (1988), *with Deming v. Nationwide Mutual Ins. Co.*, 279 Conn. 745, 777 (2006) (narrower amended claim subsumed within broader allegations of loss of insurance renewal commissions deemed to relate back); *Wagner v. Clark Equipment Co.*, 259 Conn. 114, 119 (2002) (allegation that forklift was defective because backup alarm failed to sound when forklift was engaged in reverse did relate back to allegations that forklift was defective because it lacked, inter alia, backup alarm that sounded sufficiently distinct to warn plaintiff), *Bielaska v. Waterford*, 196 Conn. 151, 154 (1985) (allegations that defendants failed to replace broken glass panel and failed to inspect corridor door amplified allegations that defendants failed properly to install and maintain replacement glass in door).

The Court's analysis in *Sharp v. Mitchell*, 209 Conn. 59 (1988) is instructive here. In that case, three men asphyxiated in an underground fuel storage facility during the course of their employment. The plaintiffs, administrators of the decedents' estates, brought a wrongful death action based on negligent supervision, alleging the defendant negligently caused the deaths of the

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

plaintiffs' decedents by ordering them into a dangerous underground area. After expiration of the statute of limitations, the plaintiffs sought to amend their complaint to allege the defendant had negligently designed and constructed the storage facility. *Id.* The Connecticut Supreme Court affirmed the trial court's decision barring the amendment, finding the complaints "involve[ed] two different sets of circumstances and depend on different facts to prove or disprove the allegations of a different basis of liability." *Id.* at 73. The Court reasoned "the fact that the same defendant is accused of negligence in each complaint . . . does not make any and all bases of liability relate back to an original claim of negligence. *Id*. Because the defendants did not have fair notice of the negligent design cause of action in the timely filed original complaint, the action was barred.

Similarly, in *Dimmock*, 286 Conn. 789 (2008), the Court affirmed the trial court's denial of the plaintiff's request to amend her complaint to add a new claim asserting that her spinal surgery was performed negligently. The plaintiff's original complaint focused only on post-surgical treatment of her surgical wound and a resulting infection. The trial court found the new allegation that the defendant had deviated from the standard of care in performing the surgery was unrelated to treatment of the infection and did not relate back to those in the original complaint. Affirming the trial court, the Court held that the plaintiff was "attempting to substitute an entirely new theory of negligence," and under the relation back doctrine, the theory was barred by the statute of limitations. *Id.* at 806.

In so holding, the Court specifically rejected the plaintiff's argument that the amended allegations related back to the broad claims in the operative complaint that the defendant had failed "to adequately and properly care for, treat, monitor, diagnose and supervise the plaintiff for problems with her back and post operative care," and failed "to adequately and properly assess

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

and inform the plaintiff of the risks involved in the surgery." The Court explained that "[t]hose broad allegations must be read contextually "to give effect to the pleading with reference to the general theory upon which [the complaint] proceeded." *Id.* at 805. And because "the overwhelming thrust of the operative complaint related to the plaintiff's infection," the new allegations did not relate back. *Id.* at 802.

In contrast, in *Gurliacci v. Mayer*, 218 Conn. 531, 546 (1991), the plaintiff claimed that she had suffered injuries when her vehicle was struck in the rear by a driver who had acted negligently in operating his automobile while he was intoxicated. After the relevant limitations period had passed, the plaintiff sought to amend her complaint to add allegations that the defendant had acted either willfully, wantonly and maliciously, or outside the scope of his employment. In distinguishing *Gurliacci* from *Sharp*, the Court explained that the amendment in *Sharp* was impermissible because "the defendant would have been required to gather different facts, evidence and witnesses to defend the amended claim." *Id.* at 549. In *Gurliacci*, by contrast, the amendment "did not inject two different sets of circumstances and depend on different facts." *Id.* Accordingly, the Court concluded that the amended complaint in that case related back to the original complaint. *Id.* at 546.

Like the plaintiffs in *Sharp* and *Dimmock*—and unlike the plaintiff in *Gurliacci*—Plaintiffs here have abandoned the factual allegations of their original complaints and replaced them with an entirely different set of facts and new legal theories. The Proposed Amended Complaint does not challenge the words and images allegedly used by Ruger to promote ownership of the firearm, which formed the sole basis of the Operative Complaint. Instead, they take issue with the firearm's design and Ruger's representation that the firearm was a lawfully manufactured, sold, and

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

possessed pistol under federal law. To the extent that Ruger's "marketing" is implicated at all in these new counts, Ruger's designation of the firearm as a pistol forms the basis of the claims, not the words and images Ruger used to allegedly promote criminal use of the firearm. Like the Court found in *Sharp*, the Proposed Amended Complaint here "depend[s] on different facts to prove or disprove the allegations of a different basis of liability." *See Sharp*, 209 Conn. at 73.

Ruger anticipates Plaintiffs will argue the Operative Complaint pled a firearm design cause of action because it alleged that Ruger designed the firearm to "preserve its classification as a pistol for regulatory purposes." (Getz/Stanisic Entry Nos. 114.00 at ¶ 12). The Court should reject this argument. Alleging that Ruger designed the firearm to comply with applicable regulatory requirements is the exact opposite of alleging the product was designed and sold in violation of Federal law. *See Sherman*, 294 Conn. at 560-61 (rejecting argument that focused on the "superficial resemblance" between two complaints and "gloss[ed] over the essential differences between them."); *Dimmock*, 286 Conn. at 805 ("broad allegations must be read contextually "to give effect to the pleading with reference to the general theory upon which [the complaint] proceeded. . . ."). Moreover, like the Court found in *Dimmock*, "the overwhelming thrust of the operative complaint" here alleges that Ruger's marketing materials allegedly promote militaristic and assaultive uses, glorify the lone gunman, promote mass casualty assaults, and promote criminal use. Revised Complaint, ¶¶ 16-25. The Proposed Amended Complaint abandons those allegations in exchange for an entirely distinct legal theory and set of facts. These are precisely the type of amendments that *Sharp*, *Dimmock* and their progeny counsel against. Accordingly, because the Proposed Amended Complaint does not relate back to the Operative Complaint and the requested amendments are time-barred, this Court should not allow amendment.

Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

HALLORAN SAGE

Phone 860.522.6103
Fax 860.548.0006
Juris No. 26105

WHEREFORE, Defendant Sturm, Ruger & Company, Inc. respectfully requests that this Court deny Plaintiffs' Request for Leave to Amend in its entirety, sustain Ruger's Objection to Plaintiffs' Proposed Amended Complaint, and order such other and further relief as the Court deems necessary.

STURM, RUGER & COMPANY, INC.

By 402182

Joseph G. Fortner, Jr.
fortner@halloransage.com
HALLORAN & SAGE LLP
225 Asylum Street
Hartford, Connecticut 06103
(860) 522-6103
Juris No.026105

James Vogts *(pro hac vice)*
jvogts@smbtrials.com
SWANSON MARTIN & BELL, LLP
330 North Wabash, Suite 3300
Chicago, IL 60611
(312) 222-8517
Juris No. 437445
Its Attorneys

CERTIFICATION

I hereby certify that a copy of the above was mailed or electronically delivered on the 23rd day of August, 2023 to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served.

Andrew P. Garza, Esq.
Connecticut Trial Firm, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033
service@cttrialfirm.com
Attorney for Plaintiff

402182
Joseph G. Fortner, Jr.

DOCKET NO: UWY-CV 23-6072789S PREFIX: X06	:	SUPERIOR COURT,
RADMILO STANIŠIĆ, EXECUTOR OF THE ESTATE OF NEVIN STANIŠIĆ, ET. AL,	:	COMPLEX LITIGATION DOCKET AT WATERBURY
V.	:	
STURM, RUGER & COMPANY, INC.	:	SEPTEMBER 22, 2023

PLAINTIFFS' RESPONSE TO DEFENDANT'S OBJECTION TO REQUEST TO AMEND

The Plaintiffs respectfully submit this reply to Defendant Sturm, Ruger & Company, Inc.'s ("Defendant" or "Ruger") Objection to Plaintiffs' Request to Amend, dated August 23, 2023 [Entry No. 1160.00] (the "Objection").

INTRODUCTION

The plaintiffs are the executors of the estates of the victims of the March 22, 2021, mass shooting at a King Soopers supermarket in Boulder, Colorado. A 21-year-old shooter killed ten people in a matter of minutes with a short-barreled rifle unlawfully designed, manufactured, marketed, and sold by Connecticut-based Ruger. The shooter had purchased the short-barreled rifle a mere six days earlier, on March 16, 2021.

The National Firearms Act (the "NFA") and the Gun Control Act impose heightened regulation on manufacturers, sellers, and purchasers of short-barreled rifles, over and above the baseline federal regulation of all firearms. Proposed Amended Complaint ("Am. Compl.") ¶¶ 39–53 [Entry No. 120.00]. Notably, prospective civilian retail purchasers must complete a multi-step application process and receive approval from the Bureau of Alcohol, Tobacco, Firearms and Explosives (the "ATF") before buying a short-barreled rifle. Am. Compl. ¶¶ 52–53. On average, this process takes approximately seven months to complete. *Id*. This rigorous oversight is

commensurate with the elevated danger presented by short-barreled rifles. The Ruger weapon at issue here, for instance, resembles full-length AR-15-style rifles in function and firepower, but offers greater concealability and maneuverability due to its shorter barrel. Am. Compl. ¶¶ 32–38, 43; *see also* Original Complaint[1] ¶¶ 9–11. As alleged in both the Original and proposed Amended Complaints, Ruger sought to evade this heightened federal regulation by designing, marketing, and selling short-barreled rifles with alternative shoulder stocks and under the model name "AR-556 Pistol." Am. Compl. ¶¶ 5–13, 16, 21, 56–82; Original Compl. ¶¶ 8–14. Ruger engaged in this evasive conduct knowing that its AR-556 short-barreled rifles would be purchased by consumers, like the shooter, who did not complete the proper screening. Am. Compl. ¶ 14; Original Compl. ¶ 26. To maintain the charade, Ruger deceptively marketed and sold the AR-556 short-barreled rifles as "pistols." Am. Compl. ¶ 112; *see also* Original Compl. ¶ 14. At the same time, Ruger's direct and indirect marketing promoted assaultive uses of the AR-556 "Pistol" and its similarity to rifles. Am. Compl. ¶¶ 34, 112(e); Original Compl. ¶¶ 14, 16, 36. It was a likely and foreseeable consequence of Ruger's conduct that a shooter with malintent would be attracted to a loophole around the NFA process and misuse the Ruger AR-556 short-barreled rifle. Am. Compl. ¶ 124.

That is what happened here. Ruger's conduct enabled the shooter to obtain his short-barreled rifle of choice in one day, while avoiding the lengthy NFA application process. Am Compl. ¶¶ 99–109. Ruger's conduct expedited the shooter's purchase of his weapon, enabling him to obtain it in time to kill the plaintiffs' relatives six days later. *Id*. Had Ruger followed federal law, the shooter would not have been able to obtain the weapon he used in time. Ruger's conduct proximately caused the death and related injuries of the plaintiffs' decedents. Am. Compl. ¶¶ 109,

[1] For the sake of clarity, Plaintiff here uses the term "Original Complaint" to refer to the pleading styled as the "Revised Complaint" [Entry No. 114.00], which Plaintiff filed on July 7, 2023, and which is the currently operative complaint.

148–152; *see also* Original Compl. ¶¶ 39–43 (alleging that Ruger's conduct, including alleged evasion and marketing conduct, proximately caused the plaintiffs' decedents death and injuries).

On August 8, 2023, Plaintiffs filed a request to amend to amplify and expand on his allegations. Both the Original and proposed Amended Complaints contain two intertwined sets of fact allegations: (a) Ruger evaded federal regulation of short-barreled rifles in designing, producing, and distributing its line of civilian short-barreled rifles, which it misleadingly labeled as AR-556 "Pistols," and (b) Ruger unfairly, deceptively, unscrupulously, and recklessly marketed the same. To be sure, the Original Complaint placed greater emphasis on Ruger's marketing conduct, while the proposed Amended Complaint clarifies and expands the allegations relating to the ways in which Ruger circumvented federal regulation of short-barreled rifles. But neither the evasion nor the marketing theory is either brand new or abandoned in the Amended Complaint.

Nor are they conflicting or siloed theories. Whether Ruger unlawfully produced and sold short-barreled rifles will turn on whether Ruger designed, made, and intended its AR-556 "Pistols" to be fired from the shoulder. 26 U.S.C. § 5845(a)(3)–(4), (c); 18 U.S.C. § 921(a)(7)–(8). That inquiry will involve examining objective evidence of Ruger's intent, which could include both the weapon's design and Ruger's marketing. *Cf. Sig Sauer, Inc. v. Brandon*, 826 F.3d 598, 602 (1st Cir. 2016) ("[I]t is hard to believe that Congress intended to invite manufacturers to evade the [National Firearms Act's] carefully constructed regulatory regime simply by asserting an intended use for a part that objective evidence in the record—such as a part's design features—indicates is not actually an intended one."). Likewise, whether Ruger unlawfully marketed its AR-556 "Pistols" will turn in part on whether those weapons are, in fact, short-barreled rifles.

Ruger has objected to Plaintiffs' request on the sole ground that Plaintiffs' new allegations do not relate back to the Original Complaint and are thus time-barred. Defendant's Objection is

wrong on the facts and the law.

Defendant conspicuously ignores the controlling Connecticut Supreme Court case *Briere v. Greater Hartford Orthopedic Group*, 325 Conn. 198, 157 A.3d 70 (2017), which clarified that the relation back doctrine requires a "case-by-case inquiry" and that the pleadings should be construed "broadly and realistically, rather than narrowly and technically." *Id.* at 209–10, 78–79. Relying solely on cases that predate *Briere*, Defendant advocates a narrow, hyper-technical approach, which, if adopted, would preclude a plaintiff from ever amending a complaint after the statute of limitations has expired.

Defendant also repeatedly mischaracterizes Plaintiffs' proposed amendments, by erroneously asserting that Plaintiffs have "abandoned" the claims and factual allegations in the Original Complaint and "replaced them with an entirely different set of facts and new legal theories." Objection at 11; *see also id.* at 3, 4, 12. But as discussed below, Plaintiffs' amended allegations arise out of the very same transaction as in the Original Complaint. More specifically, the new allegations involve substantially similar types of conduct by the same actor, during the same time period, at the same locations, resulting in the same injury. *See* Section II.B *infra*.

Accordingly, Plaintiffs' request to amend his Original Complaint should be granted.

ARGUMENT

I. AMENDMENTS TO COMPLAINTS ARE LIBERALLY GRANTED

Practice Book § 10-60(a) permits a plaintiff to request an amendment of a complaint at any time, and courts grant such requests liberally. *See, e.g.*, *Jacob v. Dometic Origo AB*, 100 Conn. App. 107, 111, 916 A.2d 872, 875 (2007) ("In the interest of justice courts are liberal in permitting amendments; unless there is a sound reason, refusal to allow an amendment is an abuse of discretion.") (quoting *Tedesco v. Julius C. Pagano, Inc.*, 182 Conn. 339, 341, 438 A.2d 95 (1980)); *McNeil v. Riccio*, 45 Conn. App. 466, 473, 696 A.2d 1050, 1055 (1997) ("Our courts have pursued

a liberal policy in allowing amendments.") (quoting *Johnson v. Toscano*, 144 Conn. 582, 587, 136 A.2d 341 (1957)). This liberal policy applies even when a request is made during or after trial. *See Wagner v. Clark Equip. Co.*, 259 Conn. 114, 128–30, 788 A.2d 83, 94 (2002) (reversing denial of motion to amend complaint after first trial).

To determine whether to grant a request to amend, courts consider "the length of the delay, fairness to the opposing parties and the negligence, if any, of the party offering the amendment." *Id.* at 128. "The ***essential tests*** are whether the ruling of the court will work an injustice to either the plaintiff or the defendant and whether the granting of the motion will unduly delay a trial." *Wilburn v. Mount Sinai Medical Center*, 3 Conn. App. 284, 287, 487A.2d 568, 570 (1985) (emphasis added). Defendant does not allege that Plaintiffs' request to amend—filed a mere five months after commencement of this action and before Defendant has produced a single document or sat for a single deposition—will cause any delay or prejudice. Nor does Defendant allege any negligence on Plaintiffs' part. Instead, Defendant raises a single objection—that the amendments raise new causes of action that do not relate back to the original complaint and are therefore time-barred. For the reasons that follow, Defendant's argument lacks merit.

II. THIS COURT SHOULD GRANT PLAINTIFFS' REQUEST TO AMEND THE COMPLAINT

A. The Allegations in the Proposed Amended Complaint Relate Back to the Earlier Pleading and Are Thus Timely Filed.

The standard for application of the relation back doctrine is a broad one intended to "serve the purpose of promoting substantial justice." *Briere*, 325 Conn. at 210. A plaintiff may amend his or her complaint to "amplify or expand" the allegations as long as the "identity of the cause of action remains substantially the same." *Wagner*, 259 Conn. at 129 (2002). "A change in, or addition to, a ground of negligence or an act of negligence arising out of the single group of facts which was originally claimed . . . does not change the cause of action." *Id.* If an alternate theory

of liability may be supported by the original factual allegations, then that does not negate the "identity of the cause of action" or bar the application of the relation back doctrine. *Gurliacci v. Mayer*, 218 Conn. 531, 549, 590 A.2d 914, 924 (1991). A proposed amendment "relates back" so long as the original complaint provided "fair notice that a claim is being asserted stemming from a particular transaction or occurrence." *Grenier v. Comm. of Transportation*, 306 Conn. 523, 559, 51 A.3d 367, 391 (2012).

The Supreme Court in *Briere* affirmed this State's broad policy of allowing amendments to relate back liberally and clarified the factors that should be considered to determine whether an amendment relates back to the original complaint. The Court emphasized that where the amended claims fall within the same "transaction or occurrence," the new claims relate back. *Briere*, 325 Conn. at 210–211. To determine whether the new allegations fall within the same transaction or occurrence, courts consider several non-exhaustive factors, including whether the original and new allegations involve the same actor or actors, the same time period, the same location, the same injury, substantially similar types of conduct, and require the same type of evidence. *Id.* at 211.

Here, the relation back doctrine as clarified in *Briere* indisputably applies to Plaintiffs' proposed amendment. Plaintiffs' Original Complaint and proposed Amended Complaint arise from the same nucleus of operative facts—Ruger's negligence and recklessness in designing, manufacturing, and marketing the AR-556 short-barreled rifle as if it was a pistol—and are based on the same injury—the wrongful death of Plaintiffs' mother. "Reading the original complaint broadly and realistically," as this Court is required to do, each of the factors discussed in *Briere* support application of the relation back doctrine here. *First*, the actor remains the same—Ruger. *Second*, the new allegations involve the same time period—the period during which Ruger designed, manufactured, marketed, and sold the AR-556, leading to the death of Plaintiffs' family

members in March 2021. *Third*, the location of Ruger's conduct remains the same. *Fourth*, Plaintiffs have not alleged a new injury; both the Original Complaint and proposed amendments allege wrongful death as a result of Ruger's unlawful conduct. *Finally*, both the Original Complaint and new allegations involve substantially similar types of conduct—namely, Ruger's improper design and marketing of the AR-556—and thus will necessarily require the same types of evidence.

Defendant focuses exclusively on the final two factors, arguing Plaintiffs' amendment "abandoned the factual allegations of their original complaints and replaced them with an entirely different set of facts and new legal theories." Objection at 11. Specifically, Defendant argues Plaintiff has "abandoned" his "marketing cause of action" in favor of "an entirely new cause of action based on firearm's design." *Id.* at 3. But Defendant misleadingly summarizes Plaintiffs' allegations, cherry-picking those that suit its argument while wholly disregarding others that make clear that the core of Plaintiffs' theory of liability has not changed. As demonstrated *supra*, at 1–3, Plaintiffs' Original and Amended Complaints both allege that Ruger deliberately evaded federal regulation of short-barreled rifles in designing, manufacturing, and selling its AR-556 "Pistols" and that Ruger unlawfully, recklessly, and unscrupulously marketed the same. Plaintiffs have from the beginning alleged this range of conduct as the basis for liability under the Connecticut Unfair Trade Practices Act ("CUTPA"), which broadly prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-110b(a); *see Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 112, 202 A.3d 262, 298 (2019) ("[W]e frequently have remarked that 'CUTPA's coverage is broad and its purpose remedial.'" (citation omitted)); *see also* Am. Compl. ¶¶ 110–118 (CUTPA claim); Original Compl. ¶¶ 1–39 (CUTPA claim).

First, from the outset, Plaintiffs have alleged, among other things, that Ruger deliberately

"***designed***" the AR-556 "Pistol" in a way that made it function as a rifle while still purportedly preserving its pistol classification for regulatory purposes. *See* Original Compl. ¶¶ 10–14. Ruger argues that the Amended Complaint's allegations regarding Ruger's violation of the NFA and the Gun Control Act "have no relevance to, nor bearing on" Plaintiffs' Original Complaint. Objection at 6. But Plaintiff explicitly alleged in his Original Complaint that Ruger's conduct was intended to "***evad[e] regulations*** targeted at limiting AR-15-style rifles." Original Compl. ¶ 14.[2] That Plaintiff did not specifically reference the "National Firearms Act" and the "Gun Control Act" as the regulations being evaded is immaterial and improperly elevates form over substance. By identifying such Acts in the proposed Amended Complaint, Plaintiff is simply expanding and amplifying his initial allegations. *Compare* Original Compl. ¶¶ 10–14 *with* Am. Compl. ¶¶ 13, 54–70, 112(a). While Plaintiffs' proposed amendments provide significantly more detail regarding Ruger's alleged evasion of federal law, the Amended Complaint does not represent Ruger's first notice of Plaintiffs' theory on this front. To reject Plaintiffs' proposed Amended Complaint on the grounds that it adds too many additional, clarifying allegations would turn the fact-pleading standard on its head. *See, e.g., O'Donnell v. AXA Equitable Life Ins. Co.*, 210 Conn. App. 662, 679, 270 A.3d 751, 762 (2022) ("The purpose of fact pleading is to put the defendant and the court on notice of the important and relevant facts claimed and the issues to be tried."). Here, Plaintiffs' proposed Amended Complaint provides additional factual detail to allegations already noticed in the Original Complaint in order to frame the issues for Defendant and the Court at an early stage.

---

[2] In its Objection, Defendant "anticipates" that Plaintiff will rely on his allegations in Paragraph 12 of the Original Complaint that Ruger designed the AR-556 pistol to "preserve its classification as a pistol for regulatory purposes" (Objection at 11–12), but remarkably fails to address Plaintiffs' more direct allegation of wrongful conduct just two paragraphs later in Paragraph 14. This is emblematic of Defendant's selective, self-serving reading of Plaintiffs' allegations.

Moreover, even if the Original Complaint had not included allegations of Ruger's evasion of federal law, the relation back doctrine does not preclude assertion of new or alternate theories of liability so long as they are based, as they are here, on the ***same transaction or occurrence*** as the original allegations. *See Briere*, 325 Conn. at 210; *see also Gurliacci*, 218 Conn. at 546–49.

Second, far from abandoning its marketing claim, Plaintiffs' proposed Amended Complaint maintains and expands its allegations with respect to Ruger's unlawful marketing. *See, e.g.*, Am. Compl. ¶¶ 22, 34, 112-13, 123.[3] To be sure, Plaintiffs' Amended Complaint does not include every fact allegation that appeared in his Original Complaint. But removing or reframing certain allegations of fact does not amount to a wholesale abandonment of Plaintiffs' theory of Ruger's marketing-based liability.

Ruger had fair notice of Plaintiffs' design-based claims. The Court should reject Ruger's arguments that ignore current law and an accurate reading of the Amended Complaint.

B. Defendant Relies on Case Law That Is Distinguishable From This Case.

None of the cases relied on by Defendant provide a legal basis for this Court to deny Plaintiffs' request to amend his complaint. The majority of the decisions cited by Defendant (Objection at 8–10) are unavailing since the amendments in those cases, unlike here, raised entirely new core claims that did not have allegations to support them in the original complaints. *See Sharp v. Mitchell*, 209 Conn. 59, 546 A.2d 846 (1988) (negligent supervision v. design defect); *Alswanger v. Smego*, 257 Conn. 58, 776 A.2d 444 (2001) (informed consent to procedure v. informed consent to surgical resident's involvement in surgery); *Sandvig v. A. Dubreuil & Sons, Inc.*, 68 Conn. App. 79, 789 A.2d 1012 (2002) (failure to finish floor v. actively damaged tiles on

[3] These allegations concern Ruger's deceptive and unfair marketing of the AR-556 short-barreled rifles as: (1) "pistols" available for lawful civilian purchase, (2) designed like rifles, and (3) having assaultive/militaristic uses.

floor); *Patterson v. Szabo Food Serv. of New York, Inc.*, 14 Conn. App. 178, 540 A.2d 99 (1988) (failure to clean floor v. created a dangerous condition on floor). Moreover, the plaintiff in *Dimmock v. Lawrence & Mem'l Hosp., Inc*., 286 Conn. 789, 945 A.2d 955 (2008) sought not only to raise entirely new claims, but one that "directly contradicted" those in her original complaint. *Id.* at 805. Specifically, the plaintiff in that case initially alleged "that the defendants should *not* have performed a spinal fusion because there was *no spinal instability*;" in her amendment, she alleged "that the defendants *should* have performed a spinal fusion, but that they did not use the proper material." *Id.* No such contradictions exist here. Nor does Defendant allege there are any.

Unlike those cases, Plaintiffs' Original Complaint gave Defendant sufficient notice of Plaintiffs' design-based claims, even before his requested amendments. As discussed above, the Original Complaint alleged that Ruger designed, produced, and sold the AR-556 in a manner intended to evade federal regulations. The Amended Proposed Complaint merely clarifies *which* federal regulations Ruger violated and expands on the ways in which it did so. *See* Section II.A. *supra*. Moreover, both the Original and Amended Complaints allege Ruger's unlawful marketing of the AR-556 short-barreled rifle. *See* Introduction and Section II.A, *supra.* And, importantly, Plaintiffs' allegations concerning Ruger's unfair and deceptive marketing and its evasion of federal regulation are all of a piece. They are part and parcel of Ruger's effort to reach consumers wishing to purchase short-barreled rifles outside the NFA process and to profit from the sale of those weapons without the hassle of increased federal oversight. In other words, Ruger's objection to Plaintiffs' requested amendments is premised on a false dichotomy between Ruger's design and production of its AR-556 short-barreled rifles and its marketing of the same.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' request for leave to amend their complaint.

EVERYTOWN LAW

Eric Tirschwell, Esq.*
Juris No. 444838
Len H. Kamdang, Esq.*
Juris No. 444850
Carolyn Shanahan, Esq.*
Juris No. 444837
Laura Keeley, Esq.*
Juris No. 444836
450 Lexington Ave
P.O. Box 4184
New York, NY 10017
Tel: (646) 324-8222
Fax: (917) 410-6932
etirschwell@everytown.org
lkamdang@everytown.org
cshanahan@everytown.org
lkeeley@everytown.org
**admitted pro hac vice*

THE PLAINTIFF,

/s/Andrew Garza
Andrew P. Garza, Esq.

CONNECTICUT TRIAL FIRM, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033
Tel: (860) 471-8333
Fax: (860) 471-8332
andrew@cttrialfirm.com
Juris No. 436558

WILLKIE FARR & GALLAGHER LLP

Soumya Dayananda, Esq.*
Juris No. 444835
1875 K Street, N.W.
Washington, DC 20006
Tel: (202) 303-1312
Fax: (202) 303-2000
SDayananda@willkie.com
**admitted pro hac vice*

CERTIFICATION

I certify that a copy of the above document was mailed or delivered electronically or non-electronically on the 22nd day of September, 2023 to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

Joseph G. Fortner, Jr.
HALLORAN & SAGE, LLP
225 Asylum Street
Hartford, CT 06103
fortner@halloransage.com
Attorney for Defendant

James Vogts
Swanson, Martin & Bell, LLP
330 North Wabash, Suite 3300
Chicago, Illinois 60611
jvogts@smbtrials.com
Attorney for Defendant

/s/ Andrew Garza
Andrew P. Garza, Esq.

ORDER 421277

DOCKET NO: UWYCV236072789S

SUPERIOR COURT

STANISIC, RADMILO, REPRESENTATIVE OF THE ESTATE OF Et Al
V.
STURM, RUGER & COMPANY, INC.

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

10/4/2023

ORDER

ORDER REGARDING:
08/23/2023 1160.00 OBJECTION TO REQUEST TO AMEND

The foregoing, having been considered by the Court, is hereby:

ORDER: OVERRULED

Superior Court Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

421277

Judge: BARBARA N BELLIS

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (https://jud.ct.gov/external/super/E-Services/e-standards.pdf), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

RADMILO STANISIC, EXECUTOR OF THE ESTATE OF NEVIN STANISIC, ET AL *Plaintiff*, v. STURM, RUGER & COMPANY, INC., *Defendant.*	Civil Action No. 3:23-cv-01340-RNC **November 13, 2023**

PLAINTIFFS' MOTION TO REMAND

Pursuant to 28 U.S.C. § 1447(c), Plaintiffs by and through their undersigned counsel, respectfully request that this Court remand the above captioned matter to the Connecticut Superior Court. In support of this motion, Plaintiffs submit a Memorandum of Law in Support of Plaintiffs' Motion to Remand, which is being filed contemporaneously with this motion.

THE PLAINTIFFS

By: */s/ Andrew B. Ranks*

Andrew B. Ranks, Esq. [ct28751]
Connecticut Trial Firm, LLC
437 Naubuc Avenue, Suite 107
Glastonbury, CT 06033
Tel: (860) 471-8333
Fax: (860) 471-8332
ranks@cttrialfirm.com

ORAL ARGUMENT IS NOT REQUESTED

CERTIFICATION

This is to certify that a copy of the foregoing was served electronically on the above captioned date and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail at the addresses shown below to anyone unable to accept electronic filing as indicated by the Notice of Electronic Filing. Parties may access filing through the Court's CM/ECF System.

Robert Carl Eric Laney
Ryan Ryan Deluca LLP
1000 Lafayette Boulevard, Suite 800
Bridgeport, CT. 06604
roblaney@ryandelucaw.com

James Vogts
Swanson, Martin & Bell, LLP
330 North Wabash, Suite 3300
Chicago, Illinois 60611
jvogts@smbtrials.com