IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

RADMILO STANISIC, EXECUTOR OF THE ESTATE OF NEVIN STANISIC ET AL	:	
Plaintiff,	:	CIVIL ACTION NO: 3:23-cv-01340-RNC
v.	:	**December 22, 2023**
STURM, RUGER & COMPANY, INC.,	:	
Defendant.	:	

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO REMAND

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Defendant, Sturm, Ruger & Company, Inc. ("Ruger"), respectfully submits this Memorandum in Opposition to Plaintiffs' Motion to Remand (ECF 18; and "Pls.' Memo.").

INTRODUCTION

Federal jurisdiction exists because Plaintiffs' claims "necessarily raise[] stated federal issues, actually disputed and substantial, which [this Court] may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *See Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 314 (2005). Plaintiffs' protestations to jurisdiction in this Court reflect a fundamental misunderstanding of the distinctly federal issues at stake and the availability of the federal forum to uniformly decide those issues. This case should be decided in federal court, and Ruger's removal was appropriate under 28 U.S.C. § 1331.

Plaintiffs make two principal arguments in support of remand: First, that removal was untimely; and second, that this case does not raise a substantial federal issue that can be decided in this Court without disrupting the federal-state balance of judicial responsibilities. Both are wrong. With respect to the timeliness argument, the Initial Complaint contained a single, state law claim that could be decided solely on state law grounds, independent of any federal issue, and was therefore not removable under the four-factor *Grable* doctrine. This case did not become removable until Plaintiffs amended their Initial Complaint to add new claims, one or more of which necessarily raised a disputed and substantial federal issue, namely whether Ruger AR-556 Pistols, like millions of similar firearms sold by other manufacturers throughout the United States, are classified and lawfully sold as pistols with a stabilizing brace or instead are classified as short-barreled rifles regulated by the National Firearms Act of 1934 ("NFA") and the Gun Control Act of 1968 ("GCA").

With respect to Plaintiffs' second argument, the disputed federal issue at the heart of this case is unquestionably substantial. Indeed, the dispute is the subject of ongoing parallel litigation brought by numerous types of plaintiffs in federal courts across the country against the federal government. As here, those cases involve interpretation of the NFA and GCA provisions defining pistols and short-barreled rifles, as well as the legality of a Final Rule issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") on January 31, 2023. *See Factoring Criteria for Firearms with Attached Stabilizing Braces*, 88 Fed. Reg. 6478 (Jan. 31, 2023).[1]

Finally, Plaintiffs' claim that federal jurisdiction will somehow disrupt the federal-state judicial balance is baseless. The issues presented in the Amended Complaint are squarely focused on federal issues and federal laws. Moreover, the one other federal court within the Second Circuit to consider the precise issue here—whether *Grable* supports removal of state law claims that require interpretation of federal firearm laws and unsettled ATF regulations—specifically found that accepting federal jurisdiction would not disrupt the federal-state judicial balance. *See New York v. Arm or Ally*, 644 F. Supp. 3d 70 (S.D.N.Y. 2022). The federal forum here is vital to maintaining that balance. The present case is appropriately decided in federal court. Plaintiffs' Motion to Remand should be denied.

[1] *See Mock v. Garland*, 75 F.4th 563 (5th Cir. 2023) (reversing denial of preliminary injunction on enforcement of the Final Rule and remanding for reconsideration); *Mock v. Garland*, No. 4:23-cv-00095-O, 2023 WL 6457920 (N.D. Tex. Oct. 2, 2023) (preliminarily enjoining enforcement of the Final Rule); *Firearms Regulatory Accountability Coalition, Inc. v. Garland*, 1:23-cv-024, 2023 WL 5942365 (D. N.D. Sept. 12, 2023) (denying motion to preliminarily enjoin enforcement of the Final Rule), appeal filed Oct. 6, 2023 (No. 23-3230); *Miller v. Garland*, 1:23-cv-195 (RDA/JFA), 2023 WL 3692841 (E.D. Va. May 26, 2023) (denying motion to preliminarily enjoin enforcement of the Final Rule), appeal filed June 6, 2023; *Texas v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 6:23-CV-00013, 2023 WL 7116844 (Oct. 27, 2023), appeal filed Dec. 1, 2023; *Second Amend. Found., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 3:21-CV-0116-B, 2023 WL 7490149 (N.D. Tex. Nov. 13, 2023), appeal filed Nov. 14, 2023.

BACKGROUND

Plaintiffs' Amended Complaint alleges that the Ruger firearm at issue, an AR-556 Pistol, is actually a short-barreled rifle ("SBR") sold in violation of the NFA and the GCA, and that those alleged violations were a proximate cause of Plaintiffs' damages. A brief overview of the NFA, GCA, and Final Rule will aid the Court in understanding the critical importance of deciding the present case in a federal court. As the Fifth Circuit recently explained,

> The [NFA] and the [GCA] are two of the primary means of federal arms regulation and licensure. To that end, the statutes impose heightened, and at times, onerous requirements on manufacturing, selling, and transferring certain firearms, including short-barreled rifles ("SBRs"). Pistols and handguns are not subject to those extra requirements.

Mock v. Garland, 75 F.4th 563, 566 (5th Cir. 2023).

Neither the NFA nor GCA provide guidance on whether a braced pistol—designed to be used as a pistol—is a statutorily-defined pistol or an SBR. As such, members of the firearm industry sought guidance from ATF. In 2012, the first stabilizing brace, also known as a pistol brace, was submitted to ATF for review. "The applicant asked whether the attachment of that device would change the pistol's classification under firearm laws. The applicant stated that the brace was designed so that disabled persons could fire heavy pistols more safely and comfortably. The ATF examined the sample and concluded that the submitted brace did 'not convert that weapon to be fired from the shoulder and would not alter the classification of a pistol or other firearm.'" *Mock*, 75 F.4th at 571. Over the ensuing decade, ATF repeatedly reaffirmed that a pistol brace did not convert a pistol into a SBR. *Id.* at 571-72. As recently as 2019, "ATF asserted in criminal prosecutions that 'ATF letters do correctly state that they consider a firearm with a pistol brace *to not be a rifle under the NFA* for purposes of the NFA.'" *Id.* at 572 (emphasis added).

In January 2023, ATF changed its position and published a Final Rule that details

"objective design features," which effectively reclassifies pistols with stabilizing braces as SBRs subject to NFA requirements and restrictions. Since issuance of the Final Rule, it has been challenged in federal courts across the country. In the one case decided by a reviewing court thus far, *Mock v. Garland*, the court held ATF violated the Administrative Procedures Act ("APA") when issuing the Final Rule, finding it to be legislative in character, not interpretative, because it "affects individual rights, speaks with the force of law, and significantly impacts private interests." *Mock*, 75 F.4th at 578. The court further held that the plaintiffs were likely to succeed on the merits of their challenge to the Final Rule, and remanded the case to the district court. On remand, the district court preliminarily enjoined the government from implementing and enforcing the Final Rule against the plaintiffs, including a firearm manufacturer and its distributors, dealers, and consumer purchasers. *Mock v. Garland*, No. 4:23-cv-00095-O, 2023 WL 6457920, at *18 (N.D. Tex. Oct. 2, 2023).

Two days after the government was enjoined from enforcing the Final Rule in *Mock*, the Connecticut state court in this case granted Plaintiffs leave to file their Amended Complaint. The Amended Complaint's allegations rely extensively on the so-called objective design factors set forth in ATF's Final Rule, and allege *for the first time* that Ruger violated the NFA and GCA by selling the AR-556 Pistol. Plaintiffs' allegations are inextricably entwined with the Final Rule and the substantial federal issues addressed in *Mock* and other ongoing federal cases. Indeed, the majority of the Amended Complaint's 152 paragraphs are dedicated to federal firearm statutes and regulations, which reflect the federal government's preeminent role in enforcing federal regulatory requirements on the manufacture, registration and sale of firearms, including those classified as NFA firearms. Tracking the Final Rule, Plaintiffs plead that Ruger firearms with stabilizing braces are SBRs under the design criteria outlined by the Final Rule; Am. Compl. at ¶¶ 72-87; that ATF

has reviewed the same type of stabilizing brace on a Ruger firearm and determined the firearm to be an SBR; *id*. at 88-93; and that Ruger failed to register and transfer its firearms with stabilizing braces in violation of a litany of NFA requirements. *Id*. at ¶¶ 94-105.

Ruger is confident that it will prevail on the disputed federal issue at the core of this case– that its AR-556 Pistols are not SBRs. The ATF's Final Rule and attempted reclassifications should be rejected. Like millions of brace-equipped pistols sold by other manufacturers, AR-556 pistols are not SBRs and therefore can be sold without compliance with the NFA. Resolution of this federal question will necessarily have far-reaching implications for other firearm manufacturers, distributors, retailers, other federal firearm licensees, and owners of pistols with stabilizing braces. This Court, not a Connecticut state court, should decide these significant federal issues, interpret the NFA and GCA, and rule on the legality of the Final Rule to preserve the balance of federal and state judicial responsibilities.

ARGUMENT

I. Plaintiffs' Procedural Objections to Removal are Meritless.

Plaintiffs' procedural argument for remand, that removal was allegedly untimely because their Initial Complaint was removable, is flatly wrong. On its face, the Initial Complaint was not removable under *Grable* because it contained only a state law claim, an alleged a violation of the Connecticut Unfair Trade Practices Act ("CUTPA") based on Ruger's alleged unlawful marketing of the AR-556 Pistol. The CUTPA claim was predicated entirely on state law standards and thus could be decided independently of any federal question. Had Ruger removed the Initial Complaint, the first *Grable* factor would have dictated remand because the presence of a state law basis for the CUTPA claim prevented a federal issue from being "necessarily raised." *See Loussides v. Am. Online, Inc.*, 175 F. Supp. 2d 211, 213-14 (D. Conn. 2001) (CUTPA claim was not removable

under *Grable* because the presence of a state law basis prevented any federal basis for the same claim from being a "necessary element"). At that time, Plaintiffs' claim lacked the necessary federal ingredient, which is an "essential element of one of the well-pleaded claims" to remove under 28 U.S.C. §1331. *Id*.

As a result, Plaintiffs' lawsuit did not "become removable" under 28 U.S.C. § 1446(b)(3), until the Amended Complaint added a negligence per se claim that does not invoke any state statutory standard of care. Rather, Plaintiffs' negligence per se claim depends exclusively on resolution of the federal issue—whether Ruger violated the NFA and the GCA. *See Broder v. Cablevision Sys. Corp*., 418 F.3d 187, 194 (2d Cir. 2005) (a single claim over which federal question jurisdiction exists is a sufficient basis for removal). There is no dispute that Ruger removed within 30 days of the filing of the Amended Complaint. [2]

It is of no consequence that Plaintiffs alleged in their Initial Complaint that Ruger designed the AR-556 Pistol to "preserve" its lawful classification as a pistol under federal law and "evade" its classification as a rifle. Alleging that Ruger designed the firearm to *comply* with applicable regulatory requirements is the *opposite* of alleging that the rifle was designed in *violation* of those requirements. "Evade" is synonymous with "avoid" and Ruger's design of the firearm to avoid violating the law reflects *its compliance with the law*. Indeed, the law would be turned on its head if compliance with the law is equivalent to violation of the law.

Plaintiffs acknowledge that they did not even "name" the NFA or the GCA in their Initial Complaint. (Pls.' Memo. at 7). Not only was there not a single reference to either of these federal laws, there was no allegation that Ruger violated these federal laws. Notably, Plaintiffs referred to

[2] Plaintiffs do not contest that a single claim over which federal question jurisdiction exists is sufficient to allow removal. *See* NOR at ¶ 10. Nor do Plaintiffs contest that the other claims pled in the Amended Complaint are within the supplemental jurisdiction of this Court. *Id*. at ¶ 19.

the firearm at issue as a "pistol" throughout the Initial Complaint, and did not once use the term "short-barreled rifle" or its initialism "SBR." Plaintiffs' own, repeated characterization of the firearm as a pistol in the Initial Complaint but as an SBR in the Amended Complaint evidences the sea-change in their allegations.

Even if Plaintiffs had expressly pled violations of the NFA and GCA in their Initial Complaint (which they did not), the Initial Complaint would not have been removable under *Grable* because Plaintiffs' sole claim under CUTPA could have been decided under state law standards. Resolution of any arguable federal issue would not have been necessary to resolve the claim, as is required for federal jurisdictional purposes. *See Loussides v. Am. Online, Inc.*, 175 F. Supp. 2d at 213-14 (remanding on ground that CUTPA claim asserted theories of liability beyond violations of federal law). Plaintiffs' argument that Ruger should have "ascertained" that the Initial Complaint alleged Ruger's violation of federal law and created federal question jurisdiction should be rejected for the red herring that it is. Whether the Initial Complaint put Ruger on notice of a cause of action based on violations of the GCA and NFA (it did not) is immaterial to the question of whether the single-count Initial Complaint alleging only a CUTPA violation was removable (it was not).[3]

Plaintiffs' law-of-the-case argument borders on the absurd. That the Connecticut state court in a one-word order "overruled" Ruger's objection to Plaintiffs' Request to Amend their Initial Complaint has no bearing on whether the Initial Complaint was removable under *Grable* or whether removal was timely. The state court did not find, either directly or by implication, that the Initial Complaint "necessarily raised" a disputed federal issue as required under *Grable*.

[3] Ruger does not concede that the Initial Complaint gave notice of Plaintiffs' new claims related to the GCA and NFA, and reserves the right to argue that point at the appropriate time.

Rather, the state court's order overruling Ruger's objection to the amendment is rightly seen as an order in accordance with Connecticut state court law and practice under which amendments are to be liberally granted and, in the absence of a sound reason, refusal to allow an amended pleading is an abuse of discretion. *See Tedesco v. Julius C. Pagano, Inc*., 182 Conn. 339, 341 (1980). It is not uncommon for a Connecticut state court to overrule an objection to a request to amend a complaint only to later grant a dispositive motion on those same grounds. *See, e.g.*, *Mesner v. Cheap Auto Rental*, No. CV075009039S, 2008 WL 590495, at *8 (Feb. 13, 2008) (Bellis, J.) (granting summary judgment and finding that new allegations in amended complaint did not relate back to allegations in original complaint and were thus barred by the statute of limitations, despite previously allowing the amendment and overruling the defendant's objection on the same ground).

Regardless, the law-of-the-case doctrine is discretionary, even when the case is transferred from state to federal court. *Quinn v. Aetna Life & Cas. Co*., 616 F.2d 38, 40 (2d Cir. 1980). And "[w]here a case is removed to federal court on the basis of a federal question, the federal court need not follow the law of the case as declared by the state court." *Local 1 of United Food & Commercial Workers v. Heinrich Motors, Inc*., 559 F. Supp. 192, 195 (W.D.N.Y.1983) (citing 1B Moore's Federal Practice § 0.404(b), at 504); *accord Robinson v. Gorman*, 145 F. Supp. 2d 201, 204 (D. Conn. 2001).[4] Plaintiffs' procedural argument for remand should be rejected.

[4] Plaintiffs' reliance on *Torah Soft Ltd. v. Drosin*, 224 F. Supp.2d 704 (S.D.N.Y. 2002), for the general proposition that "[t]he law of the case doctrine generally applies to decisions made by a state court prior to removal to federal district court" is not helpful to their position. There, the court noted that a federal court "may reconsider a determination based on state procedural law if its application in the federal forum would be anomalous." *Id*. at 710. Here, Plaintiffs were granted leave to amend their Initial Complaint under Connecticut Practice Book Section 10-60, which places no burden on the amending party to justify an amended pleading. The only procedural limitation on amendment under Section 10-60 is that the amendment should not affect the parties' ability "to join issue in a reasonable time for trial." In contrast, Federal Rule of Civil Procedure 15 would have required Plaintiffs to show that "justice" required their amended pleading. Had Plaintiffs asked this Court for leave to file their Amended Complaint, stating new causes of action

II. Ruger Has Met the Four Requirements of a Removal under *Grable*.

Turning to the merits of Ruger's *Grable*-based removal, the four requirements for federal jurisdiction are satisfied. Plaintiffs correctly concede the first two *Grable*-factors: the federal issues expressly pled in the Amended Complaint are "necessarily raised" and "actually disputed." Plaintiffs object to the third and fourth *Grable*-factors: substantiality and federal-state balance. Again, both are satisfied. How firearms equipped with stabilizing braces are to be classified under the NFA and GCA, as either pistols or SBRs, raises a host of substantial and wholly federal issues, which can (and should) be decided in this Court without disrupting any federal-state balance of judicial responsibilities.

A. The Disputed Federal Issue of Whether Ruger AR-556 Pistols are SBRs is Substantial.

Substantiality looks to "the importance of the issue to the federal system as a whole," which requires assessing, *inter alia*, whether the federal government, typically a federal agency, has a "strong interest" in the federal issues at stake and, in turn, if allowing state courts to resolve the issue will undermine the "development of a uniform body of [federal] law." *Gunn v. Minton*, 568 U.S. 251, 260-61 (2013) (quoting *Grable*, 545 U.S. at 315). This inquiry "captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues." *Grable*, 545 U.S. at 312.

There can be no dispute that uniform application of the statutory and regulatory definition of an SBR is an important and uniquely federal question. This is precisely why firearm industry

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based on violations of the NFA and the GCA after expiration of the statute of limitations, they would have been subject to a burden not imposed under Connecticut law.

members have sought the federal government's guidance. *See Mock*, 75 F.4th at 571. The need for uniformly applying and interpreting federal statutes and regulations that implicate Constitutional rights cannot be overstated. ATF's interpretation of the very definition at issue in this case is currently in dispute in numerous federal courts across the country, and the Final Rule has already been preliminarily enjoined in at least two of those cases.

(i) The Present Case is Analogous to *Grable*.

Grable, the seminal case on the question of federal question jurisdiction, supports removal. *Grable* involved a private dispute over title to real property, typically a state law matter. Although arising in the context of litigation between private parties, there was a federal issue at the center of the dispute—whether the IRS had failed to notify Grable "in the exact manner required by [26 U.S.C.] § 6335(a)." *Grable*, 545 U.S. at 311. Resolution of the dispute thus required a determination of whether § 6335(a) required personal service or allowed service to be made by certified mail; *id*.; a determination that could impact IRS practices; *see id*. at 315.

Like *Grable*, the dispute here is between the private litigants. Also like *Grable*, this dispute requires the interpretation of unsettled federal law. Here, ATF has the responsibility to administer and enforce compliance with federal firearms laws and regulations. Its recent attempt to reclassify millions of pistols equipped with stabilizing braces as SBRs and the legal challenges to that effort implicate the government's strong interest in clearly determining how firearms are to be classified under federal law. Exercising federal jurisdiction over the federal legal questions in dispute here is consistent with *Grable*'s core reasoning: "The meaning of the federal . . . provision is an important issue of federal law that sensibly belongs in a federal court." *See Grable*, 545 U.S. at 315.

As the Supreme Court later explained, the federal question in *Grable* was substantial, in

part, because "[t]he dispute there centered on the action of a federal agency and its compatibility with a federal statute[.]" *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 700 (2006). In other words, the private parties' dispute over the interpretation of the federal law in *Grable* implicated the ability of the federal government "to vindicate its own administrative action . . . ." *Grable*, 545 U.S. at 315. Here, the ATF's administrative action—implementation of the Final Rule reclassifying pistols with stabilizing braces as SBRs—is directly implicated in the dispute between the parties.[5]

(ii) The Dispute over the Construction, Meaning, and Application of Federal Law Classifying Pistols with Stabilizing Braces Are Nearly Pure Issues of Law.

Although the dispute here is wholly dependent on the interpretation and application of unsettled and disputed federal law, Plaintiffs argue that it is really a question over facts. Plaintiffs are wrong. Properly interpreting the meaning and scope of federal law's classification of the firearm at issue is a legal question, and the federal interest in the answer to that question is both substantial and central to the dispute between the parties. The unsettled issue is whether ATF's Final Rule and its analytical framework for determining whether pistols with stabilizing braces are SBRs—the same analytical framework relied upon by Plaintiffs in their Amended Complaint—is legally binding.[6] This is a legal question appropriately addressed by federal not state courts. Indeed, at least one federal appellate court has held that the Final Rule "must be set aside as

[5] The overlap between Plaintiffs' allegations and the parallel litigation against the ATF cannot be genuinely disputed. Plaintiffs' Amended Complaint identifies the manufacturer of the stabilizing brace used on the Ruger AR-556 Pistol as SB Tactical. Am. Compl. at ¶¶ 59-61. It is the same stabilizing brace depicted in the opinion issued in the ongoing federal lawsuits against the ATF. *See, e.g., Second Amend. Found., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 3:21-CV-0116-B, 2023 WL 7490149, at *2 (N.D. Tex. Nov. 13, 2023) (on appeal).

[6] Indeed, Plaintiffs' allegations regarding the manner of Ruger's alleged violation of the NFA and GCA precisely mirror the "objective design criteria" set forth by ATF in the Final Rule.

unlawful." *Mock*, 75 F.4th at 583-86 (citing 5 U.S.C. § 553(b)-(c), which provides that a final rule adopted by an agency must be a logical outgrowth of its concomitant proposed rule). The dispute at this juncture is not about facts such as, for example, the length of a firearm's barrel or whether the bore is rifled. Factual questions, if there are any, concerning the design of Ruger AR-556 Pistols will only be addressed after the legal standard for assessing that design is settled. But it is not settled. Plaintiffs miss the point that there is no clear framework for assessing the factual determinations. This Court is the more appropriate forum to establish that federal framework than a state court sitting in Connecticut.

Plaintiffs' arguments also miss the broader point that strongly supports substantiality. The sheer volume of firearms subject to the at-issue ATF design criteria are the alleged "hundreds of thousands of Ruger AR-556 Pistols" in circulation (Am. Compl. at ¶ 142), as well as the millions of nearly identical pistols with stabilizing braces manufactured, sold, and owned by others., as well as the many more thousands of nearly identical pistols with stabilizing braces manufactured, sold, and owned by others. *See* 88 Fed. Reg. at 6514-6518. As the court in *Mock* observed:

> The ATF's own regulatory analysis concludes that the Final Rule has effectively reclassified 99% of all pistols with stabilizing braces to NFA rifles. Through seminal Final Rule adjudications, the ATF has already reclassified a whole host of specific weapons platforms and commercially available braced firearms to NFA rifles.

Mock, 2023 WL 6457920, at *7. The same regulatory analysis concluded that there are three to seven million "braced pistols under the ownership of law-abiding individuals for lawful purposes throughout the United States." *Id*. at *9. *See also Texas v. Bureau of Alcohol, Tobacco, Firearms*, 2023 WL 7116844, at *9 (ATF estimates there are at least three million pistols with attached braces in circulation). Accepting the Final Rule as the legal basis for determining whether a pistol with a stabilizing brace is or is not an SBR subject to NFA requirements and restrictions has

implications far beyond the parties in this case. *Any* state court finding on this unsettled issue would be an intrusion into the firearms classification scheme set forth by Congress and implemented by ATF through a complex web of federal regulations, with implications for the manufacturers, sellers, and owners of millions of firearms. *See Mock*, 2023 WL 6457920, at *1-4 (summarizing the complex set of NFA, GCA and federal regulations pertinent to SBR issues).[7]

(iii) The NFA's and GCA's Complex Regulatory Scheme Require Uniform Interpretation.

While Plaintiffs attempt to downplay the significance of the complexity of the federal statutory and regulatory schemes governing firearms, and, in particular, the multilayered set of laws governing whether pistols with stabilizing braces are classified as SBRs, this Court should not be fooled. The many recent decisions in cases challenging ATF's authority and decisions on this issue underscore the depth of the complexity. That a court addressing this issue will be tasked with interpreting and applying a robust, complex and unsettled federal regulatory scheme supports the existence of federal jurisdiction. Indeed, the Second Circuit has previously concluded that the existence of a "complex scheme" involving oversight of a federal agency, the SEC, supported substantiality. *See NASDAQ OMX Grp., Inc. v. UBS Sec., LLC*, 770 F.3d 1010, 1026 (2d Cir. 2014). In *NASDAQ OMX*, the court held that the disputed federal issue—whether the defendant

[7] Because millions of firearms were not deemed NFA firearms by ATF when sold, their owners did not file NFA transfer forms with ATF, pay a federal transfer tax, secure approval of transfer forms from ATF, or register the firearm in the National Firearms Registration and Transfer Record (NFRTR). *See* ATF, *National Firearms Act Handbook* at 59-60 (Rev. 2009); 26 U.S.C. §§ 5841-5845; 27 CFR §§ 479.84-479.88. If Plaintiffs are successful on their claims, all of these currently lawful gun owners could be deemed criminals. *See* 26 U.S.C. §§ 5845(a)(6) & 5861(d). *See also* 26 U.S.C. §§ 5811, 5812, 5841 (registration and tax requirements when an NFA firearm is transferred); 26 U.S.C. §§ 5871, 5872(a) (criminal penalties and forfeitures for NFA violations). And, if Plaintiffs are successful, hundreds of manufacturers, distributors, and retailers could all be in violation of federal law. *See* 26 U.S.C. § 5861(e, f) (making it unlawful to transfer or make a firearm in violation of the NFA).

"violated its Exchange Act obligation"—was "sufficiently significant to the development of a uniform body of federal securities regulation to satisfy the requirement of importance 'to the federal system as a whole.'" *Id.* at 1024 (citation omitted). The court also noted that there was a "comprehensive scheme of statutes and regulations designed to police the securities industry [which] is indicative of a strong federal interest." *Id*. at 1026 (citation omitted). The same reasoning applies here: uniform interpretation of complex and comprehensive federal firearms laws policed by the ATF "is indicative of a strong federal interest." *See id*.

Although Plaintiffs concede the existence of disputed issues over complex federal statutes and regulations, Plaintiffs rely on *Gunn*, 568 U.S. 251, to argue that their claims do not implicate a substantial federal interest because they are generally not important to the "federal system as a whole." (Pls.' Memo. at 15 (citing *Gunn*, 568 U.S. at 260).) *Gunn* concerned legal malpractice. The Supreme Court concluded that no substantial federal question existed because adjudicating the legal malpractice claim in state court would not undermine the development of a uniform body of federal patent law. *Id*. at 260-63. Indeed, the Court explained that the legal malpractice claim in *Gunn* was of a "backward-looking nature" that required resolution of a "hypothetical 'case within a case.'" *Id.* at 261. The Court determined that such "fact-bound and situation-specific" effects were insufficient to establish federal arising under jurisdiction. *Id*. at 263. For that reason, the Supreme Court found *Gunn* to be "poles apart from *Grable*," and that to be a substantial federal issue "something more" was required. *Id*. at 262; 264.

That "something more" is present here. "Where the resolution of a federal issue in a state-law cause of action *could*, because of different approaches and inconsistency, undermine the stability and efficiency of a federal statutory regime, the need for uniformity becomes a substantial federal interest, justifying the exercise of jurisdiction by federal courts." *Ormet Corp. v. Ohio*

Power Co., 98 F.3d 799, 807 (4th Cir. 1996) (emphasis added) (citing *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat) 304, 347-48 (1816) (Story, J.)). Here, in light of the challenges to ATF's new Final Rule reclassifying firearms with stabilizing braces as SBRs, a state court's decision to adopt that reading of the NFA, "could, because of different approaches and inconsistency, undermine the stability and efficiency of a federal statutory regime[.]" *See Ormet*, 98 F.3d at 807. That the federal issues in dispute are not settled makes it all the more important for resolution in federal court. *See New York v. Arm or Ally*, 644 F. Supp. 3d 70, 80 (S.D.N.Y. 2022) (noting that ATF's "recently revised rule" on a classification of firearms supported substantiality); *see also Tantaros v. Fox News Network, LLC*, 12 F.4th 135, 145-47 (2d Cir. 2021) (noting that a recent revision to federal law addressed in six other federal cases supported substantiality).

Plaintiffs' suggestion that, post-*Gunn*, involvement of a complex federal regulatory scheme is insufficient to establish federal question jurisdiction, is overly simplistic and ignores applicable precedent. The Second Circuit in *Broder* recognized the substantiality of the federal issue because of its implications to the "complex federal regulatory scheme … as to which there is 'a serious federal interest in claiming the advantages thought to be inherent in a federal forum.'" *Broder v. Cablevision Systems Corp.*, 418 F. 3d 187, 195 (2d Cir. 2005) (quoting *Grable*, 545 U.S. at 513). *Gunn*, cannot be read, as Plaintiffs suggest, to diminish the obvious advantage to the federal system for adjudicating complex issues of federal law. Even post-*Gunn*, the Second Circuit has continued to identify complex federal regulatory regimes as pertinent to the substantiality inquiry. *See New York ex rel. Jacobson v. Wells Fargo Nat'l Bank, N.A.*, 824 F.3d 308, 318 (2d Cir. 2016) (denying remand and finding substantiality requirement under *Grable* satisfied because the federal

regulations at issue were "necessarily complex").[8]

Plaintiffs' attempt to frame this dispute as one only concerning Plaintiffs and Ruger, where a Connecticut state court should be free to determine how federal law classifies pistols with stabilizing braces ignores the reality of the issues in dispute. There are multiple federal lawsuits pending on this issue now. Resolution of the dispute will impact millions of other firearms. Moreover, Congress warned against inconsistent application of federal firearm laws in enacting the NFA and GCA, which were intended to create a consistent, nationwide approach to regulating commercial firearm manufacture and sales. Congress found that "only through adequate Federal control over interstate and foreign commerce in [firearms], and over all persons engaging in the business[] of … dealing in [firearms], can this grave problem . . . be properly dealt with." Pub. L. No. 90-351, sec. 901, 82 Stat. 225 (1968). Whether pistols with stabilizing braces are classified as SBRs can, and should, be resolved in federal court.

(iv) The Absence of a Right of Action under the NFA and the GCA Does Not Make the Disputed Federal Issue Insubstantial.

Plaintiffs' argument that, under *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804 (1986), the absence of a private right of action in the federal statutes at issue favors remand in this case confuses jurisdictional sufficiency with necessity. As explained in *Grable*, "*Merrell Dow* should be read in its entirety as treating the absence of a federal private right of action as evidence relevant to, but not dispositive of" the propriety of federal jurisdiction. 545 U.S. at 318. While

[8] Multiple other courts in the Second Circuit have noted that complexity weighs in favor of federal jurisdiction. *See, e.g., N.Y. City Health & Hosp. Corp. v. WellCare of N.Y., Inc.*, 769 F. Supp. 2d 250, 256-57 (S.D.N.Y. 2011) (concluding a substantial federal question exists because state-law claims required interpreting certain Medicare regulations under "the complex reimbursement schemes created by Medicare law"); *Hayes v. Am. Airlines, Inc.*, No. 04CV3231, 2005 WL 2367623, at *4 (E.D.N.Y. Sept. 27, 2005) (concluding state-law claims raised a substantial federal issue because resolving the claims required determination of whether various airfare refunds were "mandated by the relevant federal statutes and regulations").

Merrell declined to find substantiality, in part, because "Congress had not provided a private federal cause of action for violation of the federal branding requirement," *Grable* was clear that *Merrell*'s "broad language" on this issue requires context, and *Merrell* cannot be read as "overturn[ing] decades of precedent" authorizing federal jurisdiction even though the federal statute did not contain a private right of action. *Id*. at 317. *Merrell* simply "disclaimed the adoption of any bright-line rule," and, instead, "expressly approved the exercise of [federal] jurisdiction" under a litany of circumstances "despite the want of any federal cause of action." *Id*. (citing *Merrell*, 478 U.S. at 814, n.12) (rejecting that *Merrell* "convert[ed] a federal cause of action from a sufficient condition for federal questions into a necessary one"). Under *Grable*, there can be no dispute that the existence of a federally created private cause of action is *not* a necessary precondition to the exercise of federal-question jurisdiction. That the NFA and GCA do not provide a private right of action for civil liability does not make the federal issues here insubstantial.

(v) Other Removed Actions Concerning Interpretation and Application of Federal Firearms Laws Support Federal Question Jurisdiction.

Arm or Ally is on all fours with the present case. There, like here, the plaintiff asserted state law claims, but determination of those claims required interpretation of the GCA and ATF regulations. Upon consideration of the *Grable* factors, the court in *Arm or Ally* found in favor of federal jurisdiction. The court's reasoning there applies with equal force here.

The federal question in *Arm and Ally* was "whether the products at issue [were] 'firearms' or 'component parts' thereof within the meaning of federal law." 644 F.Supp.3d at 73. The court found that "properly defining the terms 'firearm' and 'component part' [was] plainly a substantial issue . . . [as] those terms are central to the federal scheme embodied in the Gun Control Act of

1968 [], 18 U.S.C. § 921 et seq. (as amended)." *Id*. at 79. There, as here, the issue centered on interpretation of a recently issued and challenged ATF final rule. That the dispute over the definitions and the validity of ATF's rulemaking authority were "unsettled" supported the court's finding of substantiality and the need for a federal court's involvement under the *Grable*-doctrine. *Id*. at 80. The court further reasoned that determining whether the products at issue fell within the scope of the federally defined terms "firearm" and "component part" could "have sweeping consequences for the regulatory flexibility of the ATF, the enforcement powers of federal prosecutors, the scope of a state's authority to regulate these products, and the potential liability of thousands of individuals who have acquired these products." *Id*. Thus, the court held that there could be "no reasonable dispute" that "[t]he meaning" of the terms at issue in this case "is an important issue of federal law." *Id*. (citing *Grable*, 545 U.S. at 315).

Likewise, here, Plaintiffs' claims are premised on whether pistols equipped with stabilizing braces are classified as SBRs pursuant to the applicable federal laws. Properly defining the term SBR is plainly a substantial issue. That Plaintiffs push for a classification of stabilizing braced firearms drawn directly from ATF's Final Rule (a rule rejected by at least one Circuit Court of Appeals and now under intense scrutiny in many other courts) underscores the point. A decision on this question will necessarily have consequences for the ATF, federal prosecutors, firearm manufacturers, distributors, retailers, other federal firearm licensees, and the millions of persons who own pistols with stabilizing braces.[9] This is the same type of dispute over ATF's authority

[9] That the subject brace-equipped Ruger pistol was purchased and criminally misused by a Colorado resident, in Colorado, to harm Colorado residents, but nevertheless Plaintiffs filed their case in Connecticut, only serves to underscore the national interests in play here. There is no good argument for why a Connecticut state court has any unique interest in adjudicating the classification of a firearm that is not alleged to have been sold or used inside the state. This is a federal issue that sensibly belongs in federal court.

and the meaning of federal firearms laws that prompted the *Arm or Ally* court to deny the plaintiff's motion to remand.[10]

Similarly, in *Minnesota v. Fleet Farms*, the court found that the plaintiff's state law negligence and public nuisance claims met the substantiality prong of *Grable*, because "[i]n adopting the GCA, Congress recognized the importance of a consistent, nationwide approach to regulating firearm sales and deemed it necessary to enact federal control over interstate and foreign commerce of firearms by creating a federal scheme of regulations over the sale of firearms." *Minnesota v. Fleet Farm LLC*, No. CV 22-2694 (JRT/JFD), 2023 WL 4203088, at *7 (D. Minn. June 27, 2023). "At issue [in the case was] not just the Gun Control Act, but also the various regulations and enforcement requirements by the ATF." *Id.* The court thus held that "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. Therefore, the Court concludes that the federal issue is substantial." *Id.*

Similarly, this Court's decision on whether pistols equipped with stabilizing braces are SBRs and subject to heightened NFA requirements will have a substantial impact on the manner in which Ruger and other manufacturers of pistols utilizing stabilizing braces sell the firearms they manufacture. Plaintiffs claim that pistols with stabilizing braces, including the "thousands" sold by Ruger across the nation, are "contraband." Am. Compl. at ¶ 96. No manufacturer can bear the uncertain risk of selling firearms held by any court to be NFA firearms without complying with

[10] Plaintiffs attempt to distinguish *Arm or Ally* by setting up a strawman for Ruger to knock down. Plaintiffs argue that federal jurisdiction was appropriate there, but not here, because the government had filed a "Statement of Interest" in a "parallel" federal lawsuit. (Pls.' Memo at 21). This distinction does nothing to further Plaintiffs' cause because here there was no need for the government to file a statement of interest in the "parallel" litigation challenging the Final Rule—the government was already a party. *See supra*, Footnote 1.

the NFA's requirements. The need for federal uniformity on how to classify what constitutes an SBR is undeniable. A Connecticut state court cannot supply such uniformity. *See Grable*, 545 U.S. at 313 (recognizing "a serious federal interest in … the advantages thought to be inherent in a federal forum").

Plaintiffs' reliance on *Mihok v. Medtronic, Inc.*, 119 F. Supp. 3d 22 (D. Conn. 2015) is misplaced. (Pls.' Memo at 13-14). Indeed, *Mihok* actually supports Ruger's position on substantiality. The court in *Mihok*, in analyzing the Second Circuit's decision in *NASDAQ*, recognized that a "statement by an agency of the federal government about a federally-registered SRO concerning the very duty implicated by the state law claims brought by UBS 'strongly signal[ed] the substantial importance of the[] federal issues' at stake in the litigation"—hence the need for the federal forum to further "the development of a uniform body" of federal law. *Id*. at 29. If uniformity is deemed important in the area of federal securities laws, which lack constitutional underpinnings, there is unquestionably a need for a uniform interpretation and application of federal firearms laws, which implicate the constitutional right to keep and bear arms under the Second Amendment of the U.S. Constitution.[11]

Moreover, *Mihok* rejected the defendant's substantiality argument for reasons inapplicable here. *First*, an FDA warning letter on the issue was seen by the court as entitled to deference in the state court. 119 F. Supp. 3d at 30. In contrast, the legality of ATF's Final Rule is unsettled

[11] *See Mock*, 75 F.4th at 588 (J. Willett, concurring) ("In my view, protected Second Amendment 'conduct' likely includes making common, safety-improving modifications to otherwise lawfully bearable arms.[] Remember: ATF agrees that the weapons here are lawfully bearable pistols absent a rearward attachment. Congress might someday try to add heavy pistols to the NFA and the GCA, but it hasn't yet. These pistols are therefore lawful. Adding a rearward attachment—whether as a brace or a stock—makes the pistol more stable and the user more accurate. I believe these distinctions likely have constitutional significance under" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 2130 (2022)).

and the subject of ongoing court challenges that address ATF's authority to issue the Rule and the procedure by which it was issued. Under these circumstances, the Final Rule should receive no deference in any court. *Second*, the *Mihok* court found the application FDA regulations was a fact-specific application, which were unlikely to substantially impact the federal system. By contrast here, interpretation and application of the Final Rule's "objective design features" will necessarily impact millions of people and entities across the country. *Third*, distinguishing the Second Circuit's decision in *NASDAQ*, the *Mihok* court found that the regulations under which the plaintiff brought her claims were of a vague and general nature, and did not create the type of "singular duty," like that under the Securities Exchange Act. 119 F. Supp. 3d at 32. In contrast here, the NFA and GCA create a "singular duty"—firearms classified as SBRs are subjected to enhanced regulations, which Plaintiffs claim Ruger violated. *Fourth*, the *Mihok* court determined that Congress anticipated state court analysis and application of FDA regulations by not completely preempting parallel state law claims. 119 F. Supp. 3d at 32. This analysis is irrelevant to the ATF's oversight of federal firearm licensees and enforcement of the NFA and GCA. There is no applicable parallel state law setting forth requirements for manufacturing and selling and SBRs.[12]

[12] The other firearms cases cited by Plaintiffs are similarly distinguishable. *See* Pl.'s Memo at 20. These cases were remanded for various reasons, none determinative here. *See Ramos v. Wal-Mart Stores, Inc.*, 202 F. Supp. 3d 457 (E.D. Pa. 2016) (federal dispute over definition of ammunition not actually disputed nor necessarily raised and issue was not substantial because it was fact-specific and not important to federal system); *Corporan v. Wal-Mart Stores E., LP*, 194 F. Supp. 3d 1128 (D. Kan. 2016) (reference to federal statute in claim regarding straw purchase of firearm was not substantial because no direct interest by the United States); *Tisdale v. Pagourtzis*, No. 3:20-CV-140, 2020 WL 7170491 (S.D. Tex. Dec. 7, 2020) (federal issue was not substantial where allegations were "garden-variety tort claims" that were "unimportant to the federal system as a whole"); and *Roberts v. Smith & Wesson Brands, Inc.*, No. 22-CV-6169, 2023 WL 6213654 (N.D. Ill. Sept. 25, 2023) (federal question not necessarily raised where claims could be decided on state law grounds). Certainly, none of these cases involved concurrent, parallel litigation against the government. If anything, these cases reiterate that assessing "arises under" federal law jurisdiction is case specific and turns on the nuances of the legal bases for the claims advanced.

B. Exercising Jurisdiction Over this Case Will Not Disrupt the Federal-State Judicial Balance Approved by Congress.

The dispute over how to properly define a category of firearms under federal law—as either pistols or SBRs—is capable of resolution in federal court without disrupting the balance between federal and state courts. This is not a difficult question to answer, because there is simply no indication that exercising jurisdiction here would "materially affect, or threaten to affect, the normal currents of litigation" in state courts. *Grable*, 545 U.S. at 319. Distilled to its essence, the final *Grable* factor requires consideration of whether keeping one case would somehow force categories of cases traditionally brought in state court into the federal system. *See, e.g.*, *Gunn*, 568 U.S. at 264 (holding that because states hold "special responsibility for maintaining standards among members of the licensed professions," and there was no "reason to suppose that Congress-in establishing exclusive federal jurisdiction over patent cases-meant to bar from state courts state legal malpractice claims simply because they require resolution of a hypothetical patent issue."). Plaintiffs have not pointed to a category of cases traditionally brought in state courts involving disputes over the legality, construction and scope of federal laws and regulations defining "pistols" and "short-barreled rifles" and ATF's administration of such laws and regulations.[13]

The exact issue present here—whether federal jurisdiction would disrupt the federal-state balance—was considered by the court in *Arm or Ally*, which held that it would not. The court explained that there was a strong federal interest in "the regulation of firearms generally and whether the products at issue qualify as 'firearms' or 'component parts' thereof specifically." The

[13] On this point, the novelty of Plaintiffs' claims—seeking state court classification of pistols with stabilizing braces as SBRs—also favors Ruger's position on the final *Grable* factor. *See Offshore Serv. Vessels, L.L.C. v. Surf Subsea, Inc.*, No. CIV.A. 12-1311, 2012 WL 5183557, at *6 (E.D. La. Oct. 17, 2012) ("find[ing] that entertaining the novel theory of liability underlying the claims asserted in this action will not disturb any congressionally approved balance of federal and state judicial responsibilities.").

court reasoned,

> Congress has expressed that through the GCA and OCCSSA, which, as noted, stressed the need for "adequate Federal control ... over all persons engaging in the businesses of importing, manufacturing, or dealing in" firearms to "properly deal[ ]" with the "grave problem" of gun violence. And the Executive Branch has expressed it, through (among other things) ATF's repeated rulemaking in this area, most notably its recent rule broadening the definition of "frame" and "receiver" in an apparent effort to reach ghost guns, and through the Statement of Interest filed in the parallel City case, which emphasizes the federal government's "acute interest" in proper interpretation of the GCA and its implementing regulations. In short, this is not "an area traditionally regulated by the States" alone. Accordingly, it would be consistent with, and not disruptive to, the "congressionally approved balance of federal and state judicial responsibilities" to exercise jurisdiction over this case.

Arm or Ally, 644 F. Supp.3d at 82 (internal citations omitted). In holding that the case belonged in federal court, the court further found that the plaintiff had "made the decision to incorporate a federal definition into the relevant state law and, thus, took the risk that suits to enforce the law would be removed to federal court." Indeed, the complaint focused squarely and repeatedly on defendants' alleged violation of federal firearm laws. Thus, the court found that the complaint itself "belie[d] [the plaintiff's] assertions here about the relative balance of state and federal interests." *Id*. at 83. The present case is no different. Plaintiffs' allegations focus squarely and repeatedly on Ruger's alleged violation of federal firearm laws. *See supra*, Background. The strong federal interests described by the *Arm or Ally* court are just as significant here, if not more so.

Critically, the *Grable* Court's comparison of the "rare" case, which would not disrupt the federal-state balance, to *Merrell*'s circumstances, which would have "heralded a potentially enormous shift of traditionally state cases into federal courts;" *Grable*, 545 U.S. at 319; further leads to the conclusion that this case should be decided in federal court. No such danger of an enormous shift exists here. All of the other cases on this issue currently sit in federal courts across the country. Indeed, the present case, much like *Grable*, is the one case filed in state court where

the federal issue is squarely the focal point. And Plaintiffs are not merely asking for a Connecticut state court to interpret and apply settled and well-defined federal laws. Rather, Plaintiffs seek a state court's approval and application of ATF's Final Rule and its interplay with existing federal law. If, on remand, the Connecticut state court concludes that the ATF's Final Rule's "objective design factors" should govern, such a finding would break ground for an undesired patchwork of state court reclassification of pistols with stabilizing braces. The uniformity in the interpretation and application of federal firearm laws would be lost. The Court should not remand.

CONCLUSION

The federal issues at the heart of this case are plainly substantial and should be addressed by this Court. This is not a case in which the state court would only be tasked with deciding questions of duty, breach, causation, and damages, as Plaintiffs argue. Rather, the state court would be asked to decide a significant federal legal question regarding the classification of firearms owned by millions of persons throughout the United States and impacting countless manufacturers and sellers of such firearms and firearm components. That the same federal question is already before numerous federal courts, which have arrived at conflicting answers, underscores the importance of accepting jurisdiction and not permitting a state court to add uncertainty to a body of federal law that demands uniformity across all jurisdictions. Plaintiffs' Motion to Remand should be denied.

Dated: December 22, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2023, a copy of the foregoing was filed electronically 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 to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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