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EXHIBIT B

to the Plaintiff City of Chicago's Opposition to the Motions to Dismiss of Defendants (1) Glock, Inc., (2) Eagle Gun Club LLC, Range Plus LLC, and 5900 LLC, and (3) Midwest Sporting Goods

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FILED
AUG 28 2024
Hon. Frank J. DeAngelis, P.J.Ch.
Morris/Sussex County

MATTHEW J. PLATKIN, Attorney General of the STATE OF NEW JERSEY, Plaintiff, v. FSS ARMORY, INC., Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MORRIS COUNTY Docket Number: MRS-C-000102-23 Civil Action ~~[PROPOSED]~~ **ORDER**

This Court, having reviewed and considered Defendant's motion to dismiss, Plaintiff's opposition, and Defendant's reply, as well as all other papers submitted in connection therewith, if any, and the oral argument of counsel, if any;

It is **HEREBY ORDERED AND ADJUDGED** ~~that~~ Defendant's motion to dismiss is Denied ~~granted, and Plaintiff's Complaint, and all claims set forth therein, are dismissed with prejudice.~~

Dated: August 28, 2024

[signature]
HON. FRANK J. DEANGELIS, P.J.Ch.

This motion was [X] opposed / [ ] unopposed.

See the attached statement of reasons incorporated by reference.

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Platkin v. FSS Armory, Inc.

MRS-C-102-23

Statement of Reasons

I. Background Information

This matter comes before the Court by way of a motion to dismiss. The underlying dispute arises from a Verified Complaint filed by Plaintiff Matthew J. Platkin ("Plaintiff") against Defendant FSS Armory ("Defendant").

By way of background, FSS Armory's store, which sells handguns rifles, shotguns, ammunition, gun parts and accessories, and knives, opened in December 2019. Verified Complaint, ¶ 18. Ross Osias ("Osias") is the owner of the store, runs its day-to-day business, and is responsible for its compliance with any applicable gun laws. Id. at ¶ 19.

On January 6, 2023, the store was burglarized, when the burglars smashed 2 ground-floor windows and reached through, grabbing twenty guns. Id. at ¶ 32. Images from Google Maps and the FSS Armory's website depict guns and gun boxes stored below the window within arm's reach from July 2022 to at least January 2023. Id. at ¶ 1, 22, & 30. In the images, some guns are stored outside of boxes. Id. at ¶ 1. The windows have two to three vertical metal bars for security. Id. The burglars loaded the guns into a stolen car and drove off without activating the alarm. Id. at ¶ 33 & 34.

Osias discovered the burglary the next day, and the Montville Police Department and Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") were notified shortly thereafter. Id. at ¶ 37. A subsequent police investigation discovered one of the burglars searched for "gun stores in NJ" on his phone and that FSS armory was one of the results. Id. at ¶ 35. After the burglary, Plaintiff filed suit against Defendant alleging that its substandard storage and security practices violated New Jersey law including the Public Nuisance Law, N.J.S.A. 2C:58-35 and also

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alleged that Defendant is liable for negligence. In the instant application, Defendant moves for dismissal of the Complaint.

The Court also notes that it previously granted counsels' motion for leave to appear *amici curiae*.

II. STANDARD OF REVIEW

A motion to dismiss for failure to state a claim upon which relief can be granted is governed by R. 4:6-2(e) of the New Jersey Court Rules. The rule "permits litigants, prior to the filing of a responsive pleading, to file a motion to dismiss an opponent's complaint, counterclaim, cross-claim, or third-party complaint" Malik v. Ruttenberg, 398 N.J. Super. 489, 493 (App. Div. 2008).

The proper analytical approach to such motions requires the motion judge to (1) accept as true all factual assertions in the complaint, (2) accord to the nonmoving party every reasonable inference from those facts, and (3) examine the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim." Id. at 494 (quoting Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989).

The motion to dismiss should be approached with great caution and should only be granted in the rarest of instances. Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005). The allegations are to be viewed "with great liberality and without concern for the plaintiff's ability to prove the facts alleged in the complaint." Ibid. The plaintiff's obligation on a motion to dismiss is "not to prove the case but only to make allegations, which, if proven, would constitute a valid cause of action." Ibid. (quoting Leon v. Rite Aid Corp., 340 N.J. Super. 462, 472, (App. Div. 2001)).

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III. ANALYSIS

Defendant argues that Plaintiff's Public Nuisance claims and the Public Nuisance Law are preempted by the Protection of Lawful Commerce in Arms Act (hereinafter, "PLCAA"), and thus must be dismissed. Defendant, however, contends that even if not preempted, the claims must be dismissed due to the PLCAA's immunity provision. Further, Defendant argues that the Public Nuisance Law is unconstitutional because it infringes on free speech and violates Defendant's due process right because it is vague.

Defendant first addresses its argument that the PLCAA invalidates the Public Nuisance Law. Defendant submits that "[t]he doctrine of preemption is grounded in the Supremacy Clause of Article VI of the Constitution, which provides that 'the Laws of the United States…shall be the supreme Law of the Land." Kurns v. A.W. Chesterton Inc., 620 F. 3d 392, 395 (3d Cir. 2010). Defendant asserts that express preemption "occurs when a federal law contains express language providing for the preemption of any conflicting state law" while implied preemption "occurs when it is either impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress." Id.

Here, Defendant asserts that Congress intended for the PLCAA to preempt state law and to "intrude on [a state's] authority to hear qualified civil liability actions." Travieso v. Glock Inc., 526 F. Supp. 3d 533, 541 (D. Ariz. 2021). Defendant submits that "[i]n enacting the PLCAA, Congress primarily sought to prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products . . . for the harm solely caused by the criminal or unlawful misuse of [those] products by others when the product functioned as designed and intended." In re Acad., Ltd., 625 S.W.3d 19, 33 (Tex. 2021). Further, Defendant argues that the

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PLCAA provides substantive immunity by prohibiting filings of qualified civil liability actions. Id. Defendant provides that a "qualified civil liability action" is the following:

> [C]ivil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product or a trade association, for damages, punitive damages, injunctive or declaratory relief, or penalties or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. . .

15 U.S.C. § 7903(5)(A).

Defendant asserts that where the PLCAA applies, it prohibits civil lawsuits unless one of the limited exceptions to its immunity applies. Travieso, 526 F. Supp. 3d at 544. Defendant submits that the following are the six categories of claims that the PLCAA excludes from the definition of a qualified civil liability action:

> (i) an action brought against a transferor convicted under section 924(h) of title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;
>
> (ii) an action brought against a seller for negligent entrustment or negligence per se;
>
> (iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—
>
> I. any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
>
> II. any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing

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or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26.

15 U.S.C. § 7903(5)(A).

Defendant asserts that while none of the exceptions apply to the Public Nuisance Law, Plaintiff is likely to argue that the law satisfies the predicate exception to the PLCAA for an "action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought." Defendant, however, contends that the predicate exception is inapplicable to the Public Nuisance Law.

Defendant provides that the "predicate exception exempts only those civil actions that require proof that the actor knowingly violated the relevant statute." Defendant argues that the Public Nuisance Law "flies in the face of that scienter requirement that is necessary for the predicate exception to the PLCAA to apply." Defendant submits that the Public Nuisance Law allows for civil liability of a firearms industry member for: (1) "unlawful" conduct, regardless of whether the firearm industry member knowingly violated the law; and (2) even conduct that is not in violation of the law, but which the NJAG finds to be "unreasonable," or not in accordance with "reasonable controls." N.J.S.A. 2C:58-35(a).

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Defendant argues that even if the Public Nuisance Law had the proper scienter requirement, it would still fail to satisfy the PLCAA exception because the Public Nuisance Law absolves the NJAG of having to establish proximate cause. Defendant claims the Public Nuisance Law provides "the conduct of a gun industry member shall be deemed to constitute a proximate cause of the public nuisance if the harm to the public was a reasonably foreseeable effect of such conduct, notwithstanding any intervening actions, including, but not limited to, criminal actions by third parties." N.J.S.A. 2C:58-35(e). Defendant argues that thus the provision brings the law outside of PLCAA's predicate exception which applies only where the violation was a proximate cause of the harm for which relief is sought. Defendant thus argues that the Public Nuisance Law falls within the purview of PLCAA and none of the PLCAA exceptions apply.

Next, Defendant contends that the public nuisance claims are barred by the PLCAA's immunity provision. Specifically, Defendant argues the PLCAA prohibits civil proceedings brought by a person, NJAG, against a seller, FSS Armory, of a qualified product for damages and other relief based on the criminal use of the qualified products by third parties. 15 U.S.C. § 7903(5)(A). Defendant contends that the harm alleged in the Complaint for which the NJAG seeks to recover was the result of criminal acts of third parties which constitute crimes committed by third parties. Defendant thus argues that Plaintiff's claims constitute a qualified civil liability action against which the PLCAA provides Defendant with immunity.

Defendant also reiterates that the public nuisance claims do not fall within the predicate exception because none of the public nuisance claims require a knowing violation of a statute by Defendant. As to Count One, Defendant contends that it does not require that Defendant "knowingly violated the relevant statute," as is required for the predicate exception to the PLCAA to apply. Defendant further argues that Counts Two and Three do not require that Defendant

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violated a statute at all. Defendant contends that in direct contravention of the PLCAA, the Public Nuisance Law expressly contemplates that liability could be imposed on gun industry members who fully comply with federal and state law. N.J.S.A. 2C:58-34. Defendant thus asserts that since the public nuisance claims do not require proof of a knowing violation of a statute, the predicate exception is inapplicable. Defendant also notes that the public nuisance claims do not require proof of proximate causation despite the PLCAA applying only where the violation was a proximate cause of the harm.

Finally, Defendant argues that even if the public nuisance claims satisfy the PLCAA's exception's requirement of a knowing violation of a statute and proximate cause, the claims must be dismissed because they are not premised on a violation of any statute applicable to the sale or marketing of firearms. Defendant contends that three of the four underlying laws Plaintiff relies on are not statutes but regulations which cannot satisfy the exception. N.J. Admin. Code §§ 13:54-3.9(a)(3), 13:54-6.5(a)(1), 13:54-6.5(b). Further, Defendant asserts that N.J.S.A. 2C:58-2(a)(3) is inapplicable to the sale or marketing of firearms, but rather only to security and storage. Defendant argues that the predicate exception is clear in that it only applies to statutes concerning the sale or marketing of firearms.

In response, Plaintiff first argues that the Complaint asserts prima facie claims under N.J.S.A. 2C:58-35 and common law. Plaintiff contends that Count One sufficiently pleads that FSS engaged in knowing conduct that was unlawful and contributed to the public nuisance of illegal guns and gun crime in New Jersey. Specifically, Plaintiff asserts that Defendant left guns exposed to the public in violation of various statutes forbidding the storage and display of guns in shop windows. Plaintiff argues that Defendant was aware that these storage practices posed a risk of theft or loss of the store's guns and violated the law. Additionally, Plaintiff claims that Count Two

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sufficiently pleads that Defendant's conduct, was not only unlawful but was unreasonable under all the circumstances and knowingly or recklessly contributed to the public nuisance of illegal guns and gun crime.

As to Count Three, Plaintiff asserts that it sufficiently pleads that Defendant's conduct violated N.J.S.A. 2C:58-35 which contains a separate, affirmative requirement that gun industry members establish and enforce reasonable controls regarding their manufacture, sale, distribution, and marketing of gun-related products. Plaintiff submits that "reasonable controls" is defined as "reasonable procedures, safeguards, and business practices that are designed to . . . prevent the loss of a gun-related product or theft of a gun-related product from a gun industry member . . . ." N.J.S.A. 2C:58-34. Plaintiff alleges that Defendant failed to establish and implement reasonable controls and thus knowingly violated the statute and regulations it attested it knew. Finally, Plaintiff argues that Count Four sufficiently pleads that Defendant was negligent because "(1) it owed the public a duty of care to protect its guns from theft; (2) it breached that duty of care; and (3) that breach was the proximate cause of (4) actual damages." Plaintiff asserts that as a result of Defendant's negligence, the State and public have suffered harm and damages.

Next, addressing Defendant's preemption argument, Plaintiff asserts that the PLCAA does not have a sweeping preemptive effect on statutes or common law causes of action. Plaintiff contends that Congress intended for PLCAA to only prevent the bringing of "qualified civil liability actions," not to preempt statutes and cause of action in the abstract, and thus PLCAA has no effect on N.J.S.A. 2C:58-35. Plaintiff provides that a qualified civil liability action does not include various types of enumerated actions which includes "an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is

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sought." 15 U.S.C. § 7903(5)(A)(iii). Plaintiff contends that for a lawsuit to qualify as this time of an "action", the "plaintiff must allege a knowing violation of a predicate statute" that regulates marketing or selling guns. See Soto v. Bushmaster Firearms Int'l, LLC, 202 A.3d 262, 274 n.12 (Conn. 2019). Moreover, Plaintiff asserts that the statute's operative language is expressly limited to cover a specific category of "civil action or proceeding" that Congress intended to bar. 15 U.S.C. § 7903(5)(A). Plaintiff argues that since the PLCAA prevents the bringing of qualified civil liability actions, it has no preemptive effect on the Public Nuisance Law.

Further, Plaintiff contends that the instant action is not a qualified civil liability action. Plaintiff submits that civil actions against gun industry members "in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought" are not qualified civil liability actions. 15 U.S.C. § 7903(5)(A)(iii).

Plaintiff argues that its claims are founded upon Defendant's conduct that violated multiple statutes applicable to firearm sales which would be sufficient to make the instant matter "an action in which a.... seller...knowingly violated a State or Federal Statute...." Id. Specifically, Plaintiff asserts that N.J.S.A. 2C:58-2 regulates the sale of firearms and the storage and security requirements as mandatory conditions of being in the business of selling firearms. N.J.S.A. 2C:58-2(a). Further, Plaintiff contends that while Defendant claimed that Plaintiff may not rely on regulatory provisions, the regulators are statutorily directed pursuant to N.J.S.A. 2C:58-2's provision that the State Police Superintendent "shall prescribe standards and qualifications for retail dealers of firearms and their employees...." N.J.S.A. 2C:58-2(a). Plaintiff also provides that N.J.S.A. 2C:39-10 expressly makes it a statutory violation to violate a regulatory provision under N.J.S.A. 2C:58-2. Finally, Plaintiff contends that Defendant violated multiple provisions of Public

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Nuisance Law and thus supports an independent basis to find that the lawsuit is an "action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product." 15 U.S.C. § 7903(5)(A)(iii).

Next, Plaintiff alleges that Defendant's violations of that statute were done knowingly because its conduct consisted of knowing acts and omissions. Plaintiff claims that Defendant's knew what security measures it used and where it was storing its firearms and repeatedly attested that it knew the state's storage and security requirements for licensed firearms dealers. Plaintiff submits that "knowingly violated" means that the defendant's actions must have been knowing, not inadvertent or accidental. Plaintiff, however, argues that the PLCAA does not prevent a plaintiff from bringing an action where the seller knowingly violated a statute but rather that the seller must possess some type of knowledge.

As to proximate cause, Plaintiff refutes Defendant's argument that the violated statute must have a proximate cause requirement. Plaintiff asserts that the PLCAA explicitly provides that an action is not a qualified civil liability action if the violation of the statute "was a proximate cause of the harm for which relief is sought." Further, as to the burglars constituting an intervening act, Plaintiff contends that an upstream actor is not excused from responsibility simply because the causal chain from its misconduct to the resulting harm had more than one link. Plaintiff submits that intervening causes that are foreseeable will not breach the chain of causation. Komlodi v. Picciano, 217 N.J. 387, 418 (2014). Plaintiff relies on case law, as well as New Jersey and other state laws, to further support its assertion that an intervening criminal act is foreseeable. Plaintiff thus contends that it has pled sufficient facts to establish Defendant's violations of law proximately caused the harm for which relief is sought.

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In response, Defendant reiterates that the PLCAA invalidates the Public Nuisance Law and requests that the Court consider NSSF in which the U.S. District Court for the District of New Jersey previously held that Public Nuisance Law to be invalid under the PLCCA. Defendant acknowledges that the Court of Appeals vacated the preliminary injunction and dismissed the case but on the basis of lack of standing. Defendant also contends that the PLCAA does not limit its immunity to claims for harm alleged to have been solely caused by criminals. See Johnson v. Bass Pro Outdoor World, LLC, 547 P.3d 556, 565 (Kan. Ct. App. 2024). Defendant asserts that what constitutes a prohibited "qualified civil liability action" is defined by the PLCCA and where a matter is a "qualified civil liability action," the Court must dismiss Plaintiff's claims.

Further, Defendant argues that the Public Nuisance Law and claims are invalid under the PLCAA for not requiring a knowing violation. Defendant contends that while Plaintiff has alleged that Defendant knowingly violated a predicate statute, does not mean that the Public Nuisance Law and claims are capable of satisfying the predicate exception. Defendant also restates its argument in connection with the proximate cause requirement and Plaintiff's reliance on regulations, rather than statutes.

Defendant next contends that even if the Public Nuisance Law "could pass muster under the PLCAA," the claims must still be dismissed because the Public Nuisance Law is unconstitutional as it violates the right to free speech and due process. Specifically, Defendant argues that the Public Nuisance Law unconstitutionally restricts protected political and commercial speech. Defendant submits that "[l]aws that burden political speech as subject to strict scrutiny." E & J Equities,226 N.J. at 569. Defendant contends that "pro-firearm speech" is a "protected First Amendment activity." Nat'l Rifle Ass'n of Am. V. City of Los Angeles, 441 F. Supp. 3d 915, 941 (C.D. Cal. 2019). Defendant also provides that the First Amendment "protects commercial speech

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from unwarranted governmental regulation" because "[c]ommercial expression not only serves the economic interest of the speaker, but also assists consumers and furthers the societal interest in the fullest possible dissemination of information." E & J Equities, 226 N.J. at 549.

Defendant argues that by applying the above standards, the Public Nuisance Law unconstitutionally restricts protected political and commercial speech based on content. Defendant alleges that the Public Nuisance Law sets forth content-based restrictions that apply to gun industry members and even further apply to their, "sale, manufacturing, distribution, importing, or marketing of a gun related product." N.J.S.A. 2C:58-34. Defendant relies on Junior Sports Mags. Inc. v. Bonta, where the Court found that a California statute was unconstitutional because it would ban messages of legal uses of guns. Junior Sports Mags. Inc. v. Bonta, 80 F4th 1109 (9th Cir. 2023). Defendant asserts that the Court held that "[e]ven if California's advertising restriction significantly slashes gun violence and unlawful use of firearms among minors, the law imposes an excessive burden on protected speech." Id. at 1119. Defendant argues that the Public Nuisance Law is similar to the California statute in that it allows the NJAG to take action on "speech whose content concerns lawful activities and is not misleading." Id. at 1117-18. Defendant thus contends that the law allows the State to seek civil penalties for lawful speech that it does not find to be reasonable which is an infringement on the right to free speech.

Moreover, Defendant alleges the Public Nuisance Law is unconstitutional because it is vague as to the restrictions imposed on the speech. Defendant submits that "[w]hen the language of a regulation is vague, speakers are left to guess as to the contours of its proscriptions." Sypnewski v. Warren Hill Reg'l Bd. Of Educ., 307 F.3d 243, 266 (3d Cir. 2002). Defendant asserts that a "vague rule 'may authorize and even encourage arbitrary and discriminatory enforcement,'" "by failing to 'establish minimal guidelines to govern...enforcement.'" Id. Here, Defendant claims

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the Public Nuisance Law is vague as to what speech is prohibited and allows Plaintiff to take action against gun industry members based on "marketing" or any other business communication the State finds to be unreasonable even if the speech is otherwise lawful. Specifically, Defendant asserts that the Public Nuisance Law allows that NJAG to sue gun industry members for lawful speech about "the exercise of the right to bear arms, the benefits of owning a firearm, encouraging firearm ownership, and beneficial features of particular firearms, if the NJAG thinks that the gun industry members' positions on those issues are 'unreasonable.'" Defendant contends that such cannot survive constitutional scrutiny.

In response, Plaintiff argues that its claims do not violate the First Amendment. Plaintiff contends that while Defendant has the right to freely engage in speech by marketing its business, it does not have the right to be free from consequences of its conduct. Plaintiff asserts that its claims do not regulate, restrict, or seek to punish protected speech but rather target Defendant's conduct. Plaintiff submits that a law does not violate the Free Speech Clause if its "effect on speech" is "only incidental to its primary effect on conduct." Expressions Hair Design v. Schneiderman, 581 U.S. 37, 47 (2017). Plaintiff contends that it does not seek to hold Defendant liable for promoting the store or for opining on gun laws but that it referenced such as evidence of Defendant's knowledge of the legal requirements of operating a licensed gun retail store. Plaintiff argues that the fact that Defendant's words provide evidence of Defendant's knowledge is not a First Amendment harm.

Additionally, Plaintiff contends that to the extent the Public Nuisance Law regulates speech, it regulates only commercial speech. Plaintiff submits that commercial speech is defined "as speech that does no more than propose a commercial transaction." Bank of Hope v. Miye Chon, 938 F.3d 389, 394 (3d Cir. 2019). Plaintiff asserts that while commercial speech is afforded some

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protection, "[t]he protection available for particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation." E & J Equities v. Bd. of Adjustment of Twp. of Franklin, 226 N.J. 549, 570 (2016). Plaintiff thus contends that Defendant's marketing of its business is commercial speech and entitled to the lesser level of protection under Central Hudson Gas & Electric Corp. v. Public Serv. Commission of N.Y., 447 U.S. 557 (1980).

Plaintiff submits that a "government may restrict commercial speech that concerns lawful activity and is not misleading, if (a) the government has a substantial interest in regulating that speech, (b) the restriction directly advances that interest, and (c) the restriction is not more extensive than necessary to serve that interest." Id. at 566. Plaintiff asserts that commercial speech that concerns illegal activity is unprotected. Town Tobacconist, 94 N.J. at 124-26. Plaintiff argues that the First Amendment does not shield Defendant from liability because its claim advances New Jersey's interest in maintaining its residents' safety. Plaintiff refutes Defendant's reliance on Junior Sports Magazines and contends that there, the advertisement ban prohibited non-misleading speech about a lawful activity whereas the Public Nuisance Law does not ban marketing or advertising one's gun store.

Defendant also claims that the Public Nuisance Law is unconstitutionally vague under due process. Defendant relies on State v. Cameron, which provides that vague laws are unenforceable under both Federal and State Constitutions. State v. Cameron, 100 N.J. 586, 591 (1985). Defendant submits that a "law is void as a matter of due process if it is so vague that persons 'of common intelligence must necessarily guess at its meaning and differ as to its application.'" Town Tobacconist v. Kimmelman, 94 N.J. 85, 118 (1983). Defendant also asserts that courts must consider "the extent to which the regulatory law impacts on constitutional interests." Cameron,

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100 N.J. at 592. Further, Defendant provides that "[a] statute that is challenged facially may be voided if it is 'impermissibly vague in all its application,' that is, there is no conduct that it proscribes with sufficient certainty." Id. Defendant asserts that "[a] statute can be challenged 'as applied' if the law does not with sufficient clarity prohibit the conduct against which it sought to be enforced 'in that particular case.'" Id.

Defendant argues that the Public Nuisance Law violates due process under both federal and state constitutions both facially and as applied because it gives the NJAG the authority to take action against firearm industry members based on conduct in the "sale, manufacturing, distribution, importing or marketing of a gun-related product" that the NJAG finds to be unreasonable. Defendant contends that if the law is allowed to stand then "no firearm industry member will ever be able to know whether its conduct, even though lawful at the time, will later on subject it to severe civil consequences because the NJAG decides that the action was not reasonable." Defendant asserts that if the State wanted Defendant to conduct its business in a certain manner, then it may do so through passing legislation and/or adopting regulations.

In opposition, Plaintiff argues that the Public Nuisance Law is not unconstitutionally vague. Plaintiff asserts that "[o]ne to whose conduct a statute clearly applies may not successfully challenge it for vagueness." Parker v. Levy, 417 U.S. 733, 756 (1974). Plaintiff contends that Defendant does not identify a vagueness problem with the Public Nuisance Law as applied to FSS. Plaintiff argues that since Defendant's conduct is proscribed by the Public Nuisance Law, Defendant may not complain of the vagueness of the law as applied to others. Further, Plaintiff asserts that Defendant speculates that the law might be arbitrarily applied but does not explain how the enforcement action is arbitrary.

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In response, Defendant maintains that the Public Nuisance Law is unconstitutional as it violates the First Amendment and is impermissibly vague. Defendant also contends that the Public Nuisance Law violates the Second Amendment and the Commerce Clause by imposing civil liability on firearm industry members, an industry that is regulated by the federal government as part of interstate commerce. As to the Second Amendment, Defendant asserts that the law is unconstitutional because it seeks to regulate conduct of "gun industry member[s]" with respect to their "sale, manufacturing, distribution, importing or marketing of a gun-related product." N.J.S.A. 2C:58-34. Defendant thus requests that the Court should dismiss the public nuisance claim as barred by the Second Amendment and the Commerce Clause.

Defendant next argues that the PLCAA bars Plaintiff's negligence claim based on the above arguments that the instant matter is a qualified civil liability action and thus the PLCAA provides it with immunity. Further, Defendant contends that the Court should dismiss Plaintiff's claims because Plaintiff cannot establish causation. Defendant asserts that while Plaintiff seeks to recover for the "expend[ing of] significant resources mitigating and investigating crimes already committed with, or threatened by, the twenty guns taken by [the burglars] from FSS Armory," Defendant itself was a victim of the criminal acts by the burglars. Defendant argues that the burglar's actions constitute an intervening act that broke the chain of causation between Defendant's conduct and the alleged nuisance. Defendant thus asserts that Plaintiff cannot establish negligence.

In opposition, Plaintiff reiterates that it can establish the four elements to support a negligence claim including proximate cause. Plaintiff asserts that gun sellers, including Defendant, have a common law duty to the public by virtue of the inherent risk in being a firearm dealer. Gallara, 364 N.J. Super. at 438-40. Plaintiff alleges that Defendant breached that duty when it

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failed to appropriately safeguard its store and when it advertised its unlawfully inadequate storage and security practices. As to damages, Plaintiff contends that it incurred actual damages having spent significant resources to mitigate and investigate crimes already committed by the firearm taken from Defendant's window.

In response, Defendant contends that Plaintiff failed to respond to the argument that the negligence claim is barred by the PLCAA. Defendant further states that whether Plaintiff pled facts to support its negligence claim is irrelevant because the PLCAA contains no exception for common law negligence claims.

Finally, Defendant argues that Plaintiff's claims for punitive damages should be dismissed. Defendant cites to Hagel v. Davenport, which states that liability under the Punitive Damages Act is reserved for especially egregious intentional wrongdoing. Hagel v. Davenport, No. A-3652-19, 2024 WL 444738 (N.J. Super. Ct. App. Div. Feb 6, 2024). Defendant asserts that a plaintiff may recover punitive damages upon proof of "intentional wrongdoing…" or "an act accompanied by a wanton and willful disregard of the rights of another." Id. Defendant argues that Plaintiff's allegations fall short of demonstrating that Defendant acted with actual malice or wanton and willful disregard. Defendant thus requests that the Court dismiss Plaintiff's claims against Defendant for punitive damages.

In opposition, Plaintiff asserts that punitive damages are not a cause of action but available where there "is a valid underlying cause of action." Nappe v. Anschelewitz, Barr, Ansell Bonello, 97 N.J. 37, 45 (1984). Plaintiff contends that the issue of whether to award punitive damages is premature nor has Defendant cited any authority that a request for such may be dismissed on a motion to dismiss. Plaintiff submits that to plead entitlement to punitive damages, it must plead "that the injury, loss, or harm suffered by the State was the result of defendant's acts or omissions;

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and that either (2a) defendant's conduct was malicious, or (2b) defendant acted with wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions. N.J.S.A. 2A:15-5.12(a). Plaintiff asserts that it may pursue punitive damages "for the purpose of punishing, and thereby deterring," the wrongdoer." Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 194 N.J. 212, 216 (2008). Plaintiff claims that Defendant acted with wanton and willful disregard and that the Complaint sufficiently pleads facts to support such. Plaintiff thus contends that Defendant's conduct entitles Plaintiff to punitive damages.

Defendant contends that there is no basis to delay the Court's decision as it relates to punitive damages since Plaintiff's claim for such "contravenes the extraordinary nature of, and strict standards for, punitive damages." Hagel, No. A-3652-19, 2024 WL 444738, at *23. Defendant argues that based on Plaintiff's assertion, anything that any member of any industry that Plaintiff does not like can subject them to having to defend against claims for punitive damages despite the lack of a specific factual basis for such claims. Defendant asserts that such will lead to unfair and unwarranted outcomes and thus, the Court should dismiss Plaintiff's claim for punitive damages.

Amici are law professors at various law schools who oppose Defendant's instant application. *Amici* first assert that for a lawsuit to qualify under the predicate exception, (1) the lawsuit must rely on a state or federal statute applicable to the sale of a firearm product, and (2) it must allege that a firearms manufacturer or seller knowingly violated the predicate statute in a manner that proximately caused harm. *Amici* argue that the Public Nuisance Law explicitly applies "to the sale and marketing of firearms products," and thus is a predicate statute. *Amici* contend that a lawsuit that alleges a violation of the Public Nuisance Law, meets the knowledge and causation elements of the predicate exception is not preempted by the PLCAA.

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Next, *Amici* refute Defendant's assertion that Public Nuisance Law does not qualify as a predicate statute because it does not include a scienter requirement. *Amici* asserts that the predicate statute exception delineates the category of predicate statute as "State or Federal" statutes that are "applicable to the sale or marketing of the product." 15 U.S.C. § 7903(5)(A)(iii). Additionally, *Amici* contend that the predicate exception specifies conditions under which the violation of a predicate statute provides a basis for a civil lawsuit which includes (1) when "a manufacturer or seller of a qualified product knowingly violated" the predicate statute and (2 when "the violation was a proximate cause of the harm for which relief is sought[.]" Id. *Amici* thus argue that for a lawsuit to be viable under the predicate exception, the State must meet the predicate exception's knowledge and causation element but the predicate statute itself does not need to define the defendant's required state of mind.

Further, *Amici* argue that the two examples provided in the predicate exception illustrate that the predicate statute does not need to make any reference to knowing violation. *Amici* submit that the PLCAA's first example refers to predicate statutes that prohibit specified forms of conduct and the second refers to a predicate statute that defines categories of individuals prohibited from possessing or receiving a firearm. Id. *Amici* further assert that neither statute references any mental state.

Next, *Amici* contend that PLCAA's proximate causation requirement is met if harm resulting from third-party misuses of firearms was a "reasonably foreseeable effect" of a gun industry member's conduct. *Amici* refute Defendant's argument that the Public Nuisance Law would defeat the PLCAA's purpose to "prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms....for harm solely caused by the criminal or

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unlawful misuse of firearms products…."*Amici* argue that such argument misreads the PLCAA and the Public Nuisance Law.

In addition, *Amici* argue that the Public Nuisance Law's proximate causation provision is fully consistent with the doctrines of tort law. *Amici* assert that the PLCAA lawsuits against manufacturers and sellers for harm "solely caused" by third-party criminal misuse of firearm products. *Amici* contend that the prohibition is reflected in the predicate exception's proximate cause requirement which subjects a manufacturer or seller to liability for harm caused by third-party unlawful misuse of firearm products only when the manufacturer or seller's knowing violation of a predicate statute was a proximate cause of the harm. *Amici* provide that in those circumstances, the third-party unlawful misuse is not the sole cause of the harm. *Amici* assert that by foreseeably increasing the risk of third-party misuse, the manufacturer or seller's misconduct may also be a proximate cause of the harm. *Amici* argue that liability under such circumstances does not contradict the PLCAA's goal to shield manufacturers and sellers from vicarious liability for harms "solely caused" by third-party criminal misuse. *Amici* thus contend that when a defendant's knowing violation of a predicate statute is a proximate cause of harm resulting from criminal misuse, the defendant is subject to liability under the predicate exception. Further, *Amici* submit that New Jersey courts have imposed liability on defendants for foreseeably increasing the rise of third-party criminal misconduct. Steele v. Kerrigan, 148 N.J. 1 (1997).

Moreover, *Amici* argue that the Public Nuisance Law is consistent with the PLCAA's text, structure, and purpose because PLCAA only bars lawsuits brought pursuant to common law but expressly permits lawsuits brought pursuant to statutes, like the Public Nuisance Law. *Amici* contend that the PLCCA does not operate as an absolute liability shield and instead circumscribes

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the jurisdiction of courts to hear only certain claims against firearms industry defendants for harms resulting from third-party unlawful misuse of firearms products.

Amici assert that the PLCAA's explicit commitment to separation of powers is expressed in the predicate exception's distinction between legislatively created causes of action, which may serve as the basis for a lawsuit against the industry, and judge-made causes of action, which may not. *Amici* contend that PLCAA's preemption of state common law causes of action is reflected in several of its provisions and findings. *Amici* submit one of the PLCAA's findings identifies the following:

> The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States.

15 U.S.C. § 7901(a)(7).

Amici argue that this finding reflects a conception of separation of powers common among advocates of tort reform that the expansion of civil liability by common law courts is an encroachment on legislative function. See Timothy D. Lytton, Using Litigation to Make Public Health Policy: Theoretical and Empirical Challenges in Assessing Product Liability, Tobacco, and Gun Litigation, 32 J.L. MED. & ETHICS 556, 557 (2004). Further, *Amici* provide that the PLCAA's exceptions reflects its central concern with preempting civil liability actions based on common law.

Additionally, *Amici* assert that the PLCAA's commitment to protecting Second Amendment Rights is expressed in the predicate exception's knowledge and proximate causation

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requirements. *Amici* submit that the PLCAA's first two legislative findings demonstrate such when it stated the following:

> (1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.
>
> (2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

15 U.S.C. § 7901(a)(1), (2).

Amici argue that to protect the rights of citizens to keep and bear arms, PLCAA preempts litigation against the firearms industry that could restrict the availability of firearms in the civilian market. *Amici* assert that the predicate exception imposes a heightened mental state requirement that any actionably violation be made "knowingly," which limits litigation to allegations of deliberate industry misconduct while protecting manufacturers and sellers from lawsuits based on unwitting negligence. In addition, *Amici* contend that the predicate exception imposes a proximate cause requirement which limits ligation to allegations that a manufacturer or seller actively facilitated the unlawful misuse of its products while shielding the industry from vicarious liability for harm caused solely by the illegal misconduct of others.

Finally, *Amici* assert that the PLCAA's commitment to federalism is expressed in the predicate exception's invitation to state legislatures to enact statutes that impose obligations and prohibitions on the firearms industry. *Amici* provide that the PLCAA preserves the ability of states to regulate the industry in accordance with regional variation in attitudes about gun ownership and how best to respond to firearms-related violence. Further, *Amici* contend that the predicate exceptions allows not only federal but also state statutes to serve as predicate statutes. *Amici* conclude by stating that the constitutional principles endorsed by the PLCAA's findings and

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purposes section all support an interpretation of the predicate exception that authorizes lawsuits against the gun industry under the Public Nuisance Law.

IV. CONCLUSION

Under the Supremacy Clause of the United States Constitution, federal law preempts state law in several circumstances. Hager v. M&K Construction, 246 N.J. 1, 26-45 (2021). It is established that "[p]re-emption may be either expressed or implied." Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992). Further, "[e]xpress preemption is determined from an examination of the explicit language used by Congress." Gonzalez v. Ideal Tile Importing Co., 184 N.J. 415, 419, (2005) (citing Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977)). "A federal enactment expressly preempts state law if it contains language so requiring." Bruesewitz v. Wyeth Inc., 561 F.3d 233, 239 (3d Cir. 2009).

"In the alternative, there are two forms of implied preemption: field and conflict." Hager, 246 N.J. at 28. "'Field preemption applies "where the scheme of federal regulation is 'so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'"'" Id. (quoting In re Reglan Litig., 226 N.J. 315, 328 (2016) (quoting Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992)). Conflict preemption exists when either (1) "compliance with both federal and state regulations is a physical impossibility'" or (2) state law "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Altice, 253 N.J. at 417.

The PLCAA prohibits the bringing of qualified civil liability action in both Federal and State courts. 15 USC § 7902 (2024). A "qualified civil liability action" is defined as:

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> [A] civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party....

15 U.S.C. § 7903 (2024).

Additionally, the PLCAA provides six exceptions to the prohibition. Id. Among such exceptions is "an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought...." Id.

Moreover, the Public Nuisance Law provides the following:

> (1) A gun industry member shall not, by conduct either unlawful in itself or unreasonable under all the circumstances, knowingly or recklessly create, maintain, or contribute to a public nuisance in this State through the sale, manufacturing, distribution, importing, or marketing of a gun-related product.
>
> (2) A gun industry member shall establish, implement, and enforce reasonable controls regarding its manufacture, sale, distribution, importing, and marketing of gun-related products.
>
> (3) It shall be a public nuisance to engage in conduct that violates paragraphs (1) or (2) of this subsection.

While Defendant asserts that the Public Nuisance Law is preempted by the PLCAA, the Court finds that the Public Nuisance Law is not preempted, either explicitly or implicitly. The explicit language of the PLCAA, which includes the predicate exception, allows Plaintiff to bring the instant action. See Gonzalez, 184 N.J. at 419; 15 U.S.C. § 7903(5)(A)(2024). The exception provides that a "qualified civil liability action" may brought where a "manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product...." Id. It follows that as the PLCAA allows the instant lawsuit to be initiated, implied preemption is absent. Further, while Defendant argues that that Congress intended for the

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PLCAA to preempt state law had Congress intended to provide a blanket immunity to gun manufacturers and sellers, it would not have provided any exception to the PLCAA. Therefore, the Court finds that the Public Nuisance Law is not preempted by the PLCAA.

Next, Defendant asserts that the Public Nuisance Law does not satisfy the predicate exception to the PLCAA and relies on NSSF in support of its assertion. Nat'l Shooting Sports Found. v. Platkin, Civil Action No. 22-6646, 2023 U.S. Dist. LEXIS 16459 (D.N.J. Jan. 31, 2023). However, the Court first notes that the NSSF decision is not binding on the Court and has been reversed by the Third Circuit. Moreover, substantively, the District Court's analysis is not applicable here as the claims are not being brought on the basis of any allegation that there was "criminal or unlawful misuse of a qualified product by the person or third party" but rather that Defendant allegedly knowingly violated the nuisance law with respect to establishing and enforcing reasonable controls regarding its sale of gun-related products. N.J.S.A. 2C:58-35.

Moreover, the plain language of the PLCAA does not require that the underlying statute include a scienter requirement. In construing the statute, we first consider "the literal language of the statute, consistent with the Legislature's admonition that its words and phrases 'shall be read and construed with their context, and shall, unless inconsistent with the manifest intention of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.'" US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 471 (2012). "To the extent possible, the Court must derive its construction from the Legislature's plain language. If the language chosen by the Legislature is unambiguous, then the Court's 'interpretive process is over.'" Id. Based on the plain language of the PLCAA, the PLCAA predicate exception only requires allegations of a knowing violation of a state or federal law, not that the statute violated contain a knowing scienter requirement. Plaintiff

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has sufficiently plead that Defendant knew that its alleged storage practices were contrary to the State's storage and security requirements for licensed firearms dealers.

Similarly, Plaintiff sufficiently pled that the burglars and their actions were an intervening foreseeable event that does not break the chain of causation. Komlodi v. Picciano, 217 N.J. 387 (2014). Proximate causation is a "combination 'of logic, common sense, justice, policy and precedent' that fixes a point in a chain of events, some foreseeable and some unforeseeable, beyond which the law will bar recovery." People Express Airlines, Inc. v. Consol. Rail Corp., 100 N.J. 246, 264 (1985) (quoting Caputzal v. Lindsay Co., 48 N.J. 69, 77-78 (1966). Thus, as stated in Estados Unidos Mexicanos, "[p]roximate cause is commonly understood as the function of the foreseeability of the harm[.]" 91 F.4th at 534. While Defendant denies that proximate causation exists, courts, including New Jersey courts, have previously held that business owners are required to protect customers and tenants from foreseeable criminal acts even if the criminal act was beyond their control. Gallara v. Koskovich, 364 N.J. Super. 418 (2003); see also Minnesota v. Fleet Farm LLC, 679 F. Supp. 3d 325 (D. Minn. 2023) ("Where a criminal act is reasonably foreseeable, then that act does not break the causal chain"). In fact, "[i]f the reasonably prudent person would foresee danger resulting from another's voluntary criminal acts, the fact that another's actions are beyond defendant's control does not preclude liability." Id. (quoting Butler v. Acme Markets, Inc., 89 N.J. 270, 276 (1982). Here, as in Gallara, "a jury could decide that [FSS Armory] should have foreseen or anticipated that stolen guns would likely cause harm, that reasonable security measures would have served as an effective deterrent, and that a failure to take such measures was a substantial contributing factor to the ultimate harm suffered." Id. at 444. "If a third-party's unlawful act always undercuts proximate cause, the predicated exception would be meaningless." Estados Unidos Mexicanos, 91 F. 4th at 535.

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Next, the Court does not find merit as to Defendant's contention that the Public Nuisance Law violates the right to free speech. Political expression is protected by the First Amendment of the United States Constitution and by Article I, Paragraphs 6 and 18 of the New Jersey Constitution. See Mazdabrook Commons Homeowners' Ass'n v. Khan, 210 N.J. 482, 486 (2012). Political speech "is entitled to the highest level of protection in our society." Dublirer v. 2000 Linwood Ave. Owners, Inc., 220 N.J. 71, 85 (2014). On the other hand, commercial speech is "expression related solely to the economic interests of the speaker and its audience." Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557, 561(1980). However, commercial speech is not entitled to the same protection as political speech. Instead, the following four-part analysis is conducted to determine whether the commercial speech is protected:

> [I]t at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Id. at 566.

While Defendant alleges that the Public Nuisance Law "sets forth content-based restrictions specifically targeted at political speech about firearms, and the commerce thereof.... because it applies only to 'gun industry members,'" the law does not restrict any speech but seeks to regulate gun industry member's conduct in the storage, sale, and marketing of their gun-related products. The instant action relates to Defendant's failure to properly safeguard the firearms in its possession by storing unsecured firearms next to a ground floor, exterior window. While the State makes reference to Defendant's Google page, it is not for any speech contained online but rather to demonstrate that Defendant improperly stored firearms and disclosed its improper actions on the internet to the general public

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However, even if the Public Nuisance Law targets speech, it would be commercial speech. Further, the Public Nuisance Law is content-neutral as the "legislature's predominant concern is with adverse secondary effects....and not with the content of speech being restricted." Ward v. Rock Against Racism, 491 U.S. 781 (1989). Any impact to speech would merely be incidental to the legislature's intent to regulate the conduct of gun manufacturers and sellers. Finally, the Public Nuisance Law is in accordance with the four-part analysis under Central Hudson Gas since (1) the "speech" at issue concerns lawful activity, the sale of firearms, (2) the State has a substantial interest in regulating speech related to the gun industry, (3) the Public Nuisance Law advances this interest in regulating the manner guns must be stored, and (4) the Public Nuisance law is not more restrictive than necessary. 447 U.S. at 566. Thus, the Court finds that the Public Nuisance Law does not violate the right to free speech.

Finally, "[a] statute is void if it is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application." State v. Lenihan, 219 N.J. 251, 267 (2014) (quoting Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 279-80 (1998). "A statute [can] be challenged as being either facially vague or vague 'as applied.'" Lenihan, 219 N.J. at 267 (quoting State v. Maldonado, 137 N.J. 536, 563(1994)). "A law is facially vague if it is vague in all applications." Id. "A statute that 'is challenged as vague as applied must lack sufficient clarity respecting the conduct against which it is sought to be enforced.'" Lenihan, 219 N.J. at 267. Accordingly, a person challenging a statute must normally show it is vague as applied to them. See Holder v. Humanitarian L. Project, 561 U.S. 1, 19-20 (2010). Here, Defendant has not demonstrated that the Public Nuisance Law is vague as applied to them. Further, the Court does not find that Public Nuisance Law is vague or does not put firearm industry members on notice of what conduct is unlawful. For instance, Plaintiff has not only relied on Defendant's alleged

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violation of N.J.S.A. 2C:58-2 but also its implementing regulations including N.J.A.C. 13:54-3.9(a)(3) which provides that "[n]o firearm, ammunition or imitation thereof shall be placed in any window or in any other part of the premises where it can be readily seen from the outside." While Defendant refutes Plaintiff's reliance on such regulations, the regulations were statutorily directed pursuant to N.J.S.A. 2C:58-2.

As to Defendant's remaining arguments that the Public Nuisance Law violates the Commerce Clause and Second Amendment, the Court finds that there is no merit to support such arguments. The Public Nuisance Law does not abridge anyone's Second Amendment right but seeks to regulate the manner in which sellers conduct their business. District of Columbia v. Heller, 554 U.S. 570, 582–83 (2008). The State has not sought to prevent the sale of firearms pursuant to the Public Nuisance Law. Further, there is no evidence to support a finding that the Public Nuisance Law violates the Commerce Clause. As noted, the Public Nuisance Law does not seek to prohibit the sale of firearms but seeks to ensure the proper sale and marketing, including safekeeping, of firearms offered for sale.

Finally, giving Plaintiff all favorable inferences and searching the Complaint for the fundament of a cause of action, the Court finds that Plaintiff has sufficiently pled the claim for negligence, including proximate cause and actual damages. As previously held by the Minnesota v. Fleet Farm LLC, "only one claim needs to survive the preemption analysis for the entire suit to move forward because the PLCAA preempts 'qualified civil liability actions,' not claims." 679 F. Supp. 3d at 841; see Ustados Unidos Mexicanos, 91 F. 4th at 527 (finding that the predicate exception includes common law claims in addition to statutory claims). Further, the Court also found that the "PLCAA does not preempt all claims based on common law, but rather any claims (common law or statutory) that are not predicated on the violation of a federal or state statute

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regarding the regulation of firearms." Fleet Farm, LLC, 679 F. Supp. 3d at 841. Like Fleet Farm LLC, the negligence claim in the instant matter is based on the violation of New Jersey statutes concerning the regulation of firearms and thus, the negligence claim is viable. See id. Similarly, the Court finds that Plaintiff sufficiently pled a claim for punitive damages.

Accordingly, Defendant's motion to dismiss is denied.