

THE STATE OF MARYLAND, et al.,

Plaintiff,

v.

ENGAGE ARMAMENT LLC, et. al,

Defendants.

**In The Circuit Court For
Montgomery County, Maryland**

**Case No.: C-15-CV-24-004781
Honorable Ronald B. Rubin**

ATLANTIC GUNS, INC.’S MOTION TO DISMISS

Defendant Atlantic Guns, Inc. (“AGI”), by and through counsel, moves to dismiss Plaintiffs’ Complaint under Maryland Rule 2-322(b)(1) and (2) for the reasons outlined in its memorandum in support. Plaintiffs filed this lawsuit against AGI, and two other Defendant federal firearm dealers, asserting state-law claims for public nuisance and negligence.

Six grounds compel dismissal of this lawsuit. First, Plaintiffs fail to state a claim for relief because they do not allege facts showing a violation of law, causation, and the other requisite elements of their public nuisance and negligence claims. Second, the Protection of Lawful Commerce in Arms Act (“PLCAA”), 15 U.S.C. § 7901 *et seq.*, is a complete bar to Plaintiffs’ claims because federal law preempts this lawsuit and provides AGI immunity for the criminal misuse of any firearms AGI transferred to Mr. Minor; and PLCAA deprives this Court of jurisdiction. Third, Plaintiffs cannot pursue remedies for these alleged criminal violations through civil litigation. Fourth, Plaintiffs’ claims are barred by the statute of limitations. Fifth, the Municipal Costs Doctrine bars Plaintiffs’ request for reimbursement of governmental costs resulting from gun violence. Sixth, Maryland’s Anti-SLAPP (Strategic Lawsuit Against Public Participation) law protects advocates like AGI against costly, bad faith lawsuits like this that are intended to silence free speech and deter them from petitioning their government.

This Court has scheduled a hearing at the parties' request for Thursday, January 16, 2024, at 9:30 a.m. Eastern Time.

Dated: November 12, 2024

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CERTIFICATE OF SERVICE

I certify that on November 12, 2024, I caused copies of the foregoing to be served upon all counsel of record via the MDEC System and/or electronic mail, and a courtesy copy by FedEx to be delivered to the chambers of the Honorable Ronald B. Rubin.

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ATLANTIC GUNS, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

Atlantic Guns, Inc. (“AGI”), a licensed firearms dealer and family-owned local business, takes seriously its responsibility to ensure firearms are not transferred to prohibited persons and unequivocally condemns illegal firearm transfers and the criminal misuse of firearms. For three quarters of a century, AGI has been well known in the Rockville community for providing outstanding service and products as well as promoting the safe and lawful use of firearms by responsible citizens for personal protection and other lawful purposes.

AGI is also well known in Annapolis as a vocal advocate for sensible firearms legislation, frequently testifying before the Maryland Legislature on firearm-related bills. As part of its advocacy, AGI has filed multiple lawsuits against certain unreasonable restrictions on firearm rights, the most recent of which is currently pending before the United States Supreme Court. Not surprisingly perhaps, AGI now finds itself the target of what appears to be a concerted effort by the State of Maryland and the District of Columbia to stifle its advocacy or forfeit its family livelihood.

This lawsuit arises out of the indictment and conviction of Demetrius Minor (“Mr. Minor”), a non-party, who pled guilty in federal court of violating 18 U.S.C. § 922(a)(1)(A) by illegally transferring firearms purchased from AGI and the other two Defendant firearm dealers to prohibited persons without a license. Plaintiffs seek to hold AGI and the other defendants liable for the illegal firearm trafficking they allege contributes to gun violence in their jurisdictions. Compl. ¶ 14; *see also id.* at ¶¶ 29, 32-33. Neither Plaintiffs nor the federal government have brought any criminal charges against AGI for the sales alleged here—or any other transactions over its long history—despite the availability of such enforcement remedies, had AGI violated the straw purchaser laws.

This is not surprising since Plaintiffs allege no facts showing that AGI knew or should have known Mr. Minor would traffic firearms he purchased from AGI. Plaintiffs base their entire case against AGI on four handgun sales over the period from late July to early September 2021. But they left out a critical fact—Mr. Minor was a Designated Firearms Collector. By statute, a Designated Firearms Collector in Maryland is vetted and approved by the Maryland State Police and permitted by law to purchase multiple handguns in a 30-day period, which Maryland State Police confirmed each time they allowed Mr. Minor’s transactions to go through.

In any event, Plaintiffs do not allege that the firearms Mr. Minor purchased from AGI were involved in firearm violence of any kind. But in what can only be seen as a calculated existential threat to this family business, Plaintiffs seek unspecified civil damages related to firearm violence generally, including costs for “healthcare, emergency medical services, social services, law enforcement, incarceration, lost tax revenues, and lost communal benefits of the Plaintiffs’ limited and diverted resources.” *See, e.g.*, Compl. ¶ 95. All for AGI’s alleged sale of four handguns to Mr. Minor.

Plaintiffs’ attempt to solve the complex problem of illegal firearm trafficking by suing AGI for lawfully selling less than a handful of firearms to Mr. Minor is as misplaced as it is novel. Holding AGI liable for Mr. Minor’s independent criminal acts would be unprecedented, completely disregarding well-established legal principles.

Six grounds compel dismissal of this lawsuit. First, Plaintiffs fail to state a claim for relief because they do not allege facts showing a violation of law, causation, and the other requisite elements of their public nuisance and negligence claims. Second, the Protection of Lawful Commerce in Arms Act (“PLCAA”), 15 U.S.C. § 7901 *et seq.*, is a complete bar to Plaintiffs’ claims because federal law preempts this lawsuit and provides AGI immunity for the criminal

misuse of any firearms AGI transferred to Mr. Minor; and PLCAA deprives this Court of jurisdiction. Third, Plaintiffs cannot pursue remedies for these alleged criminal violations through civil litigation. Fourth, Plaintiffs' claims are barred by the statute of limitations. Fifth, the Municipal Costs Doctrine bars Plaintiffs' request for reimbursement of governmental costs resulting from gun violence. Sixth, Maryland's Anti-SLAPP (Strategic Lawsuit Against Public Participation) law protects advocates like AGI against costly, bad faith lawsuits like this that are intended to silence free speech and deter them from petitioning their government.

BACKGROUND

I. AGI—The Schneider family business.

AGI is a family-owned and operated business run by the Schneider family for three generations. AGI was established in March 1950 by George Schneider, a gunsmith and WWII Army firearms instructor.¹ Steve Schneider, son of the company's founder, is president, and his son Mark is vice president and manager. Two of Steve's brothers, Mark's uncles, also work in the business.

One of 521 licensed firearm dealers in Maryland,² AGI has proudly served the Montgomery County community for 75 years and is recognized by the County as a Legacy Business. AGI takes seriously its responsibility to ensure firearm safety and prevent the criminal misuse of firearms. Significantly, Plaintiffs do not allege that AGI had criminal charges initiated against it related to the four firearm transfers to Mr. Minor or related to any of its firearm transfers to any customers over 75 years.

¹ *About Us*, <https://atlanticguns.com/about-us> (last visited November 8, 2024).

² <https://www.atf.gov/firearms/docs/undefined/0124-ffl-list-marylandxlsx/download>(last visited November 8, 2024).

Steve served as a long-time President of the Maryland Licensed Firearms Dealers Association (“MLFDA”) and frequently spoke on behalf of its members. As President of MLFDA, Steve supported the Gun Shop Project, which is a collaboration between firearm dealers, suicide prevention experts, and mental health professionals to promote firearm safety and suicide prevention. AGI was an early adopter of the Gun Shop Project. Steve’s wife worked with national experts to coordinate the Gun Shop Project’s implementation and the distribution of materials to all MLFDA member dealers.³ As a result of their implementation of the Gun Shop Project in Maryland, AGI, Steve, and his wife were recognized and were guest speakers at an American Foundation for Suicide Prevention and Veterans Administration conference.⁴

AGI and the Schneider family have long testified before the Maryland Legislature on various firearm regulation bills. Most recently, AGI testified before the Maryland Legislature in 2020 regarding MD H.B. 1257, which sought to require firearms dealers to store all firearms in vaults, safes, or reinforced display cases and required video and audio recordings of receipts, sales, and dispositions of firearms. *See Exhibit A.*⁵ AGI objected to H.B. 1257 because the bill would require firearm dealers to incur substantial compliance costs without significant security increases. 2020 MD H.B. 1257 died in committee.

AGI also testified regarding MD S.B. 773 in 2022, which sought to penalize firearm dealers for failing to have a vault on the premises to store all firearms offered for sale and place all firearms

³ https://www.nbcphiladelphia.com/news/local/preventing-suicide_-gun-shop-project_philadelphia1/14994/(last visited November 8, 2024).

⁴ <https://calendar.ucsf.edu/event/afsp0316> (last visited Nov 8, 2024).

⁵ https://mgaleg.maryland.gov/cmte_testimony/2020/jud/3573_02262020_91924-82.pdf (last visited Nov 8, 2024).

in the vault when the store is closed. *See Exhibit B.*⁶ AGI opposed S.B. 773 because the bill would require firearm dealers to incur substantial compliance costs without any significant increase in security; AGI already had incurred hundreds of thousands of dollars to reinforce its stores to prevent criminals from breaking in and stealing firearms. 2022 MD S.B. 773 died in committee.

AGI testified regarding 2022 MD H.B. 1396, 2023 MD H.B. 259, and 2023 MD S.B. 113, which sought to hold federal firearm licensees civilly liable for public nuisance for knowingly or recklessly engaging in conduct that violates firearm laws and permitted Maryland to seek attorney fees and punitive damages. *See Exhibit C.*⁷ AGI opposed the bills because they contained vague terms as to what would constitute a violation and would open all licensed firearm dealers in Maryland to punitive litigation for the criminal acts of others, driving firearm dealers out of business when they could no longer obtain insurance and thereby restricting citizen access to firearms. 2022 MD H.B. 1396, 2023 MD H.B. 259, 2023 MD S.B. 113 died in committee.

Most recently, AGI testified before the Maryland Legislature regarding 2024 MD H.B. 947 and SB 488, whose purpose was identical to 2022 MD H.B. 1396, 2023 MD H.B. 259, 2023 MD

⁶ Maryland General Assembly, Committee Testimony and Witness Signup SB0773, <https://mgaleg.maryland.gov/mgawebsite/Legislation/WitnessSignup/SB0773?ys=2022RS> (last visited Nov 8, 2024) (Mark Schneider's oral testimony on SB 773).

⁷ Maryland General Assembly, Committee Testimony and Witness Signup HB1396, <https://mgaleg.maryland.gov/mgawebsite/Legislation/WitnessSignup/HB1396?ys=2022RS> (last visited November 8, 2024) (Mark's oral testimony against H.B. 1396); Maryland General Assembly, Committee Testimony and Witness Signup HB0259, <https://mgaleg.maryland.gov/mgawebsite/Legislation/WitnessSignup/HB0259?ys=2023RS> (last visited November 8, 2024) (Mark's oral testimony against H.B. 259); Maryland General Assembly, Committee Testimony and Witness Signup SB0113, <https://mgaleg.maryland.gov/mgawebsite/Legislation/WitnessSignup/SB0113?ys=2023RS> (last visited November 8, 2024) (Mark's oral testimony against S.B. 113).

S.B. 113. *See Exhibit D.*⁸ AGI again opposed the bills. 2024 MD H.B. 947 was passed and signed into law effective June 1, 2024.

AGI has even filed suit challenging firearm restrictions enacted by Maryland or its municipalities. As early as 1983, AGI successfully sued to overturn an ordinance that prohibited the sale of ammunition in certain circumstances because Montgomery County’s more restrictive ordinance was preempted by Maryland law.⁹ *See Montgomery Cnty. v. Atl. Guns, Inc.*, 302 Md. 540, 549 (1985). In 2013, AGI challenged the constitutionality of a ban on certain common rifles and magazines.¹⁰ A panel of the Fourth Circuit held that the challenged Firearm Safety Act provisions were unconstitutional, but the en banc court reversed applying the two-part approach later expressly abrogated by *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). *Kolbe v. Hogan*, 849 F.3d 114, 132 (4th Cir. 2017).

In 2016, AGI filed an action against Maryland contesting the constitutionality of Maryland’s handgun qualification license (“HQL”) requirement (“HQL Action”).¹¹ The Fourth Circuit found that AGI was the only plaintiff with independent as well as third-party standing on behalf of its potential customers to contest the HQL’s constitutionality, *Maryland Shall Issue, Inc.*

⁸ Maryland General Assembly, Committee Testimony and Witness Signup HB0947, <https://mgaleg.maryland.gov/mgawebsite/Legislation/WitnessSignup/HB0947?ys=2024RS> (last visited November 8, 2024) (Mark’s oral testimony against H.B. 947); Maryland General Assembly, Committee Testimony and Witness Signup SB0488, <https://mgaleg.maryland.gov/mgawebsite/Legislation/WitnessSignup/SB0488?ys=2024RS> (last visited November 8, 2024) (Mark’s oral testimony against S.B. 488).

⁹ *Atlantic Guns, Inc. et al. v. Montgomery County, Maryland et al.*, Circuit Court for Montgomery County, case no.: 85854E.

¹⁰ *Kolbe et al. v. O’Malley et al.* U.S. District Court for Maryland, case no. 1:13-cv-02861-CCB (last visited November 8, 2024).

¹¹ *Maryland Shall Issue, Inc., et al. v. Hogan, et al.*, case no.: 1:16-cv-03311-ELH.

v. Hogan, 971 F.3d 199, 211 (4th Cir. 2020), as amended (Aug. 31, 2020), and struck the law as an unconstitutional burden, *Maryland Shall Issue, Inc. v. Moore*, 86 F.4th 1038, 1046 (4th Cir. 2023). On rehearing en banc, the Fourth Circuit reversed its panel and affirmed the constitutionality of the HQL provisions but reiterated AGI's independent and third-party standing. AGI filed a Petition for Writ of Certiorari that is presently pending before the United States Supreme Court. Writ of Certiorari, *Maryland Shall Issue, Inc., et al, Petitioners v. Wes Moore, Governor of Maryland, et al.*, No. 24-373 (U.S. Sep. 27, 2024).¹²

II. AGI lawfully sold handguns to Mr. Minor, a Maryland Designated Collector of handguns.

Mr. Minor, a Designated Collector, is alleged to have purchased four firearms from AGI between August and September of 2021. Compl. ¶ 73. Mr. Minor was not a new customer, having previously purchased three other handguns for his collection beginning more than nine months before.¹³

In Maryland, a person may not purchase more than one handgun in 30 days unless that person is a Designated Collector. Md. Code Ann., Pub. Safety § 5-129. A Designated Firearms Collector in Maryland is designated by the Maryland State Police as permitted by law to purchase multiple handguns in a 30-day period. There is no set limit. A Designated Collector devotes time and attention to acquiring certain types of handguns to enhance his collection and does not act as

¹² <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24-373.html> (last visited November 8, 2024).

¹³ See **Exhibit E** (ATF Agent Donovan's Affidavit in Support of Criminal Complaint and Arrest Warrant).

a firearms dealer.¹⁴ For Mr. Minor to become a Designated Collector, he had to submit an application and affidavit to the Maryland State Police under penalty of perjury. *Id.* Upon approval by the Maryland State Police, he was granted the status of a Designated Collector and could lawfully purchase multiple handguns without limit within any 30-day period. *Id.*

Moreover, before purchasing a handgun in Maryland, Mr. Minor had to obtain an HQL, which required him to submit to a fingerprint background check, complete a four-hour firearms safety training course that discusses Maryland firearm laws on how to legally purchase and transfer firearms—including the laws against straw purchasing and firearm trafficking—and complete an application to Maryland State Police, which then has up to 30 days to conduct a comprehensive background check.¹⁵

Even with an HQL, each time Mr. Minor intended to purchase a handgun, he needed to submit to the Maryland State Police an Application and Affidavit to Purchase a Regulated Firearm (“MSP Form 77R”). Compl. ¶ 50. A copy of an MSP Form 77R form is attached as **Exhibit F**.¹⁶ Mr. Minor had to fill out the MSP Form 77R for each transaction and answer the questions under penalty of perjury, which is subject to a sentence of up to 3 years in prison under Maryland law. See MD Code. Public Safety, § 5-118(c). Question 2 of the MSP Form 77R asks:

Are you participating in a straw purchase of a regulated firearm? (Straw purchase means a transaction in which an individual uses another person, known as the straw purchaser, to complete the application to purchase a regulated firearm, take initial possession of that firearm and subsequently transfer that firearm to the first individual.)

¹⁴ MSP 29-56 [https://mdsp.maryland.gov/Organization/Documents/Collector_Application_Affidavit%20\(5\).pdf](https://mdsp.maryland.gov/Organization/Documents/Collector_Application_Affidavit%20(5).pdf) (last visited November 8, 2024).

¹⁵ <https://mdsp.maryland.gov/Organization/Pages/CriminalInvestigationBureau/LicensingDivision/Firearms/HandgunQualificationLicense.aspx> (last visited on November 8, 2024).

¹⁶ https://www.marylandattorneygeneral.gov/forms/Form_77R_gun_questions.pdf (Last visited November 8, 2024).

Ex. E, p. 2. To obtain a firearm, Mr. Minor had to answer the question, “No.” Plaintiffs do not allege that Mr. Minor answered any MSP Form 77R question 2 in the affirmative.

Then, before the firearm can be transferred to Mr. Minor, the Maryland State Police runs another background check on Mr. Minor, and unless the Maryland State Police notifies Mr. Minor that his application was “Not Disapproved,” Mr. Minor could not take possession of the firearm. *See* Compl. ¶ 50. By “not disapproving” Mr. Minor’s application, in addition to confirming he is not a prohibited person, the Maryland State Police confirms that he is a Designated Collector and not barred from purchasing multiple handguns in a 30-day period.

In addition to completing the MSP Form 77Rs, Mr. Minor also had to complete an ATF Form 4473 for each transaction. A copy of an ATF Form 4473 is attached as **Exhibit G**.¹⁷ Mr. Minor had to answer the questions under penalty of perjury, for which a violation is subject to a maximum penalty of up to 5 years under federal law. *See* 18 U.S.C. § 1001(a). Questions 21a. and b. of ATF Form 4473 ask:

a. Are you the actual transferee/buyer of all of the firearm(s) listed on this form and any continuation sheet(s) (ATF Form 5300.9A)? Warning: You are not the actual transferee/buyer if you are acquiring any of the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer any of the firearm(s) to you.

b. Do you intend to sell or otherwise dispose of any firearm listed on this form and any continuation sheet(s) in furtherance of any felony or other offense punishable by imprisonment for a term of more than one year, a Federal crime of terrorism, or a drug trafficking offense?

Ex. G.

ATF Form 4473 required Mr. Minor to certify he “underst[ood] that a person who answers

¹⁷[www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/ download](https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download). (last visited November 8, 2024).

“yes” to any of the questions 21.b. through 21.l . . . is prohibited from receiving, possessing, or purchasing a firearm” and “making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law.” Ex. G. Plaintiffs do not allege that Mr. Minor answered ATF Form 4473 questions 21.a or b in the affirmative.

The chart below lists the dates AGI is alleged to have transferred firearms to Mr. Minor, when the MSP Form 77R was filed, and the make/model of the handguns.¹⁸

MSP Form 77R Date	Transfer Date	Make/ Model
July 28, 2021	August 4, 2021	Taurus G2c
August 6, 2021	August 13, 2021	Taurus G3
August 7, 2021	August 14, 2021	Glock 19X
August 28, 2021	September 4, 2021	Taurus PT 24/7

Copies of the MSP Form 77Rs for each firearm transferred to Mr. Minor from AGI are attached as **Exhibit H**. Based on the attached Form 77Rs, each firearm transferred to Mr. Minor was “Not Disapproved,” and Mr. Minor attested under penalty of perjury that he was not a straw purchaser. The Maryland State Police has access to all completed MSP Form 77Rs for all regulated firearm transfers, including all of Mr. Minor’s purchases with all the other defendants in this action. AGI only had access to MSP Form 77Rs for Mr. Minor’s transactions with AGI.

III. Mr. Minor was convicted of illegal firearm trafficking, not straw purchasing.

In July 2022, the United States filed a criminal complaint against Mr. Minor in the United States District Court for the District of Columbia for the interstate transfer of firearms to a

¹⁸ The Transfer Date and Make/Model listed in the chart was taken from the Complaint. *See* Compl. ¶ 73. The MSP Form 77R Date was taken from the Mr. Minor’s MSP Form 77R forms attached hereto as **Exhibit H**. Plaintiffs conflate the date of purchase with the date of transfer. In reality, Mr. Minor did not purchase any handguns from AGI in September 2021. *See supra* pp. 9 (chart showing date each MSP Form 77R was submitted and date of transfer). The date each handgun was purchased corresponds with the date the MSP Form 77R was submitted.

prohibited person in violation of 18 U.S.C. §922 and for conspiracy to violate federal firearm laws in violation of 18 U.S.C. § 371.¹⁹ ATF Agent Donovan filed an affidavit supporting the criminal complaint and outlining the probable cause for arresting Mr. Minor. *See* Ex. E. The affidavit was based on Mr. Minor’s 34 handgun purchases from three different firearm dealers and his transfer of those handguns to prohibited persons. AGI is the least mentioned firearms dealer in the affidavit. Agent Donovan obtained ATF Form 4473s regarding Mr. Minor’s firearm purchases from AGI and the other Defendants. *See* Ex. E, ¶ 15. Mr. Minor affirmed that he was the actual transferee/buyer of the firearm by checking “Yes” on the ATF Form 4473s in response to the question, “Are you the actual transferee/buyer of the firearm(s) listed on this form?” Ex. E, ¶¶ 16-17; *see* Compl. ¶ 41. Mr. Minor signed the ATF Form 4473s, certifying his answers were true and accurate under penalty of perjury.

In 2022, Mr. Minor was arrested and ultimately entered into a plea agreement, attached hereto as **Exhibit I**, agreeing to plead guilty to engaging in the business of dealing firearms without a license in violation of 18 U.S.C. § 922. As a result of the plea agreement, Mr. Minor was sentenced to eighteen months in prison and twenty-four months of supervised probation.

IV. The Complaint.

Plaintiffs assert five causes of action against AGI: public nuisance, negligence, negligence per se, negligence (statute or ordinance rule), and negligent entrustment. Plaintiffs allege that AGI knew or should have known Mr. Minor, a Designated Collector, was a straw purchaser when he purchased four firearms from AGI between August and September 2021. *See* Compl. ¶¶ 54, 73. Plaintiffs also appear to charge AGI with the knowledge of Mr. Minor’s thirty other firearm

¹⁹ *See United States of America v. Minor*, Case No. 1:22-mj-00171.

transfers from the other unaffiliated Defendants, even though they allege no facts to show how or why AGI should be charged with that knowledge.

Each cause of action against AGI is based on all 34 total firearms transfers by three unrelated Defendant firearm dealers over five months to Mr. Minor, not just the four alleged AGI transfers in August and September 2021. *See id.* Based on these 34 transfers and Mr. Minor's subsequent conviction for unlicensed firearm trafficking, Plaintiffs allege that AGI violated various Maryland and Federal firearm statutes and aided and abetted Mr. Minor in his scheme to illegally transfer the firearms to prohibited individuals.

Plaintiffs conclusorily assert that Defendants should have recognized Mr. Minor as a straw purchaser given his repetitive buying of the same firearms in a short period, despite each firearm being a different make and model. *Id.* at ¶ 53. Plaintiffs describe common indicators of straw sales as: "bulk purchases, repetitive buying of the same or similar firearms within a short time period (especially commonplace or non-collectible firearms), taking photographs or videos within the store, and customers' inability to answer simple questions about why they are purchasing firearms." *Id.* But Plaintiffs do not allege that Mr. Minor exhibited any such indicators to AGI. Nevertheless, Plaintiffs claim that AGI was on notice that Mr. Minor was a "straw purchaser" yet continued to facilitate the firearm transfers, citing Mr. Minor's firearm purchases from all Defendants. *Id.* at ¶ 58.

In addressing AGI's four firearm transfers to Mr. Minor, Plaintiffs allege AGI should have known that Mr. Minor was not buying the firearms for his own use because he purchased four 9mm pistols. *Id.* at ¶ 74. Yet, each of Mr. Minor's four purchases was a different make and/or

model, and 9mm caliber firearms are the most popular caliber in America.²⁰ Plaintiffs then cite a seven-year-old ATF investigation into AGI that resulted in two warning letters (one for each of its retail outlets at the time) as evidence that AGI was on notice to prevent straw purchase sales. Remarkably, while Plaintiffs rely upon the Maryland Firearm Crime, Injuries, Fatalities, and Crime Firearms Study 21, they ignore AGI’s contemporaneous 2021 Maryland State Police’s Dealer Audit reported there, which found no fault in AGI’s inventory or recorded transfers and deemed the audit satisfactory with no further actions recommended.²¹ AGI has always been mindful that it should try to prevent straw purchases as the law commands. Plaintiffs rely solely on four handgun transfers over a six-week period—by a Maryland Designated Collector with an HQL and whose MSP Form 77Rs were all returned “Not Disapproved” by Maryland State Police—to claim AGI should have known Mr. Minor was a straw purchaser.

Plaintiffs allege no damages flowing directly from AGI’s four handgun transfers to Mr. Minor, nor do they allege any were recovered in connection with a crime of violence. Plaintiffs broadly claim damages stemming from the financial costs associated with gun violence generally, citing the estimated cost to the District in response to a firearm homicide as \$1.53 million per suspect and \$783,000 per suspect for nonfatal shootings. *Id.* at ¶ 33. Maryland does not allege any estimated cost incurred associated with gun violence. Plaintiffs nevertheless claim that they have been harmed by AGI’s firearm transfers to Mr. Minor and unnamed others, not mentioned in the

²⁰ Jon Rydberg, ATF AFMER Pistol and Revolver Caliber Groupings, Orchid Advisors (January 31, 2023), <https://orchidadvisors.com/atf-afmer-pistol-and-revolver-caliber-groupings/> (last visited November 8, 2024).

²¹ The States cite Maryland Firearm Crime, Injuries, Fatalities, and Crime Firearms Study 21, https://www.marylandattorneygeneral.gov/Reports/122023_Firearms_Report.pdf. *See generally* Compl. The Maryland Firearm Crime, Injuries, Fatalities, and Crime Firearms Study 21, at pp. 25, indicates that there was no issue with AGI’s record keeping and compliance with Maryland firearm regulations.

“Facts” section of the Complaint, seeking harm caused by “the costs of healthcare, emergency medical services, social services, law enforcement, incarceration, lost tax revenues, and lost communal benefits of the Plaintiffs’ limited and diverted resources” and “the lost value of activities,” “depressed value of certain property held by the District,” “lost wages and depressed private property values” impacting the Plaintiffs’ tax revenue. *Id.* at ¶¶ 95, 106.

Plaintiffs also seek to enjoin AGI from knowingly selling firearms to straw purchasers or firearm traffickers. *See generally id.* Yet, AGI and other federally licensed firearm dealers in Maryland are already under a legal duty, with the threat of criminal prosecution, to prohibit sales to straw purchasers and firearm traffickers, something AGI takes seriously. *See generally id.* (citing 18 U.S.C. §§ 922-924 and Md. Code Ann., Pub. Safety § 5-134(b)(13) prohibiting firearm transfers to prohibited persons, including straw purchasers).

STANDARD OF REVIEW

“Under Maryland Rule 2-322(b)(2), the court may dismiss a complaint if it fails ‘to state a claim upon which relief can be granted.’” *Aleti v. Metro. Balt., LLC*, 479 Md. 696, 717 (2022); *see* Md. R. Civ. P. Cir. Ct. 2-322. Such a motion should be granted “where the factual allegations in a complaint, if proven, would not provide a legally sufficient basis for the cause of action asserted in the complaint.” *Aleti*, 479 Md. at 717. In determining whether the plaintiff has stated a claim, the court “assume[s] the truth of all relevant and material facts that are well pleaded and all inferences which can be reasonably drawn from those pleadings.” *Id.* (quoting *Barclay v. Castruccio*, 469 Md. 368, 373–74 (2020)).

But “[m]ere conclusory charges that are not factual allegations need not be considered.” *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condominium, Inc.*, 253 Md. App. 279, 296 (2021). Conclusory allegations and uncertainties “must be construed against” the Plaintiffs. *Shenker v. Laureate Education, Inc.*, 411 Md. 317, 335 (2009); *Alleco Inc.*

v. Harry & Jeanette Weinberg Foundation, Inc., 340 Md. 176, 193 (1995) (providing that uncertainty in the allegations must be “construed against the pleader”). And “speculation” is not enough to survive; the plaintiff must provide a plausible “nexus between the facts [alleged] and the [legal] conclusion” to be inferred. *McMahon v. Piazze*, 162 Md. App. 588, 597 (2005).

On a motion to dismiss, this Court may also take judicial notice of additional facts that are either “matters of common knowledge or capable of certain verification.” *Faya v. Almaraz*, 329 Md. 435, 443-44 (1993). *See also Abrishamian v. Washington Medical Group*, 216 Md. App. 386, 413 (2014)(same). The Court may also take judicial notice of documents referenced in the complaint when considering any motion to dismiss. *See Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 710, n. 4 (2015) (although the plaintiff did not attach a Deposit Account Agreement to his complaint, “he expressly referred to it and repeatedly alleged that its disclosures that did not satisfy the” Consumer Protection Act; thus, the court properly regarded the agreement as “simply supplementing the allegations in the complaint” without converting defendant’s motion to dismiss into one for summary judgment).

In this case, AGI respectfully requests that the Court take judicial notice of each MSP Form 77R associated with the sales allegedly made by AGI, as identified in paragraph 73 of the Complaint. These Forms are expressly referenced in the Complaint and were, by law, contemporaneously submitted to, and are already within the possession of, the Maryland State Police. As such, these Forms are “capable of certain verification.” *See Faya*, 329 Md. at 443-44. AGI also requests that the Court take judicial notice of the criminal case against Mr. Minor, including all filings of public record, because Mr. Minor’s conviction is expressly referenced in the Complaint. *See, e.g.*, Compl. ¶¶ 55 n.34, 61 n.39, 72 n.48. The criminal case against Mr. Minor,

including all filings, are “public record” of which judicial notice may be taken. *See, e.g., Abrishamian*, 216 Md. App. at 414 (collecting cases).

Because the bases of Plaintiffs’ claims against AGI stem from its allegedly wrongful sales to Mr. Minor, which all occurred in Maryland, the Court should apply Maryland’s substantive law under the doctrine of *lex loci delicti*. *Doctor's Weight Loss Centers, Inc. v. Blackston*, 487 Md. 476, 492 (2024) (discussing Maryland’s adherence to *lex loci delicti* principles in tort cases).

ARGUMENT

I. Plaintiffs fail to allege the necessary elements for their tort claims.

Plaintiffs assert five causes of action: public nuisance (Count I), negligence (Count II), negligence per se (Count III), negligence (statute or ordinance rule)(Count IV), and negligent entrustment (Count V). Plaintiffs’ causes of action against AGI rely on AGI’s alleged violation of the straw purchaser statutes, *see, e.g.*, Compl. ¶¶ 85, 99, but Plaintiffs fail to allege facts showing a violation of those statutes. Plaintiffs also fail to allege the necessary elements to bring their claims, including causation. To assert a claim for public nuisance, Plaintiffs must allege a public right and that AGI’s four alleged handgun transfers to Mr. Minor unreasonably interfered with that public right, causing Plaintiffs harm. *See Tadjer v. Montgomery Cnty.*, 300 Md. 539, 552 (1984) (citing Restatement (Second) of Torts § 821B). To assert their negligence-based claims, Plaintiffs must, at minimum, allege the existence of a duty, a breach of that duty, causation, and harm. *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 495 (2011).

By failing to allege facts showing knowledge of Mr. Minor’s gun trafficking or purchases from other dealers, Plaintiffs fail to allege facts showing AGI’s violation of the straw purchase statutes. Moreover, all of these claims require Plaintiffs to allege facts sufficient to establish causation: that AGI’s sale of four handguns to Mr. Minor caused their injuries allegedly flowing from firearm violence. *See Collins v. Tri-State Zoological Park of W. Maryland, Inc.*, 514 F. Supp.

3d 773, 781 (D. Md. 2021) (in assessing a public nuisance claim, the court looks to whether the defendant's conduct imposes or causes an injury to the public) (citing *Adams v. Commissioners of Town of Trappe*, 204 Md. 165, 170 (1954)); *Troxel*, 201 Md. App. at 495 (a properly pled negligence claim must allege that defendant's actions caused the alleged injury). Plaintiffs fail to meet the necessary causation element.

Plaintiffs' public nuisance claim further fails because they do not allege a cognizable public right, how AGI's four alleged handgun sales to Mr. Minor interfered with that public right, or that AGI created, participated in, or adopted the alleged nuisance resulting in firearm violence. Plaintiffs' negligence-based claims also fail because they do not allege sufficient facts charging AGI with knowledge of Mr. Minor's gun trafficking or purchases from other dealers to show that AGI breached any duty.

A. Plaintiffs fail to allege facts showing AGI's violation of the straw purchase statutes.

Plaintiffs base their entire case against AGI on the transfer of four handguns to Mr. Minor, a Designated Collector, who Plaintiffs allege knew or should have known was a straw purchaser. Plaintiffs allege that AGI participated in Mr. Minor's straw purchase scheme, violating both Maryland and Federal straw purchase statutes. Plaintiffs then cite various firearm statutes and regulations, only two of which involve straw purchasing: Md. Code Ann., Pub. Safety § 5-134(b)(13) and Md. Code Regs. 29.03.01.08. Section 5-134(b)(13) provides that a dealer may not transfer a firearm to a purchaser who it knows or has reasonable cause to believe is a participant in a straw purchase. COMAR 29.03.01.08 codifies this prohibition as a regulation. None of the federal statutes cited by Plaintiffs prohibited Mr. Minor's alleged straw purchases from AGI. Federal law, in effect at the time of these alleged purchases (2021), did not expressly prohibit straw purchases. Beginning in 2022, "straw purchases" were more directly regulated federally with the

enactment of Section 12004 of the Bipartisan Safer Communities Act, Pub. L. 117-159, 136 Stat 1313 (June 25, 2022), codified in part at 18 U.S.C. § 932.

The linchpin to Plaintiffs' claim that AGI violated the straw purchase statutes is knowledge that Mr. Minor was a straw purchaser. But Plaintiffs fail to allege facts showing AGI had any indication that Mr. Minor was anything other than what he purported to be in the late summer of 2021—a former customer returning to purchase less than a handful of handguns over several months for his private collection. Plaintiffs assert that AGI knew or should have known that Mr. Minor was “engaged in straw purchasing or dealing firearms without a license” based solely on the four alleged handguns AGI transferred to Mr. Minor. Compl. ¶¶ 75, 125. Plaintiffs support this assertion based on “the volume, type, and pattern of Mr. Minor’s” four alleged handgun purchases from AGI, which indicated “that Mr. Minor was not buying the pistols for his own use.” *Id.* at ¶ 74. Plaintiffs also allege the common indicators of straw sale purchases, such as “bulk purchases, repetitive buying of the same or similar firearms within a short time period (especially commonplace or non-collectible firearms), taking photographs or videos within the store, and customers’ inability to answer simple questions about why they are purchasing firearms.” *Id.* at ¶ 53. But Plaintiffs fail to allege that Mr. Minor presented any of these ‘indicators’ to AGI, except only the purchase of four handguns over more than a month. Critically Plaintiffs ignore both Mr. Minor’s Designated Collector status and that Maryland State Police allowed each of the purchases to go through. These four handgun purchases, to a Designated Collector, cannot as a matter of law charge AGI with knowledge that Mr. Minor was a straw purchaser.

Mr. Minor’s four alleged handgun purchases from AGI involve different handguns. The four firearms vary in their features, manufacturer, popularity, intended purpose, dimensions, weight, design age, and appearance. These differences may appear superficial to the uninformed

but are significant to the industry and its more sophisticated customers (especially collectors) as can be seen on the manufacturers' web sites.²² The only commonality between the four handguns was that they were chambered in 9mm, the most common handgun chambering in the United States. Given these differences, coupled with Plaintiffs' failure to allege that Mr. Minor exhibited the general straw purchaser "indicators" to AGI to alert AGI of his alleged scheme, Plaintiffs fail to allege any factual predicate charging AGI with knowledge of Mr. Minor's criminal intent and fail to allege a violation of the straw purchaser statutes they cite.

B. Plaintiffs fail to allege facts showing that AGI's four handgun transfers to Mr. Minor proximately caused Plaintiffs' alleged injuries from firearm violence.

Causation is essential to each of Plaintiffs' claims. *Valentine v. On Target, Inc.*, 112 Md. App. 679, 691, (1996), *aff'd*, 353 Md. 544 (1999) ("to recover in negligence, it is incumbent upon appellant to establish not only the breach of a duty owed by appellee but also that the breach was the proximate cause of his damages"); *Collins*, 514 F. Supp. 3d at 781 (in assessing a public nuisance claim, the court looks to whether the defendant's conduct imposes or causes an injury to the public); *Hector v. Bank of New York Mellon*, 473 Md. 535, 559 (2021) (applying proximate cause analysis in negligence per se case). Although causation is ordinarily a fact question, it may be properly determined at the pleading stage if the well-pleaded factual allegations, taken as true, would not support a finding of causation. *Kiriakos v. Philips*, 448 Md. 440, 470 (2016); *see also*

²² The manufacturer specifications for the four handgun purchases from AGI are available online. *See* Tarus, Taurus G2C, <https://www.taurususa.com/pistols/taurus-g2/taurus-r-g2c-matte-black-9mm-luger-compact-12-rds> (last visited November 8, 2024); Tarus, Tarus G3, <https://www.taurususa.com/pistols/taurus-g3/taurus-r-g3-matte-stainless-9mm-luger-full-size-17-rds-steel-sights> (last visited November 6, 2024); Glock, G19x, <https://us.glock.com/en/pistols/g19x> (last visited November 8, 2024); *see also* Genitron.com, Tarus Model PT-24/7, <https://www.genitron.com/Handgun/Taurus/Pistol/PT-24-7/9-mm/Variant-1> (last visited November 8, 2024).

Caroline v. Reicher, 269 Md. 125, 133 (1973) (explaining that “the determination of proximate cause . . . is for the jury” except when “the facts admit of but one inference”).

Causation includes both proximate cause and foreseeability. Proximate cause “involves a conclusion that someone will be held legally responsible for the consequences of an act or omission.” *Peterson v. Underwood*, 258 Md. 9, 10 (1970). To be a proximate cause of an injury, the wrongful act must be 1) a cause in fact, and 2) a legally cognizable cause. *Pittway Corp. v. Collins*, 409 Md. 218, 242–43 (2009); *Hartford Ins. Co. v. Manor Inn*, 335 Md. 135, 156 (1994). The starting point for proximate cause is foreseeability, *Collins v. Li*, 176 Md. App. 502, 536 (2007), but that itself is not enough. *See, e.g., Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1306 (2017) (“[F]oreseeability alone does not ensure the close connection that proximate cause requires.”).

When addressing proximate cause, the court first determines foreseeability by looking back “from the point in time, when the harm occurred, to the actor’s negligent conduct and deduce whether it appears highly extraordinary that such conduct should have brought about harm, severing the link between the act and the harm and whether such conduct is a substantial factor in causing the harm.” *Li*, 176 Md. App. at 538 (citing *Atlantic Mut. Ins. Co. v. Kenney*, 323 Md. 116, 129–30 (1991); Restatement (Second) of Torts § 435 (1965)). The “substantial factor” test provides that an “actor’s negligent conduct is a legal cause of harm to another if (a) his conduct is a substantial factor in bringing about the harm, and (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm.” *Pittway Corp. v. Collins*, 409 Md. 218, 244 (2009) (citing Restatement (Second) of Torts § 431 (1965)).

Here, Plaintiffs allege that AGI sold four guns to Mr. Minor, who then trafficked those guns, and because of Mr. Minor’s illegal trafficking, Plaintiffs suffered harm caused generally by

firearm violence. *See, e.g.*, Compl. ¶ 10. But Plaintiffs fail to connect any of the four AGI handguns with firearm violence. Compl. ¶¶ 88, 92. There is no factual basis in the Complaint to suggest that AGI’s four specific handgun sales to Mr. Minor actually caused Plaintiffs any of their alleged harm. *See supra* pp. 16-18.

Of the four AGI handgun transfers to Mr. Minor at issue, none were alleged to have been used in a crime involving gun violence. *See, e.g., id.* at ¶ 92. Plaintiffs allege that the Glock 19X that AGI transferred to Mr. Minor on August 14, 2021 was recovered by the Metropolitan Police Department on April 8, 2022, and speculate that it was used “in the facilitation of drug distribution within the District [of Columbia]” but allege no facts in support of their claim. *See, e.g., id.* Plaintiffs allege the Taurus G2c that AGI transferred to Mr. Minor on August 4, 2021 was recovered on June 28, 2022, in the possession of a fugitive D.C. resident with an active warrant for assault in Prince George’s County. *See, e.g., id.* Plaintiffs fail to mention that a third handgun—a Taurus 24/7 Pro, the last handgun Mr. Minor received from AGI on September 4, 2021—was in his possession and turned over to ATF agents on December 6, 2021. Ex. E, at 15.

Based solely on the two AGI firearms alleged to have been recovered, Plaintiffs claim that they incurred substantial costs and will incur substantial costs to ameliorate the harms caused by firearm violence. *See, e.g., id.* at ¶ 94. Plaintiffs describe the general costs incurred in responding to firearm violence, alleging they have spent millions of dollars to respond to and investigate firearm violence, prosecute and incarcerate those who commit firearm violence, and provide medical services to victims of firearm violence, including the cost of the response of law enforcement and other emergency services. *See, e.g., id.* at ¶ 104. Plaintiffs do not allege that they incurred specific costs due to AGI’s alleged firearm transfers, none of which were used in firearm violence.

Plaintiffs fail to allege that they incurred costs due to AGI's firearm transfers at issue because none of the guns were alleged to have been used in gun violence. This alone severs the causation needed for Plaintiffs to hold AGI liable in tort. Nevertheless, Plaintiffs attempt to hold AGI liable for all gun violence in DC and Maryland by conclusorily alleging that AGI knew or should have known that Mr. Minor was a straw purchaser and would traffic the handguns purchased, thereby causing Plaintiffs harm. *See* Compl. ¶ 93. Even taking this nebulous allegation as true, foreseeability alone is not sufficient.

The Supreme Court has held that proximate cause requires more than foreseeability and demands a direct connection between the asserted injury and the complained-of action. *See, e.g., Bank of Am. Corp.* 137 S. Ct. at 1306. Applying that settled principle, numerous courts have held that proximate cause bars suits like this one, *see, e.g., City of Philadelphia v. Beretta U.S.A. Corp.*, 277 F.3d 415, 425 (3d Cir. 2002), even where there are allegations connecting a specific firearm to violence. *See, e.g., Steinle v. United States*, 17 F.4th 819, 822 (9th Cir. 2021) (finding as a matter of law that negligence in leaving a loaded handgun unlocked and unsupervised in a vehicle was so remote from the killing of a woman with that same handgun that it cannot amount to proximate cause); *Valentine*, 353 Md. at 551 (dismissing petitioners' argument that would impose liability "based solely on an imprecise notion of a foreseeability of risk of harm to the public in general").

Moreover, where a third party directly causes the alleged harm, like here, the court's inquiry is not on foreseeability "but, rather, whether the person or entity sued had control over the conduct of the third party who caused the harm by virtue of some special relationship." *Warr v. JMGM Group, LLC*, 433 Md. 170, 183 (2013). Plaintiffs do not, and indeed cannot, allege any such special relationship or that any control existed. And, Plaintiffs' attempt to hold AGI liable for four handgun transfers to Mr. Minor, handguns that have never been linked to firearm violence, is too remote to

be the proximate cause of Plaintiffs' harm. To permit such attenuated connections to satisfy proximate cause would distort that standard beyond recognition—with dramatic consequences far beyond this suit and the firearms context. Such an expansive view of proximate cause imposes boundless liability on any industry whose activities have possible indirect downstream consequences that result from independent, third-party actors misusing or abusing their products (e.g., pharmaceuticals, agricultural products, automobiles, to name a few). And it broadly expands the ability of governments to bring suit over these alleged harms, vastly extending their grip on legal economic activity far beyond their circumscribed law enforcement powers. In areas ranging from climate change to lead paint, state and local governments (and even foreign sovereigns) could sue industries to vindicate harms purportedly suffered by their citizens—harms that have always rightly been considered far too attenuated to pass muster but now may become standard fodder for such litigation.

Plaintiffs have failed to sufficiently allege causation and all their claims should be dismissed.

C. Plaintiffs' public nuisance claim also fails because they do not allege a public right, how AGI interfered with that public right, or how AGI created the nuisance.

Plaintiffs' public nuisance claim, like their four negligence-based claims, is based on AGI's sale of four firearms to Mr. Minor, a Designated Collector. Plaintiffs' attempt to package its theory as a public nuisance fails because they do not adequately allege the requisite elements.

1. Plaintiffs have not adequately alleged the implication of a public right.

Maryland has adopted the Restatement (Second)'s definition of public nuisance as “an unreasonable interference with a right common to the general public.” *Tadger v. Montgomery Cnty.*, 300 Md. 539, 552 (1984) (citing Restatement (Second) of Torts § 821B). “A public right is one common to all members of the general public. It is collective in nature and not like the individual

right that everyone has not to be assaulted or defamed or defrauded or negligently injured.” *Id.* (quoting comment g of the Restatement). For example, polluting a stream does not inherently implicate a public right—it only does so if it “prevents the use of a public bathing beach or kills the fish in a navigable stream and so deprives *all* members of the community” of fishing access. *Id.* (emphasis added).

Plaintiffs fail to allege a public right. Plaintiffs assert that the four alleged handguns sold to Mr. Minor by AGI amount to an unreasonable interference with “the rights of the area’s residents to life, health, the use and enjoyment of property, the right to travel within the region, the right to attend school, and the ability to effectuate all of these rights without fear of being shot or suffering an injury from a gun.” Compl. ¶ 88. It is settled law, however, that there is not a public right to be free from being assaulted by criminals. *Tadger*, 300 Md. at 553.

Without pleading a legally cognizable public right, Plaintiffs’ nuisance claim fails.

2. Plaintiffs have failed to show how AGI’s four handgun transfers unreasonably interfered with a public right.

Plaintiff have failed to allege facts showing that AGI’s conduct has interfered with any public right at all, let alone unreasonably so. Conduct may be said to “*significant[ly]* interfere with the public health, the public safety, the public peace, the public comfort or the public convenience” only when it is “proscribed by a statute, ordinance, or administrative regulation,” and “is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.” Restatement (Second) of Torts § 821B(2) (emphasis added).

Courts have long refused to hold manufacturers and distributors liable in public nuisance for downstream harms traceable to their lawful products. In *State ex rel. Hunter v. Johnson & Johnson*, for instance, the Oklahoma Supreme Court recently held that its analogous nuisance

statute “does not apply to ... [the] manufacturing, marketing, and selling [of] prescription opioids.” 499 P.3d 719, 731 (Okla. 2021). As the court explained, applying nuisance law (rather than products liability law) to these product-based claims would conflict with nuisance jurisprudence in two respects. First, it would conflict with the established rule that public nuisance claims must concern the violation of a public right, not a private one; “[p]roducts generally are purchased and used by individual consumers, and any harm they cause—even if the use of the product is widespread and the manufacturers or distributors’ conduct is unreasonable—is not an actionable violation of a public right.” *Id.* at 726–27 (quoting Donald Gifford, *Public Nuisance as a Mass Products Liability Tort*, 71 U. Cin. L. Rev. 741, 817 (2003)). Second, a seller, similar to a manufacturer, lacks “control of its product once it is sold,” meaning that it lacks power to prevent the product’s misuse or to “remove or abate” any resulting nuisance. *Id.* at 727. Finally, allowing nuisance claims in such circumstances would subject manufacturers to “perpetual[] liab[ility]” across a range of industries: “will a sugar manufacturer or the fast-food industry be liable for obesity, will an alcohol manufacturer be liable for psychological harms, or will a car manufacturer be liable for health hazards from lung disease to dementia or for air pollution?” *Id.* at 729, 731. Such wide-ranging liability should come—if at all—from legislative activity, not the “expansion of public nuisance law” beyond its “traditional limits.” *Id.* at 731.

Johnson & Johnson did not break new ground. Indeed, across a range of industries, courts have refused to use nuisance law to regulate harms arising from the foreseeable use of products. This principle is especially significant where the foreseeable *misuse* of a product is concerned. For example, in *Modisette v. Apple Inc.*, the California Court of Appeal rebuffed a public nuisance claim alleging that Apple could be held responsible for harms caused by distracted drivers because it failed to install “lockout” technology in its iPhone 6. 30 Cal. App. 5th 136, 140

(2018). The *Modisette* court stated that the “burden to Apple and corresponding consequences to the community that would flow” from such liability was simply too great, especially in light of the “tenuous connection” between the plaintiffs’ injuries and “Apple’s design.” *Id.* at 142.

A handful of courts have taken a different approach to the question of foreseeability. But the correct result—as explained by the authors of the Third Restatement in addressing a topic left open by the Second Restatement—is clear:

Tort suits seeking to recover for public nuisance have occasionally been brought against the makers of products that have caused harm, such as tobacco, firearms, and lead paint. These cases vary in the theory of damages on which they seek recovery, but often involve claims for economic losses the plaintiffs have suffered on account of the defendant's activities; they may include the costs of removing lead paint, for example, or of providing health care to those injured by smoking cigarettes. *Liability on such theories has been rejected by most courts, and is excluded by this Section, because the common law of public nuisance is an inapt vehicle for addressing the conduct at issue.*

Restatement (Third) of Torts: Liab. for Econ. Harm § 8 cmt. g (Am. L. Inst. 2020) (emphasis added).

As will be discussed below, Plaintiffs fail to allege facts to show a violation of any applicable enforceable statute. Plaintiffs fail to allege how four handgun transfers could be said to have caused firearm violence, let alone interfere with life, property, travel, and education. Compl. ¶ 88. Four firearm transfers do not have an impact that is analogous to polluting a river so thoroughly that it “deprives *all* members of the community” use of that river. *Tadger*, 300 Md. at 552 (emphasis added). Nor do four firearm transfers, which occurred more than three years ago, constitute a continuing or substantial harm. Instead, what Plaintiffs are attempting to do in their public nuisance count “is simply to frame an action in negligence using somewhat different terms. *Id.* at 554. Public nuisance is an inapt vehicle for addressing Plaintiffs’ claims. Restatement (Third) of Torts: Liab. for Econ. Harm § 8 cmt. g (Am. L. Inst. 2020).

Without concretely demonstrating that AGI's allegedly wrongful transfer of four handguns to Mr. Minor three years ago is ongoing or how those four transactions affected the entire community's interests, Plaintiffs have not pled an interference with a public right. Without a public right that has been interfered with, Plaintiffs' nuisance claim fails.

3. Plaintiffs have not alleged that AGI created the alleged nuisance of general firearm violence.

To be liable for public nuisance, AGI must have either created the nuisance, actively participated in it, or undertaken "some positive act evidencing its adoption." *Gorman v. Sabo*, 210 Md. 155, 161 (1956); see Restatement (Second) of Torts § 834, cmt. d (one of several participants in the activity must contribute "substantial[ly] . . . to be a legal cause of harm"). There is no claim that AGI created an illegal firearm epidemic because of four handgun transfers to Mr. Minor. Compl. ¶ 87. And, of the four transfers, only two were allegedly trafficked by Mr. Minor, and none were alleged to have been involved in gun violence.

Plaintiffs claim that illegally trafficked guns are in and of themselves a public nuisance. *Id.* But, even if Plaintiffs are correct, there are no well-pleaded facts showing that AGI actively participated in or made "positive act[s]" or "positive . . . adoption" of that illegal trafficking. *Gorman*, 210 Md. at 161. The closest allegation is Plaintiffs' persistent drumbeat of unsubstantiated conclusions that AGI "knew, had reasonable cause to believe, or deliberately avoided knowing" that Mr. Minor was a straw purchaser, given his repetitive buying of the same firearms in a short period. Compl. ¶ 53. This is the linchpin of their claims, and it fails as a matter of law.

Plaintiffs describe common indicators of straw sales indicators, such as: "bulk purchases, repetitive buying of the same or similar firearms within a short time period (especially commonplace or non-collectible firearms), taking photographs or videos within the store, and

customers' inability to answer simple questions about why they are purchasing firearms." *Id.* But Plaintiffs do not allege that Mr. Minor exhibited such indicators to AGI. His status as a Designated Firearm Collector entitled him to purchase multiple handguns in a 30-day period, which Maryland State Police confirmed by allowing the transactions to go through.

AGI cannot be liable, as a matter of law, for the nuisance the Plaintiffs allege.

D. Plaintiffs' negligence-based claims also fail because they do not sufficiently allege facts showing a duty or breach of any duty.

To sufficiently allege a negligence-based claim, Plaintiffs must establish a duty owed to them, breach of that duty, causation, and harm. *See Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 289 (2022). Plaintiffs have failed to establish causation. *See supra* pp. 18-22. Plaintiffs have also failed to allege a duty breached by AGI in selling four alleged handguns to Mr. Minor. To establish a breach of duty, Plaintiffs must sufficiently allege the AGI's knowledge of Mr. Minor's trafficking. *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 315 (2007) (requiring actual or constructive knowledge as a prerequisite to a breach of duty). They fail on both critical elements.

1. AGI does not have a duty to protect the general public against firearm violence.

It is well established that "[t]here can be no negligence where there is no duty that is due." *Kennedy Krieger Inst., Inc. v. Partlow*, 460 Md. 607, 633 (2018). And "[a] private person is under no special duty to protect another from the criminal acts by a third person, in the absence of statutes, or of a special relationship." *Valentine*, 353 Md. at 551-52 (1999) (citing Restatement (Second) of Torts § 315 (Am. L. Inst. 1965)).

In *Valentine*, the Maryland Court of Appeals (now the Supreme Court of Maryland) expressly rejected a claim brought against a firearms dealer, holding it could not "discern in the

common law the existence of a third-party common-law duty that would apply to these facts.” *Id.* at 553. As stated in *Valentine*, “[o]ne cannot be expected to owe a duty to the world at large to protect it against the actions of third parties, which is why the common law distinguishes different types of relationships when determining if a duty exists.” *Valentine*, 353 Md. at 553, 727 A.2d at 951. The Court of Appeals reached the same result in *Warr v. JMGM Group, LLC*, 433 Md. 170 (2013), where the court applied *Valentine* to hold that a bar owner owed no duty to third parties or the public when an intoxicated bar patron caused an accident after leaving the bar. Plaintiffs do not allege any “well-pleaded facts” that (even if true) establish a legal duty.

The Court of Appeals in *Valentine* explained that a “gun store owner” did not owe any tort duty “to third parties to exercise reasonable care in the display and sale of handguns to prevent the theft and the illegal use of the handguns by others against third parties.” *Valentine*, 353 Md. at 546–47, 553, 556 (emphasis added). The *Valentine* court reasoned:

One cannot be expected to owe a duty to the world at large to protect it against the actions of third parties, which is why the common law distinguishes different types of relationships when determining if a duty exists. The class of persons to whom a duty would be owed under these bare facts would encompass an indeterminate class of people, known and unknown. When balancing the burden on the shop owner with the benefit to society at large clearly this imposition of duty would be a tremendous burden on shop owners while providing only a hypothetical benefit to the public at best. This Court does not discern in the common law the existence of a third party common law duty that would apply to these facts.

Id. at 553. The court further rejected the argument that foreseeability of criminal misuse of firearms was itself sufficient to establish a duty and observed that this argument “would impose a duty based solely on an imprecise notion of a foreseeability of risk of harm to the public in general.”

Id. at 551. *Valentine* is determinative: AGI owed no duty to Plaintiffs or their citizenry to prevent the criminal misuse of AGI’s products by a third party.

The Complaint alleges that AGI breached its duty “to exercise reasonable care in distributing and selling firearms and to refrain from engaging in activity that creates reasonably foreseeable risks of injury to others” by “knowingly engaging in straw sales of firearms that it knew or should have known were being directly unloaded into illegal streams of commerce.” Compl. ¶ 98. Those conclusory allegations fail both because AGI’s purported knowledge is not supported by “well-pleaded” facts, *see supra* pp. 16-18, *infra* pp. 30-31, and those threadbare allegations run headlong into the rule that AGI has no “duty to protect another from the criminal acts by a third person, in the absence of statutes, or of a special relationship.” *Valentine*, 353 Md. at 552.

To rely on a special-relationship-based duty, Plaintiffs must establish that AGI “had control over the conduct of the third party who caused the harm” or otherwise show “the existence of a special relationship between the person sued and the injured party or the person sued and the third party.” *Warr v. JMGM Grp., LLC*, 433 Md. 170, 183–84 (2013) (holding that a tavern owed no tort duty to the general public to guard against the risk that intoxicated patrons might harm others). Plaintiffs cannot allege that AGI had control over Mr. Minor, who trafficked firearms to prohibited persons. And Plaintiffs cannot allege that a special relationship otherwise existed between AGI and Plaintiffs’ citizenry. Plaintiffs cannot overcome Maryland’s longstanding rule that AGI had no “duty to protect another from the criminal acts by a third person.” *Valentine*, 353 Md. at 551–52.

Plaintiffs allege that AGI “took on the obligation to prevent such straw sales and gun trafficking as part of its legal responsibilities as an FFL.” Compl. ¶ 103. But that is exactly contrary to the holding of *Valentine*. Plaintiffs’ claim fails because AGI does not “owe a duty to the world at large to protect it against the actions of third parties.” *Valentine*, 353 Md. at 553.

2. Plaintiffs do not allege sufficient facts charging AGI with knowledge of Mr. Minor’s illegal firearm trafficking.

To the extent AGI has a duty to prevent straw purchases, that duty was not breached because there is only a duty to deny a sale when AGI has “reasonable cause” to believe that a straw purchase is occurring, and there are no specific, well-pleaded facts describing how AGI could have had “reasonable cause.” *See supra* pp. 18-22, *supra*. Plaintiffs fail to allege facts to support their conclusion that AGI sold four firearms to a purchaser that it “knows or has reasonable cause to believe . . . is a participant in a straw purchase.” Compl. ¶ 103.

Knowledge of the risk or danger involved is a necessary element of negligence. Unless a defendant has actual knowledge or is reasonably chargeable with knowledge that his act or omission may injure another, he is not guilty of negligence. *Pendleton v. State*, 398 Md. 447, 488 (2007) (finding that absent knowledge of the person’s history of conduct and sufficient factual allegations attributing the knowledge to the State there is no duty giving rise to a cause of action for negligence). The same reasoning applies to Plaintiffs’ negligent entrustment claim. *Mackey v. Dorsey*, 104 Md. App. 250, 258 (1995) (the “principal feature of [negligent entrustment] is the [defendant’s] knowledge” of the trustee’s propensity to use the instrumentality dangerously).²³ Plaintiffs allege no facts from which AGI should have known Mr. Minor would traffic the four handguns. *See supra* pp. 16-18, 30-31.

²³ There is no material difference between Maryland’s definition of negligent entrustment and PLCAA’s definition:

As used in subparagraph (A)(ii), the term “negligent entrustment” means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

15 U.S.C. § 7903(5)(B).

Only Maryland—not AGI—was aware of Mr. Minor’s purchases of 30 other handguns from two other unrelated dealers, and Maryland did not “Not Disapprove” any of Mr. Minor’s purchases. If AGI should have known that Mr. Minor was engaged in straw purchasing based on four alleged firearm sales and acted negligently in transferring the handguns to Mr. Minor, then Maryland must have known of Mr. Minor’s straw purchasing as well and is therefore contributorily negligent in allowing the transfers to proceed. *See Cadore v. Yes Organic Mkt. Hyattsville Inc.*, 253 Md. App. 628, 638 (2022) (if an injured party with knowledge and appreciation of the existence of danger that may injure it and acted or failed to act to avoid the injury, they may be guilty of contributory negligence) (quoting *Menish v. Polinger Co.*, 277 Md. 553, 561, 356 A.2d 233, 237 (1976)).

Based on the foregoing, Plaintiffs fail to allege any factual predicate charging AGI with knowledge of Mr. Minor’s criminal intent and their negligence-based claims should be dismissed.

II. PLCAA’s preemption provides AGI immunity from this lawsuit.

This action is expressly preempted by a federal statute—PLCAA—providing AGI immunity from this action. *Ileto v. Glock, Inc.*, 421 F. Supp. 2d 1274, 1283 (C.D. Cal. 2006) (“PLCAA provides immunity to firearms manufacturers and dealers from any lawsuit . . .”), *City of New York v. Beretta*, 524 F.3d 384, 398 (2d Cir. 2008) (“PLCAA immunizes a specific type of defendant from a specific type of suit.”). PLCAA preempts lawsuits like this one seeking to hold firearm dealers liable for the criminal or unlawful misuse of firearms they sell. 15 U.S.C. § 7901(b)(1).

PLCAA requires any action to be dismissed if it falls within the statute’s definition of “qualified civil liability action.” 15 U.S.C. § 7902(b).²⁴ A “qualified civil liability action” is:

a civil action or any other 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

Id. at § 7903(5)(A)(emphasis added). A “qualified product” is a firearm, ammunition, or a component part of the same. *Id.* § 7903(4).

PLCAA has six narrow exceptions limiting its preemptive reach. *Id.* § 7903(5)(A).²⁵ Plaintiffs appear to have crafted their suit to take advantage of two of these exceptions: 1. “an action brought against a seller for negligent entrustment or negligence per se,” *id.* § 7903(5)(A)(ii) (negligence exception), and 2. “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.* § 7903(5)(A)(iii) (predicate exception).

²⁴ PLCAA was a response to lawsuits targeting manufacturers and dealers where the harm caused by the firearms was exclusively a result of the misuse of firearms by third parties. *Estate of Charlott v. Bushmaster Firearms, Inc.*, 628 F.Supp.2d 174, 180 (D. D.C. 2009).

²⁵ Four of PLCAA’s exceptions are inapplicable here. (1) Actions brought against the firearm transferor who was convicted of “knowingly transfer[ing] a firearm, knowing that such firearm will be used to commit a crime of violence” by someone directly harmed by such unlawful conduct. 15 U.S.C. § 7903(5)(A)(i). This does not apply because AGI was never convicted of a crime. (2) Actions for breach of contract or warranty in connection with the firearm purchase. *Id.* § 7903(5)(A)(iv). This does not apply because Plaintiffs do not allege such claims. (3) Actions for death, physical injuries, or property damage resulting directly from a design or manufacture defect, except where the firearm was intentionally discharged, and the discharge constitutes a criminal offense. *Id.* § 7903(5)(A)(v). This does not apply because Plaintiffs do not allege such claims and, even if they did, the criminal acts of another prohibits these claims against AGI. (4) Actions commenced by the United States Attorney General to enforce the Gun Control Act or the National Firearms Act. *Id.* § 7903(5)(A)(vi). This does not apply because the United States Attorney General is not a party to this case.

This lawsuit should be dismissed because it is a preempted “qualified civil liability action” and no exception prevents immunity from applying. *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1132 (9th Cir. 2009).

A. This lawsuit satisfies the general elements of a “qualified civil liability action” under PLCAA.

This action is a qualified civil liability action because it is a “civil action” under 15 U.S.C. § 7903(5)(A) and because Plaintiffs seek “damages,” “punitive damages,” “injunctive relief,” “abatement,” “penalties,” and “other relief.” Compl. ¶¶ 94–96, 107, 115, 123, 133. The case is “brought by any person” because “person” includes “governmental entit[ies].” 15 U.S.C. § 7903(3). AGI is a “seller” of “qualified products” because it is a licensed firearms dealer, and the handguns at issue are “qualified products.” *Id.* § 7903(4), (6). Finally, each of the alleged harms for which Plaintiffs seek to recover stem directly from Mr. Minor’s admitted “criminal or unlawful misuses of” AGI’s products by illegally trafficking some of the purchased firearms to others including prohibited persons. *Id.*; Compl. ¶ 60. Plaintiffs blame AGI for the criminal acts of Mr. Minor and for “gun violence,” unrelated to any of the four firearms at issue, committed by independent actors even further down the stream of commerce. Compl. ¶¶ 9, 30–36, 92.

This lawsuit is a “qualified civil liability action,” 15 U.S.C. § 7903(5)(A), and this Court should “immediately dismiss[]” it unless it triggers an enumerated exception. *See id.* § 7902(b).

B. No enumerated exception saves this lawsuit from PLCAA’s preemption.

PLCAA contains six exceptions. *See id.* § 7903(5)(A)(i)–(iv). The only two arguably relevant here are the negligence exception, *id.* § 7903(5)(A)(ii), and the predicate exception, *id.* § 7903(5)(A)(iii). Neither saves this lawsuit from statutory preemption nor deprives AGI of its statutory immunity.

1. The negligence exception does not apply.

PLCAA's immunity will not apply when there is "an action brought against a seller for negligent entrustment or negligence per se." *Id.* § 7903(5)(A)(ii). PLCAA, itself, does not "create a public or private cause of action or remedy." *Id.* § 7903(5)(C). While Plaintiffs assert claims for negligent entrustment and negligence per se, as AGI has already shown, the Complaint does not contain "well-pleaded facts" to support either of these claims, so they fail as a matter of law. *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 644 (2010) (noting that facts must be pleaded with sufficient specificity and that conclusory statements or bald assertions will not suffice).

As discussed above on pages 16-18 and 27-31, Plaintiffs fail to sufficiently allege a negligent entrustment or negligence per se claim because they fail to allege facts showing that AGI knew or should have known under the circumstances that Mr. Minor intended to traffic the firearms he purchased from AGI, that AGI breached any duty to Plaintiffs, and that any breach caused Plaintiff's claimed damages resulting generally from firearm violence. To state a claim for negligent entrustment, a defendant must entrust "an instrumentality capable of doing serious harm if misused, to one whom he *knows, or has strong reason to believe*, to intend or to be likely to misuse it to inflict intentional harm." *Valentine*, 112 Md. App. at 687 (citing Restatement (Second) of Torts § 302B, Example E, 92) (emphasis added). To state a claim for negligence per se or negligence based on a statutory violation, Plaintiffs must adequately allege "(a) the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of." *Hector v. Bank of New York Mellon*, 473 Md. 535, 559 (2021). In Maryland, though "a statutory violation is evidence of negligence," it "does not constitute negligence per se, unless a statute expressly makes it so." *Absolon v. Dollahite*, 376 Md. 547, 557 (2003). No cited statute contains such a provision.

Plaintiffs attempt to describe general indicators of a possible straw purchaser without alleging the existence of those indicators at the time of Mr. Minor's four alleged handgun purchases from AGI, other than the four handgun purchases themselves. Because Mr. Minor was a Designated Collector specifically authorized by law and permitted by Maryland State Police to purchase multiple handguns without limit in 30-days, his purchase of four handguns in 30-days cannot as a matter of law establish either negligent entrustment or negligence per se. Plaintiffs' allegations fall critically short of establishing the knowledge requirement necessary to create a duty for their negligent entrustment claim. *See supra* pp. 16-18, 30-31. Moreover, as to their negligence per se claims, Plaintiffs have not adequately pled any violation of federal or state firearm-related law that "expressly makes" the violation negligence per se. *Absolon*, 376 Md. at 557. Further, Plaintiffs fail to allege how the sale of four firearms to Mr. Minor, none of which were used in a gun violence incident, caused their harm. *See, e.g.*, Compl. ¶ 104.

Courts have dismissed similar claims where plaintiffs alleged negligence claims from providing a firearm to criminals. *See e.g., Steinle v. United States*, 17 F.4th 819, 822 (9th Cir. 2021) (holding as a matter of law any negligence in leaving a loaded handgun unlocked and unsupervised in a vehicle was so remote from the killing of a woman with that same handgun that it cannot amount to proximate cause); *Valentine*, 353 Md. at 553 (holding it unreasonable to hold a firearm dealer as having a duty to the world to protect against the illegal actions of third party).

Plaintiffs' alleged injuries resulted from Mr. Minor's intentional criminal act of trafficking firearms. Without sufficiently alleging knowledge, duty, and causation, attributable to AGI, Plaintiffs' negligence-based claims cannot overcome AGI's PLCAA immunity.

2. The predicate exception does not apply.

PLCAA does not bar "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.” 15 U.S.C. § 7903(5)(A)(iii). “This exception has come to be known as the ‘predicate exception,’ because a plaintiff not only must present a cognizable claim, he or she also must allege a knowing violation of a ‘predicate statute.” *Ileto*, 565 F.3d at 1132. PLCAA expressly requires a showing of proximate causation and the United States Supreme Court has granted certiorari on this very question of proximate causation under PLCAA in *Smith & Wesson Brands v. Estados Unidos Mexicanos*, No. 23-1141, *cert. granted*, --- S.Ct. ----2024 WL 4394115 (Oct. 4, 2024).²⁶ Plaintiffs cannot trigger the predicate exception to avoid PLCAA immunity because they have not alleged facts showing that AGI knowingly violated a state or federal firearm statute or that any violation was the proximate cause of their harm.

Plaintiffs attempt to allege a violation of the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (the “GCA”), in two ways. First, the Complaint alleges that “AGI knew, had reasonable cause to believe, or deliberately avoided knowing” that Mr. Minor was involved in straw purchasing. Compl. ¶ 82; *see also id.* at ¶¶ 98, 100, 112, 120, 129. Second, it alleges that AGI knowingly conspired with Mr. Minor’s unlicensed firearms dealing. *Id.* ¶ 86.

Only now does the GCA prohibit a firearms dealer from selling or delivering any firearms to “any person knowing or having reasonable cause to believe that such person . . . intends to sell

²⁶ The questions presented in *Smith & Wesson* are:

1. Whether the production and sale of firearms in the United States is the “proximate cause” of alleged injuries to the Mexican government stemming from violence committed by drug cartels in Mexico.
2. Whether the production and sale of firearms in the United States amounts to “aiding and abetting” illegal firearms trafficking because firearms companies allegedly know that some of their products are unlawfully trafficked.

Petition for certiorari at i. The Petition may be found on the Supreme Court docket at <https://bit.ly/3YrHKTm>.

or otherwise dispose of the firearm or ammunition in furtherance of a felony[.]” 18 U.S.C. § 922(d)(10); *see also* 18 U.S.C. § 932 (precluding straw purchasing). Sections 922(d)(10) and 932 were added to the GCA in 2022, after AGI sold the handguns to Mr. Minor, with the enactment of Section 12004 of the Bipartisan Safer Communities Act, Pub. L. 117-159, 136 Stat 1313 (June 25, 2022), codified in part at 18 U.S.C. § 922. As a result, the U.S. Supreme Court has not addressed the reasonable cause standard contained within 18 U.S.C. § 922, but it has stated that, in at least some contexts, having reasonable cause means having a factual basis for believing. *See Johnson v. Mayor and City Council of Baltimore*, 472 U.S. 353, 359 n.6 (1985).

A Maryland District Court, applying Maryland law, previously addressed the reasonable cause standard involving firearm transfers to prohibited persons. *See DiMartino v. Buckles*, 129 F. Supp. 2d 824, 828 (D. Md. 2001) (noting that the reasonable cause standard is a fact-based inquiry, and comparing *United States v. Murray*, 988 F.2d 518 (5th Cir. 1993) and *United States v. Stracch*, 987 F.2d 232 (5th Cir. 1993)). The court in *DiMartino* noted that whether reasonable cause exists depends on the firearm seller’s *actual* knowledge of the illegality of the firearm transfer to the purchaser. *DiMartino*, 129 F. Supp. 2d. at 828 (comparing *Murray*, 988 F.2d at 521–22 (finding no reasonable cause where there was no evidence that the seller was aware of the purchaser’s criminal status before transferring the firearm) with *Stracch*, 987 F.2d at 238 (finding reasonable cause existed because purchaser told firearm seller that he was an out of state purchaser, which was illegal)). Other courts have come to similar conclusions. *See United States v. Gjergji*, 567 Fed. App’x 728 (11th Cir. 2014) (finding that there was reasonable cause to know that the buyer was a felon who could not have a gun when he told the seller explicitly that he spent 5 years in prison for selling a large amount of cocaine); *see also Pook v. Oshman’s Sporting Goods Inc.*, 768 S.W.2d

841 (App. Tx. 1989) (determining that a purchaser's mere nervousness or the purchaser being in a hurry cannot amount to having reasonable cause to know the transaction is unlawful).

This reasonable cause standard requires that the Complaint have sufficient well-pled facts showing that AGI was aware that Mr. Minor, a Designated Collector, was a straw purchaser intending to traffic his purchases. *RRC Ne.*, 413 Md. at 644. Plaintiffs failed to make that showing.

Plaintiffs baldly allege AGI had reasonable cause to believe Mr. Minor was a straw purchaser based on the following red flags for straw purchasers generally: “bulk purchases, repetitive buying of the same or similar firearms within a short time period (especially commonplace or non-collectible firearms), taking photographs or videos within the store, and customers’ inability to answer simple questions about why they are purchasing firearms.” Compl. ¶ 53. But Plaintiffs do not allege that any of these red flags were present when AGI sold the four alleged firearms to Mr. Minor. *See supra* pp. 16-18, 30-31. Plaintiffs do not allege how four handguns purchased over six weeks are bulk purchases made within a short period of time. Again, Mr. Minor was a Designated Collector, a status bestowed on him by Maryland that allowed him to make multiple handgun purchases without limit within 30 days, and created the reasonable expectation that he would do so. *See Md. Code Ann., Pub. Safety* § 5-129. Plaintiffs then conclude the four alleged firearm purchases are the same or similar because they were all chambered in 9mm—the most common handgun caliber in America—despite each handgun being a different make and model and of varying size, weight, and design. Plaintiffs do not allege that Mr. Minor took photos or videos within AGI’s stores. Plaintiffs do not allege that Mr. Minor could not answer questions about why he wanted to purchase the firearms. Based on Plaintiffs’ allegations, or the lack thereof, that could support a finding of reasonable cause to believe Mr. Minor was a straw

purchaser; Plaintiffs have not adequately alleged a knowing violation of the GCA and Maryland law.

Plaintiffs also fail to allege facts causally connecting AGI's four alleged handgun transfers to Mr. Minor to their alleged panoply of injuries flowing from firearm violence generally—the alleged many millions of dollars spent to respond to and investigate gun violence, prosecute, and incarcerate those who commit gun crimes, and provide medical services to victims of gun violence, including the cost of the response of law enforcement and other emergency services for each firearm recovered. *See, e.g.*, Compl. ¶ 104. As a result of those four handgun sales, Plaintiffs seek to hold AGI liable for their panoply of general injuries due to the criminal actions of Mr. Minor, a Designated Handgun Collector, who unlawfully trafficked two handguns purchased from AGI, neither of which were connected to any crime of violence. Such an attempt is so substantially out of proportion with AGI's alleged culpability that there cannot be proximate cause as a matter of law. That is all the more true where Plaintiffs do not allege that any of the handguns AGI transferred to Mr. Minor were used in gun violence. Plaintiffs' allegations "admit of but one inference," that AGI's alleged conduct was not a factual or legal cause of any injury. *Caroline*, 269 Md. at 133.

PLCAA compels "immediate[] dismiss[al]." 15 U.S.C. § 7902(b). Because PLCAA bars any relief, the Complaint fails "to state a claim upon which relief can be granted." Md. Rule 2-322(b)(2). This Court should grant AGI's motion to dismiss. Additionally, because PLCAA immunity deprives this Court of subject-matter jurisdiction, this Court should also dismiss the Complaint under Maryland Rule 2-322(b)(1). Although this Court has general jurisdiction over suits at law and equity, Md. Code Ann., Cts & Jud Proc. § 1-501, the operation of the Supremacy Clause of the Constitution of the United States strips this Court of subject matter jurisdiction. *See* U.S. Const. art. VI, cl. 2. PLCAA provides that "[a] qualified civil liability action" (1) "may not

be brought,” and (2) must be “immediately dismissed by the court in which the action was brought or is currently pending.” 15 U.S.C. § 7902. This Court thus has no power to entertain a suit that is a “qualified civil liability action,” where no exception applies. *Id.* It should dismiss this case for “lack of jurisdiction over the subject matter.” Md. Rule 2-322(b)(1).

III. Plaintiffs cannot pursue remedies for criminal violations through civil litigation.

Maryland cannot pursue remedies for alleged criminal violations of firearm statutes through civil litigation. The District cannot pursue its claims under Maryland’s firearm statutes because no private right of action exists. Neither Plaintiffs can pursue their claims relying on federal firearm statutes because no private right of action exists. *See* page 33 above.

It is well-established that a plaintiff cannot recover criminal penalties for alleged violations of criminal statutes through civil litigation. *See, e.g., Tribble v. Reedy*, 888 F.2d 1387 (Table), 1989 WL 126783, at *1 (4th Cir. Oct. 20, 1989) (*per curiam*) (absent “clear [legislative] intent to provide a civil remedy, a plaintiff cannot recover civil damages for an alleged violation of a criminal statute”); *see also Phair v. Zambrana*, No. CCB-14-2618, 2016 WL 3125081, at *3 (D. Md. June 3, 2016) (dismissing claims brought under criminal code because “criminal statutes do not give rise to civil liability”); *McMillan v. Templin*, No. CV JKB-22-1675, 2023 WL 3996477, at *7 (D. Md. June 14, 2023) (similar).

None of Maryland’s firearms laws relied upon by Plaintiffs expressly provide a civil remedy. The Complaint cites Md. Code Ann., Pub. Safety §§ 5-106(a), 5-124(a), and 5-134(b)(13). Section 5-106(a) provides that a person must have a dealer's license issued by the Secretary before selling, renting, or transferring handguns. Section 5-124(a) prohibits a non-licensed person from selling, renting, transferring, or purchasing a handgun until seven-days after the prospective purchaser completes the MSP Form 77Rs. Section 5-134(b)(13) prohibits a firearms dealer from

knowingly transferring a firearm to a straw purchaser. Md. Code Ann., Pub. Safety § 5-144 provides the enforcement mechanism for the cited laws.

Section 5-144 provides that a dealer who violates Subtitle 1 of Title 5 of Maryland’s Public Safety Article by knowingly participating in the illegal transfer of a regulated firearm is guilty of a misdemeanor and, on conviction, is subject to imprisonment, a \$10,000 fine, or both. Md. Code Ann., Pub. Safety § 5-144. This is clear legislative intent to deny the civil remedies Maryland seeks by expressly providing criminal penalties for violating Maryland’s firearm statutes, without providing any civil remedies, including a private right of action. The same reasoning applies to the District’s attempt to sue under Maryland firearm statutes as well as both Plaintiffs’ attempt to sue under the GCA because neither the GCA nor Maryland’s statutes provide a private right of action.

When determining whether a state statute creates a private right of action, “the central inquiry [is] whether the legislative body intended to create [one], either expressly or by implication.” *Fangman v. Genuine Title, LLC*, 447 Md. 681, 694 (2016) (quoting *Baker v. Montgomery County*, 427 Md. 691, 50 A.3d 1112, 1123 (2012)). Maryland courts ask three questions to determine whether a state statute implies a private right of action:

- (1) Is the plaintiff one of the class for whose special benefit the statute was enacted?
- (2) Is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one?
- (3) Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?

Id. at 780; *see also Erie Ins. Co. v. Chops*, 322 Md. 79, 585 (1991) (holding that a statute requiring auto insurers to notify the Motor Vehicle Administration of the cancellation of an insured’s policy did not create a private right of action in favor of a plaintiff injured by an uninsured driver whose lapse in coverage the insurer failed to report).

Because Md. Code Ann., Pub. Safety § 5-144—the enforcement mechanism for the Maryland firearm laws cited in the Complaint—does not provide Maryland the right to bring a

civil litigation for alleged criminal violations, then neither does it provide the District with a private right of action either. If Maryland’s legislature wanted to allow Plaintiffs to bring a civil lawsuit against AGI for alleged violations of Maryland’s firearms rules, it could have done so. But it did not.

Similarly, “when federal law creates the substantive requirement that the plaintiffs seek to enforce, [courts] look to federal law to determine whether a private remedy is authorized. *Bauer v. Elrich*, 8 F.4th 291, 299 (4th Cir. 2021) (citing *Moor v. Cnty. of Alameda*, 411 U.S. 693, 698-710, (1973)). In such circumstances, it is well established that a plaintiff, whether a state or an individual, may not sue for violation of a federal statute unless Congress has provided a private right of action. *See Elrich*, 8 F.4th at 296.

The Complaint cites 18 U.S.C. §§ 922, 923, and 924. The penalties for the federal statutes cited by Plaintiffs provide that whoever violates 18 U.S.C. § 922 shall be fined, imprisoned, or both. *See generally* 18 U.S.C. § 924. Based on this language, Congress intended that only circumscribed criminal penalties subject to the procedural protections of the criminal law would apply to violators. Congress did not intend for Plaintiffs to pursue unlimited damages hoping to bankrupt firearm dealers, as Plaintiffs attempt to do here. And nothing in the federal firearm statutes cited by Plaintiffs expressly permits or implies the right to initiate civil actions. PLCAA further supports the conclusion that Congress meant to preclude a private right of action. *See supra* pp. 31-39.

None of the firearm statutes Plaintiffs rely on provide for civil actions. The statutes are purely criminal in nature and do not provide a civil cause of action. *See Miller v. Maloney Concrete Co.*, 63 Md. App. 38, 48 (1985) (laws are criminal in nature when they “carr[y] criminal

penalties”). Congress and Maryland’s legislature limited the penalties for alleged violations of the firearm statutes to criminal penalties.

Without an express civil remedy or cause of action, Plaintiffs’ claims, all based on alleged violation of criminal statutes, amount to an unconstitutional end-run around the unique requirements and heightened evidentiary burden of criminal procedure. Criminal defendants, including those facing only criminal fines, have a panoply of rights not available to civil defendants, such as a higher burden of proof and a unanimous verdict. *See, e.g.*, Md. Const. Decl. of Rts. art. 21. Plaintiffs cannot ask the Court to sweep those constitutional rights away by seeking penalties above and beyond those provided by the statutes in a civil suit.

IV. The statute of limitations bars this action.

The Complaint was filed on September 3, 2024. Maryland’s claims against AGI accrued on August 28, 2021, when Mr. Minor submitted his MSP Form 77R for the final handgun he purchased from AGI. As a result, Plaintiffs’ claims are barred by Maryland’s three-year statute of limitations for civil suits. Md. Code Cts. & Jud. Proc. § 5-101. A civil action “accrues” when (1) a party has knowledge that would lead a reasonable person to investigate, and (2) the investigation, if done with reasonable diligence, would have led to knowledge of the alleged wrong. *Jacobson v. Sweeney*, 82 F. Supp. 2d 458, 461 (Md. 2000). The accrual date does not turn on when the harm or alleged wrongful acts were completed before the statute of limitations begins to run. *Id.*

Plaintiffs claim that Defendants, including AGI, are to blame for Mr. Minor obtaining handguns, despite “their awareness, willful blindness, or reasonable cause to believe that Mr. Minor lacked a legitimate reason for obtaining” multiple handguns. Compl. ¶ 55. The four handgun transfers by AGI occurred on August 4, 2021; August 14, 2021; August 15, 2021; and September 4, 2021. *Id.* ¶ 73. But if AGI should have known that Mr. Minor was engaged in straw purchasing

based on the frequency (six weeks) and number of alleged firearms (four), then Maryland, who did not “Not Disapprove” any of Mr. Minor’s MSP Form 77Rs for his dozens of purchases, should have had knowledge that would lead a reasonable person to investigate the alleged straw sales. *Id.* at ¶ 74. Again, AGI had no way of knowing that Mr. Minor was buying any firearms from other sellers. But Mr. Minor and Maryland knew.

If Maryland contends AGI had reason to know Mr. Minor was a straw purchaser, Maryland certainly had clear notice and reason to investigate more than three years before filing the Complaint. *See* Md. Code Ann., Pub. Safety §§ 5-117, -118, -121; *WUSA9*, “DC, MD Attorneys General sue gun dealers for illegal straw purchases fueling regional gun violence,” YouTube, at 00:40:00 (2024) (claiming that there was a total of thirty-four firearms sales in “just a few months” and refusing to answer a question about why the Maryland State Police did not intercept the sales).²⁷ Maryland, through the Maryland State Police, was aware of AGI’s alleged wrongful transfers to Mr. Minor once he submitted an MSP Form 77R for each handgun a week before the transfers occurred. The latest possible point where Maryland gained sufficient knowledge of the allegedly improper straw sales was August 28, 2021, when Mr. Minor submitted his fourth MSP Form 77R, one week before AGI transferred the final firearm to Mr. Minor on September 4, 2021. Ex. H at 20. This action was not filed until September 3, 2024, more than three years after August 28, 2021.

The single handgun alleged to have been transferred on September 4, 2021 was not alleged to have been trafficked, let alone recovered in connection with gun violence. Moreover, the public record makes clear that this particular handgun—a Taurus PT 24/7, serial number TAN19946—was recovered from Mr. Minor and not trafficked at all. *See* Agent Donovan’s Affidavit, Ex. E, at

²⁷ https://www.youtube.com/watch?v=WSjad6HR5_o (last visited November 8, 2024).

15. The only alleged transaction arguably not barred by the statute of limitations involved a handgun that was not trafficked.

The statute of limitations bars this action.

V. The Municipal Costs Doctrine bars Plaintiffs' recovery.

Plaintiffs attempt to recover their ordinary expenses in providing taxpayers with emergency services and the like related to firearm violence should be barred under the Municipal Costs Doctrine. *See District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077, 1080 (D.C. Cir. 1984) (“the cost of public services for protection from fire or safety hazards is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence creates the need for the service.”). The doctrine prevents government recovery of normal expenses through compensatory damages. It is rooted in public policy that courts should not invade the legislature’s decision to allocate the costs of emergency services absent legislation authorizing a shift of the burden to a private party engaging in tortious or criminal conduct. *See United States v. Standard Oil Co. of Cal.*, 332 U.S. 301, 315–17 (1947) (noting the necessity of a statute to confer the availability of indirect government recovery of expenses in a case where a soldier was injured thus requiring the government to pay the soldier’s medical costs). In short, the legislature chose to establish a cost-sharing method—taxation—of paying for emergency response services for ordinary crime, and the courtroom is not the correct venue to overrule the legislature’s decision.

Courts dealing with firearms cases—such as this one—have determined that civil recovery is improper, absent a clear showing that the recovery is through violated statutes and regulations because the existing system of fiscal policy, that all of society relies on, allocates costs through taxes. *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099 1144–45 (Ill. 2004). In cases where the government recovered costs from a tortfeasor in a civil action, the government did not

seek restitution for ordinary law enforcement expenses but rather restitution for larger-scale land-based issues such as sunken vessels, toxic waste contaminating drinking water, groundwater pollution, and removing bridge piers from water, *i.e.*, traditional harms, where the defendant proximately caused the government's damages. *See City of Flagstaff v. Atchison, Topeka & Santa Fe Ry. Co.*, 719 F.2d 322, 324 (9th Cir. 1983).

Plaintiffs' damages here are distinct from the traditional costs that governments have been permitted to recover because their alleged harms stem from Mr. Minor's independent criminal acts. Compl. ¶ 60. At least one court dealing with similar allegations determined that civil recovery is improper, absent a clear showing that civil recovery is expressly allowed under the firearm laws, because the existing fiscal policy system, which all of society relies on, allocates costs through taxes. *City of Chicago*, 821 N.E.2d at 1144–47 (dismissing an argument that the predictability of firearms violence makes it more like a disaster analogous to a wildfire or train derailment and not less like it).

Despite the municipal cost rule, several courts have been willing to allow government actions for expenditures to move forward when it is shown that misconduct is continuous. In *City of Cincinnati v. Beretta U.S.A. Corp.*, the court permitted the action to go forward due to the alleged misconduct being ongoing and persistent. 768 N.E.2d 1136, 1149–50 (2002). Similarly, the court in *James v. Arms Technology Inc.*, allowed the cause of action to exist because they viewed the alleged misconduct as ongoing. 820 A.2d 27, 48–49 (N.J. Super. 2003). The key in both cases is the continuing nature of the alleged wrongful act. That is completely unlike the instant case. Here, the alleged harm began and ended in summer 2021. Compl. ¶ 73. The allegation is that AGI failed to successfully identify a designated firearms collector during four purchases of different handguns

as a straw purchaser. *Id.* ¶ 72. That individual has been arrested, charged, and convicted. *Id.* ¶ 12. Therefore, the conduct cannot be reasonably said to be analogous to *James* or *Cincinnati*.

Though the Complaint alleges that AGI has a pattern of allowing straw purchases, no specific, well-pleaded facts support this *Id.* ¶ 80. Based on the absence of factual allegations demonstrating AGI knew or should have known that Mr. Minor was a straw purchaser, it is no wonder there are no nonconclusory, factual allegations whatsoever demonstrating that AGI knowingly sold to straw purchasers.

The Municipal Cost Doctrine requires the dismissal of the Plaintiffs' claims as an improper attempt to recover ordinary government expenses.

VI. The Anti-SLAPP Law requires dismissal of the Complaint.

Maryland enacted Md. Code Ann., Cts. & Jud. Proc. § 5-807, Strategic Lawsuit Against Public Participation ("SLAPP"), to protect litigants against costly legal challenges that act to inhibit free speech and the right to petition the government. *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condominium, Inc.*, 265 A.3d 1140, 1150 (Md. App. 2021).²⁸ A suit is a SLAPP suit if it is "[b]rought in bad faith against a party who has communicated with ... the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the First Amendment of the U.S. Constitution or ... the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern." Md. Code Ann., Cts. & Jud. Proc. § 5-807(b)(1). The suit must also "[i]ntend[] to inhibit or inhibit[] the exercise of rights." *Id.* at § 5-807(b)(3). If the suit qualifies as a SLAPP suit, then the defendant is not civilly liable unless the plaintiff can show the defendant acted with "constitutional malice."

²⁸ The District has an analogous and robust anti-SLAPP statute protecting litigants from costly legal challenges arising from public communications on issues of public interest. *See* D.C. Code Ann. § 16-5501 *et seq.*

Id. at § 5-807(c); *see also* *MCB Woodberry Dev., LLC*, 265 A.3d at 1150 (dismissing SLAPP suit where plaintiffs failed to plead non-conclusory allegations showing actual malice).

A defendant may take advantage of the statutory immunity created by the Anti-SLAPP law by moving to “[d]ismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable.” Md. Code Ann., Cts. & Jud. Proc. § 5-807(d)(1).

A. The Complaint was brought in bad faith.

Four factors are considered when determining bad faith: (1) timing of the suit with particular emphasis on the suit being filed shortly after a ruling in a different case, (2) exorbitant damages that are unsupported by plausible allegations, (3) excessive discovery, and (4) conclusory allegations in the complaint that are devoid of any specific facts to support the claim. *MCB Woodberry Dev., LLC*, 265 A.3d at 1157–58. All of the bad-faith factors weigh in favor of AGI.

First, the timing of the Complaint suggests retaliation. *Id.* at 1157 (“the timing of [the] complaint, filed four days after a ruling arguably adverse . . . was suggestive of retaliation.”). Timing is particularly relevant in the context of an alleged SLAPP suit because the litigation aims to deter and intimidate defendants from continuing their public opposition to the plaintiff’s aims. *Id.*

Plaintiffs brought the present action less than two weeks after the Fourth Circuit issued its en banc decision in the HQL Action, reversing its panel decision and upholding the HQL Requirement but reiterating its earlier ruling that AGI was the only plaintiff with independent as well as third-party standing on behalf of potential customers to challenge Maryland’s HQL requirement. *Maryland Shall Issue, Inc. v. Moore*, Nos. 21-2017 and 21-2053, ___ F.4th ___, 2024 WL 3908548, at *2 n. 6 (4th Cir. Aug. 23, 2024), petition for certiorari pending. The HQL Action, brought by AGI and others in 2016, questioned the constitutionality of a provision in Maryland’s

Firearm Safety Act of 2013 requiring a handgun qualification license before purchasing a handgun in Maryland. The HQL Action has been hard fought for eight years. And the Fourth Circuit's recent decision reiterating that AGI has independent as well as third-party standing is unfavorable to Maryland because it provides a path for AGI, and only AGI, to pursue certiorari review in the United States Supreme Court. The timing of the Complaint's filing strongly suggests that Plaintiffs intend to intimidate AGI to stop its advocacy in the HQL Action. This lawsuit also follows AGI's recent opposition earlier this year to MD H.B. 947, authorizing nuisance litigation against licensed firearm dealers, strongly suggesting that this lawsuit was meant to punish AGI for its advocacy for sensible firearm legislation and deter it from further advocacy as well.

Second, the exorbitant damages sought by Plaintiffs, which are unsupported by concrete factual allegations, are evidence that their true motive here is to inhibit AGI's advocacy and indeed put AGI out of business. Both motives are strongly indicative of bad faith. *MCB Woodberry Dev., LLC*, 265 A.3d at 1158 (citing *Wilcox v. Superior Court*, 33 Cal. Rptr. 2d 446, 449-50 (1994) (explaining that SLAPP suit plaintiffs "typically ask for damages which would be ruinous to the defendants")). As previously discussed, the firearm laws cited by Plaintiffs do not provide a private right of action and expressly limit the criminal penalties for violations. *See, e.g.*, Md. Code Ann., Pub. Safety § 5-144 (providing for a fine not exceeding \$10,000 for a violation); *see supra* pp. 40-43. Despite this, Plaintiffs seek to hold AGI liable for the cost of responding to, investigating, and prosecuting crimes, *see, e.g.*, Compl. ¶¶ 104-05, for which AGI cannot be legally responsible simply by the lawful sale of firearms. AGI, *see supra* pp. 16-22, and are in any event unavailable under the Municipal Cost Doctrine. *See supra* pp. 45-47.

Plaintiffs also seek punitive damages, which are unavailable in a criminal law enforcement action, but fail to allege the legal predicate for punitive damages. "[T]o recover punitive damages

in any tort action ..., facts sufficient to show actual malice must be pleaded and proven by clear and convincing evidence.” *MCB Woodberry Dev., LLC*, 265 A.3d at 1158. The Complaint does not meet the pleading requirements for punitive damages. Plaintiffs’ claims stem from the illegal acts of Mr. Minor, who is unrelated to AGI and whose only tenuous connection to AGI is his four handgun purchases from AGI over six weeks. To attribute the independent criminal acts of Mr. Minor to AGI, a small family-owned business, as the basis for unspecified monetary damages far beyond what Plaintiffs could obtain based on the statutes they cite, is indicative of bad faith.

Third, Plaintiffs served discovery requests on AGI seeking extensive, overbroad, and burdensome discovery, including much information Plaintiffs should have in their possession. *See supra* pp. 7-9. This is plainly a fishing expedition in hopes of developing facts they should have put together before bringing this lawsuit. Plaintiffs, for example, seek the identification of every person who purchased more than one handgun from AGI in a thirty-day period and demands all documents related to those purchases from August 2020 to the present. *See Exhibit J* (First Set of Interrogatories and Request for Production of Documents to AGI). Plaintiffs also seek video surveillance records from 2021, and all advertisements by AGI from August 2020 to the present, among other onerous and irrelevant requests. Such requests are clearly outside the scope of this litigation, transparently to an improper fishing expedition, and would require AGI to spend countless hours searching, collecting, and reviewing this material and then redacting customer’s personal private information, an overly burdensome and expensive task for a small family-owned business. This unduly burdensome nature of discovery, particularly of information Plaintiffs should have in their possession or should have gathered before filing this lawsuit, is indicative of bad faith. *See MCB Woodberry Dev., LLC*, 265 A.3d at 1158.

Finally, Plaintiffs’ conclusory allegations in support of their damages and claims are devoid of specific facts. Plaintiffs disingenuously claim that AGI’s four handgun transfers to Mr. Minor, a Maryland Designated Firearms Collector, specifically authorized by law to purchase multiple handguns without limit in 30-days, is tantamount to knowledge that Mr. Minor was a straw purchaser. When addressing AGI’s purported involvement in causing Plaintiffs’ injuries, they cite a seven-year-old ATF investigation and warning letter (which did not lead to enforcement action) and the fact that Mr. Minor purchased four different makes/models of 9mm firearms, the most popular caliber in the country. *See* Compl. ¶¶ 75, 77. Plaintiffs do not allege that the firearms were used in the commission of a violent crime. Yet, Plaintiffs’ damages are all based on the cost incurred in having to combat violent gun crimes. And those damages are clearly exorbitant, unsupported by specific facts, and unrelated to the alleged conduct of AGI.

Plaintiffs’ allegations do not support their claim for damages.

B. Plaintiffs’ Complaint is meant to inhibit AGI’s protected advocacy.

To be a SLAPP suit, a lawsuit must be aimed at a person or entity “who has communicated with a ... government body or the public” “to comment on, challenge, oppose, or otherwise exercise rights under the First Amendment.” *MCB Woodberry Dev., LLC*, 265 A.3d at 1153. The statute focuses on the substance of communications—which must involve an issue of public concern—and the identity of the recipients of those communications. *Id.* AGI’s Second Amendment advocacy, whether in the HQL Action or before the legislature, clearly involves an issue of public concern. *See California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (recognizing that the right of access to the courts for redress of grievances against the Government is protected by the First Amendment).

The HQL Action challenged Maryland’s handgun license requirement as unconstitutional under the Second Amendment. The success of the HQL Action would eliminate Maryland’s handgun license requirement and could potentially impact the District as well as Maryland given the Complaint’s allegations about criminal activity flowing from its proximity to Maryland. *See* Compl. ¶ 87. AGI and the other Plaintiffs prevailed before the Fourth Circuit panel and the law was struck. That decision was vacated, and the Fourth Circuit sitting en banc upheld the law but made clear AGI has standing to pursue the challenge further. This lawsuit promptly followed. Further, the Fourth Circuit’s acknowledgment that AGI has standing to pursue its own Second Amendment right to sell firearms, as well as standing on behalf of potential customers to challenge Maryland’s firearm regulations, is powerful affirmance that AGI’s Second Amendment advocacy addresses issues of public concern, and that AGI is an important leader in Second Amendment Advocacy. *See Maryland Shall Issue, Inc.* 2024 WL 3908548, at *2 n. 6.

AGI also repeatedly testified before the Maryland General Assembly regarding firearm-related bills. Often, AGI’s firearm advocacy before Maryland’s legislature has been successful in either preventing unreasonable bills from being passed or working with legislators to modify the bill into a sensible regulation. For example, AGI testified before Maryland legislators on no fewer than eleven firearm bills in the past four years. Each time, AGI opposed proposed firearm legislation that either impeded Second Amendment rights, caused unnecessary costs for firearm dealers, or was too vague to be workable. In most instances, its opposition was successful. *See supra* pp. 4-5 (outlining AGI’s testimony before the General Assembly on onerous firearm legislation).

Plaintiffs’ claims against AGI are in retribution for AGI’s previously successful opposition to firearms legislation before the General Assembly and in the courts and to chill it from continuing

its advocacy. By filing a civil action to obtain monetary damages far beyond the criminal remedies available under the firearms statutes against a small family-owned firearms dealer, and far in excess of what AGI could ever hope to pay, Plaintiffs clearly intend to threaten AGI with bankruptcy. By intimidating AGI, the most ardent and vocal firearm dealer advocate for sensible laws and Second Amendment rights, Plaintiffs hope to inhibit that advocacy. The Complaint is materially related to AGI's advocacy and plainly meant to stifle it, and must be dismissed as an impermissible SLAPP suit.

CONCLUSION

For the reasons set forth above, this Court should dismiss the Complaint with prejudice under Maryland Rule 2-322(b). Additionally, the Complaint is brought in bad faith and violative of Maryland's Anti-SLAPP statute.

Dated: November 12, 2024

Respectfully Submitted,
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RULE 1-313 CERTIFICATION BY OUT-OF-STATE ATTORNEY

I certify that I am admitted to practice law in Maryland.

Dated: November 12, 2024

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CERTIFICATE OF SERVICE

I certify that on November 12, 2024, I caused copies of the foregoing to be served upon all counsel of record via the MDEC System and/or electronic mail, and a courtesy copy by FedEx to be delivered to the chambers of the Honorable Ronald B. Rubin.

/s/John Parker Sweeney
John Parker Sweeney

TABLE OF EXHIBITS

Exhibit A- AGI Objection to H.B. 1257

Exhibit B-AGI Opposition to S.B. 773

Exhibit C-AGI Testimony regarding 2022 MD H.B. 1396, 2023 MD H.B. 259 and 2023 MD S.B. 113

Exhibit D-AGI Opposition against 2024 MD H.B. 947 and S.B. 488

Exhibit E-ATF Agent Donovan's Affidavit in Support of Criminal Complaint and Arrest Warrant

Exhibit F-Copy of an MSP 77R Form

Exhibit G-Copy of an ATF 4473 Form

Exhibit H-Copies of MSP 77Rs for each firearm transferred to Mr. Minor from AGI

Exhibit I-Plea Agreement

Exhibit J-First Set of Interrogatories and Request for Production of Documents to AGI