

<p><b>THE DISTRICT OF COLUMBIA, <i>et al.</i></b> *</p> <p style="padding-left: 40px;"><i>Plaintiffs,</i></p> <p>v.</p> <p><b>ENGAGE ARMAMENT, LLC, <i>et al.</i></b> *</p> <p style="padding-left: 40px;"><i>Defendants.</i></p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p><b>IN THE CIRCUIT COURT</b></p> <p><b>FOR MONTGOMERY COUNTY,</b></p> <p><b>MARYLAND</b></p> <p><b>Case No. C-15-cv-24-004781</b></p>
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**MEMORANDUM IN SUPPORT OF DEFENDANT ACEJ HOLDINGS, LLC’s**  
**MOTIONS TO DISMISS**

Defendants Defendant ACEJ Holdings, LLC d/b/a United Gun Shop (“United Gun Shop”), by and through its undersigned counsel under Rule 2-311, moves to dismiss the Complaint filed by Plaintiffs the District of Columbia (“District”) and the State of Maryland (“State”). For the reasons stated herein, the Court should Grant Defendant’s Motion to Dismiss (“Motion”).

**I. INTRODUCTION**

Plaintiffs allege that defendant United Gun Shop, a federally licensed firearm dealer, sold multiple handguns to Demetrius Minor (“Minor”) in 2021. Plaintiffs do not allege that Minor was forbidden from possessing or purchasing firearms under State or federal law. Instead, Plaintiffs allege that Minor was an “obvious straw purchaser,” who transferred the firearms he purchased to individuals who were legally prohibited from possessing them. Compl. ¶¶ 2, 12.

The Complaint alleges Minor “transferred most of [the] weapons” he purchased from Defendants “to his relative Donald Willis [“Willis”], a District resident with a record of violent felonies.” *Id.* at ¶ 2. The Complaint alleges that Willis “went on to transfer many of the firearms given to him by Minor to other dangerous individuals,” and the original sales to Minor have “resulted in harm throughout the region” due to Minor’s subsequent transfers. *Id.* at ¶¶ 9, 10.

These allegations are the basis of each of the five Counts of the Complaint, which are Public Nuisance (Count I), Negligence (Count II), Negligence Per Se (Count III), Negligence by Statute or Ordinance Rule (Count IV), and for Negligent Entrustment (Count V). Each claim should be dismissed for the reasons discussed below.

## **II. FACTS AND PROCEDURAL BACKGROUND**

### **A. Statutory Framework**

#### **1. Dealers**

A “regulated firearm” in Maryland is statutorily defined to include any “handgun.” MD Code, Public Safety, § 5-101(r)(1). To engage in the business of selling, renting or transferring regulated firearms in Maryland, a federally licensed dealer (“FFLs”)<sup>1</sup> must also be a Maryland licensed dealer. MD Code, Public Safety, § 5-106(a).

#### **2. Purchaser regulations**

All purchasers of firearms from an FFL are subject to federal and State background checks. A federal background check conducted by the FBI under the National Instant Criminal Background Check System (“NICS”). *See* 18 U.S.C. § 922(t). Purchasers must fill out a federal form, known as Form 4473, which ask a series of questions that demonstrate that the applicant is a qualified person under federal law and is the actual purchaser. *See* Compl. ¶¶ 40-42 (referencing Form 4473). Form 4473 is used to conduct the federal NICS background check required by 18 U.S.C. § 922(t). *See* 27 C.F.R. § 478.124(a).

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<sup>1</sup> FFLs are licensed under federal law, 18 U.S.C. § 923, and are subject to regulations promulgated by the ATF. FFL applicants are required to comply with all relevant State and federal laws and are subject to an investigation by the ATF prior to the issuance of the FFL license. *Id.* § 923(d).

Nearly all purchasers of handguns must have a handgun qualification license (“HQL”) under Maryland law. *See* MD Code, Public Safety, § 5-117-1. To obtain an HQL, persons must submit an application to the Maryland State Police. The applicant must be 21 years old, a Maryland resident, and must complete “a firearms safety training course approved by the Secretary that includes: (1) a minimum of 4 hours of instruction by a qualified handgun instructor; (2) classroom instruction on: (i) State firearm law; (ii) home firearm safety; and (iii) handgun mechanisms and operation; and (iv) a firearms orientation component that demonstrates the person’s safe operation and handling of a firearm; and (v) based on an investigation, is not prohibited by federal or State law from purchasing or possessing a handgun.” *Id.* § 5-117-1(d). Each applicant for an HQL must submit fingerprints taken by a State certified live scan vendor and must be fully investigated by the Maryland State Police before the HQL is issued. *See id.* § 5-117.1(f). An HQL is good for ten years. *Id.* § 5-117.1(i).

In addition to the HQL requirement, Maryland requires that every purchaser of a handgun fill out, under penalty for perjury, an application to purchase known as State “Form 77R.” MD Code, Public Safety, § 5-117. *See* Compl. ¶ 50 (referencing Form 77R). Through this application, the applicant must answer a series of questions that demonstrate that the applicant is not a disqualified person, as defined by Maryland law. This application must include “the applicant’s handgun qualification license number.” MD Code, Public Safety, § 5-118(b)(4). The application is electronically filled out on-line by applicant and must be electronically submitted by the applicant to the Maryland State Police via a “licensing portal” managed by the Maryland State Police<sup>2</sup>. Every applicant must establish a username and password with the Maryland State Police

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<sup>2</sup> *See* <https://licensingportal.mdsp.maryland.gov/MspBridgeClient/#/home>.

to fill out and submit this Form 77R. *See id.* “Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than 3 years, or a fine of not more than \$5,000, or both.” MD Code. Public Safety, § 5-118(c). As the “point of contact” agency for the federal NICS system, the Maryland State Police uses Form 4473 to conduct the NICS background check and uses Form 77R to conduct the background check of State databases for every purchase of a handgun.

The Maryland State Police is required to conduct a background investigation of the applicant for the purchase of a handgun. *See* MD Code, Public Safety, § 5-121. Maryland imposes a seven-day waiting period to allow time for background investigations, providing that “[a] licensee may not sell, rent, or transfer a regulated firearm until after seven days following the time a firearm application is executed by the firearm applicant, in triplicate, and the original is forwarded by the prospective seller or transferor to the Secretary.” MD Code, Public Safety, § 5-123(a). “An approved firearm application is valid only for the purchase, rental, or transfer of the regulated firearm listed in the firearm application.” MD Code, Public Safety, § 5-125(a).

Maryland law also provides that “[a] person may not purchase more than one regulated firearm in a 30-day period.” MD Code, Public Safety, § 5-128(b). However, Maryland makes an exception for what are known as “designated collectors,” providing, in MD Code, Public Safety, § 5-129(a), that “[n]otwithstanding” the prohibition on multiple purchases imposed by Section 5-128, “a person may purchase more than one regulated firearm in a 30-day period if: (1) the person applies for and the Secretary approves a multiple purchase; and (2)(i) the purchase of the regulated firearms is for a private collection or a collector series.” MD Code, Public Safety, § 5-129(a). Under Maryland State Police regulations, “[a] person shall be designated as a collector by the Secretary before applying for a multiple purchase of regulated firearms as a collector.” COMAR

29.03.01.25 A. Those regulations also provide that “[a] person may submit an application to be designated as a collector if the person: (1) Devotes time and attention to acquiring certain types of regulated firearms for the enhancement of the collector’s personal collection; or (2) Possesses a Federal Collector’s License (Curio and Relics).” *Id.* 29.03.01.25 B.

Every Form 77R contains an indication on the top of the first page as to whether the purchaser is a “designated collector” within the meaning of Section 5-129, asking “Designated Collector \_\_\_\_.” Similarly, Question 24 on Form 77R asks: “If you are NOT a designated collector: Have you purchased a regulated firearm within the past 30 days?” Because the designated collector status is conferred and controlled by the Maryland State Police, the questions on Form 77R as to whether the purchaser is a designated collector are automatically answered by the State Police when the on-line Form 77R is being filled out and submitted by a designated collector applicant. Dealers are thus assured that the purchaser is, in fact, a “designated collector” at the time of the sale and thus do not and need not rely on any documentation submitted by the purchaser.

### **3. Straw purchases**

Maryland law prohibits straw purchases, providing that “[a] dealer or other person may not be a knowing participant in a straw purchase of a regulated firearm for a minor or for a person prohibited by law from possessing a regulated firearm.” MD Code, Public Safety, § 5-141(a). Similarly, MD Code, Public Safety, § 5-134(b)(13), provides that “[a] dealer or other person may not sell, rent, loan, or transfer a regulated firearm to a purchaser, lessee, borrower, or transferee who the dealer or other person knows or has reasonable cause to believe: \* \* \* is a participant in a straw purchase.” A “[s]traw purchase” is statutorily defined for these purposes to mean “a sale of a regulated firearm in which a person uses another, known as the straw purchaser, to: (1)

complete the application to purchase a regulated firearm; (2) take initial possession of the regulated firearm; and (3) subsequently transfer the regulated firearm to the person.” MD Code, Public Safety, § 5-101(v). A “knowingly participat[ion] in the illegal sale, rental, transfer, purchase, possession, or receipt of a regulated firearm in violation of this subtitle” is punishable by up to five years imprisonment. MD Code, Public Safety, § 5-144(a)(1), (b).

As alleged in the Complaint, straw purchasers were federally charged under 18 U.S.C. § 922(a)(6), which makes it a crime for any person knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter. *See, e.g., Abramski v. United States*, 573 U.S. 169 (2014). Plaintiffs do not allege that United Gun Shop has ever been charged under any of the State or federal provisions raised in the Complaint, specifically 18 U.S.C. §§ 2, 371, 922(a)(1)(A), (6), (t)(1), 923(a), 924(a)(1)(A); 27 C.F.R. § 478.128(b); Md. Code Ann., Pub. Safety §§ 5-106(a), 5-124(a); COMAR 29.03.01.42(A). The Complaint does not allege that Minor was ever charged (much less convicted) of a violation of Section 922(a)(6). Plaintiffs also do not allege any facts that satisfy the Maryland definition of a “straw purchase” in MD Code, Public Safety, § 5-101(v), *viz*, the Complaint does not allege that any “person” used “another, known as the straw purchaser, to: (1) complete the application to purchase a regulated firearm; (2) take initial possession of the regulated firearm; and (3) subsequently transfer the regulated firearm to the person.” The Criminal Indictment filed against Minor likewise omits any mention of Section 922(a)(6) and he ultimately pleads to violating Section 922(a)(1)(A) for engaging in the business of dealing without a license. *See* Minor Indictment, attached at **Exhibit A**; Minor Plea Agreement, attached at **Exhibit B**.

## **B. Allegations Specific to United Gun Shop**

Plaintiffs allege that United Gun Shop sold Minor five handguns between August 13 and October 5, 2021. *See* Compl. ¶ 66. Plaintiffs allege that United Gun Shop sold Minor three different handguns on August 13, August 17, and August 21 in 2021. *Id.* ¶ at 67. Plaintiffs also allege United Gun Shop sold Minor two more handguns on October 5, 2021, almost two months later. *Id.* Plaintiffs do not plead any facts suggesting that firearms sold to Minor in October 2021 were used in furtherance of any gun violence in the Plaintiffs' identified area of the District of Columbia, Maryland, and Virginia Metropolitan Area ("DMV").

## **III. STANDARD OF REVIEW**

In ruling on a motion to dismiss for failure to state a claim, the circuit court considers only the facts alleged in the complaint and any supporting exhibits incorporated into the complaint. *See RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010). Further, the court need not accept the truth of legal conclusions. *See Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 713 (2015). Nor does the court accept as true "[m]ere conclusory charges that are not factual allegations." *Barclay v. Castruccio*, 469 Md. 368, 373-74 (2020) (citing *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 121 (2007)). Instead, "[a]ny ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader." *Ronald M. Sharrow, Chartered v. State Farm Mut. Auto. Ins. Co.*, 306 Md. 754, 768 (1986). If the court finds that the pleader would not be entitled to relief—even after assuming the truth of all well-pleaded factual allegations and drawing all reasonable inferences from those allegations in favor of the pleader—then dismissal is proper. *See O'Brien & Gere Eng'rs, Inc. v. City of Salisbury*, 447 Md. 394, 403-04 (2016). Therefore, under the circumstances of this case, the Court should grant the Motion and dismiss the Action *with prejudice*.

On a motion to dismiss, this Court may also, under Maryland Rule 5-201, 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 Med. Grp.*, 216 Md. App. 386, 413 (2014) (same). Here, United Gun Shop asks that the Court take judicial notice of the Form 4473 associated with the sales allegedly made by United Gun Shop, as identified in Paragraph 67 of the Complaint. These Forms were submitted to the Maryland State Police and thus are already within the possession of the State. These forms are business records kept in the ordinary course of business and are self-authenticating under the Rule 5-902(12). *See, e.g., Mooney v. State*, 487 Md. 701, 705-706 (2024). These Forms are “capable of certain verification” and thus may be judicially noticed. *Faya*, 329 Md. at 443-44. Each Form 4473 shows that each sale to Minor by United Gun Shop passed an NCIS background check as required by 18 U.S.C. § 922(t). The Form 4473s for the October 2021 sales are attached to the Motion to Dismiss at **Exhibits C** (including Minor’s HQL permit) and the report made by United Gun Shop at **Exhibit D**.

#### **IV. ARGUMENT**

##### **A. PLCAA Provides United Gun Shop with Immunity**

The Complaint fails to allege a breach of a duty to “specific class of persons” and because the alleged violations of firearms laws did not “proximately cause[]” the harms alleged in the Complaint. *Kiriakos v. Phillips*, 448 Md. 440, 457, 459 (2016). Indeed, this proximate causation requirement has been incorporated into federal law. In 2005, Congress passed, the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq.* (“PLCAA”). The central purpose of PLCAA was “[t]o prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely



caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.” *Id.* § 7901(b)(1). PLCAA thus creates a threshold statutory immunity: no covered action may be “brought” in “any Federal or State court.” *Id.* § 7902(a). United Gun Shop joins in the PLCAA immunity defense argument made by its fellow Defendants in this action and asks that the Court dismiss the public nuisance and negligence claims as unpermitted causes of action under PLCAA based on the immunity conferred by this statute.

### **B. Statute of Limitations**

In Maryland, “[a] civil action at law shall be filed within three years *from the date it accrues* unless another provision of the Code provides a different period of time within which an action shall be commenced.” CJ § 5-101 (emphasis added). Generally, the accrual date becomes set at “the time the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury.” *Frederick Rd. Ltd. P’ship v. Brown & Sturm*, 360 Md. 76, 96-97 (2000). Although identifying the period when the limitations began to run is often a jury question, “when there are no disputed issues of material fact, the question of when a plaintiff was on inquiry notice can be determined as a matter of law, and summary judgment may be appropriate. *See Bank of N.Y. v. Sheff*, 382 Md. 235, 244 (2004) (“If there is no . . . genuine dispute [of material fact], however, and the question of whether the plaintiffs were on inquiry notice more than three years before their suit was filed can be determined as a matter of law, summary judgment on that issue is, indeed, appropriate.”). Plaintiffs assert claims in public nuisance, negligence, negligence per se, negligence (statute or ordinance rule) and negligent entrustment, all of which are governed by Section 5-101. The Complaint was filed on September 3, 2024. All sales by United Gun Shop, identified by Plaintiffs in the Complaint took place in August 2021, except for two which occurred

on October 5, 2021. Accordingly, the three August sales are barred by Section 5-101, and Plaintiffs' claims concerning the August sales should be dismissed as untimely.

**C. Counts III and IV: Negligence Per Se and Negligence (Statute or Ordinance Rule)**

Maryland does not recognize an independent cause of action for negligence per se or negligence under the statute or ordinance rule. Instead, negligence per se or negligence under the statute or ordinance rule “is evidence of negligence.” *Walton v. Premier Soccer Club, Inc.*, 261 Md. App. 53, 61 (2024). Both causes of action require that the plaintiff be “a member of the class that the statute or regulation was designed to protect.” *Id.*, quoting *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 321-22 (2007) (negligence by statute or ordinance); *Moore v. Myers*, 161 Md. App. 349, 363 (2005) (holding that statute at issue did not support a negligence per se claims because it was not “designed to protect a specific class of persons which includes the plaintiff[.]”) (quoting *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 79 (2003) (discussing statutorily-created duties)). In Maryland, “[t]he violation of a statute (or ordinance) is considered evidence of negligence, but is not negligence *per se*. After a violation is established, the fact-finder must still determine whether the defendant acted reasonably under all the circumstances.” *Hansberger v. Smith*, 229 Md. App. 1, 15 n.7 (2016) (citing *Hous. Auth. of Baltimore City v. Woodland*, 438 Md. 415, 441 (2014))

In *Kiriakos v. Phillips*, the Supreme Court held that a plaintiff still “must meet two prerequisites to establish a prima facie case in negligence: (1) show ‘the violation of a statute or ordinance *designed to protect a specific class* of persons [ ], and [ (2) ] that the violation proximately caused the injury complained of.’” 448 Md. 440, 457 (2016) (brackets in original (emphasis added)). Relying on *Warr v. JMGM Group, LLC*, 433 Md. 170 (2013), the Court in *Kiriakos* reaffirmed that Statutes enacted designed for “the protection, health, welfare and safety

of the people of this State” do not meet this test as a matter of law. *Id.* at 459 (quoting *Warr*, 433 Md. at 198); see also *Brady v. Walmart*, No. 8:21-cv-1412-AAQ, 2022 WL 2987078, at \*12 (D. Md. July 28, 2022) (finding that it is settled Maryland law that negligence per se is not an independent cause of action and dismissing negligence per se as an independent cause of action against a firearm seller). Therefore, the Court should dismiss both Counts III and IV as they cannot be brought as independent causes of action.

#### **D. Count I: Public Nuisance**

Maryland, like other jurisdictions, has yet to recognize public nuisance claims beyond the traditional common law precedent developed the past couple centuries. *Burley v. City of Annapolis* concerned the propriety of the revocation of billiard table licenses by a municipal corporation. 182 Md. 307 (1943). In that opinion Judge Ogle Marbury said for the Court:

Public nuisances, that is to say, those nuisances which have a common effect and produce a common damage, are usually placed in three classifications: First, those which are nuisances per se or by statute; second, those which prejudice public health or comfort such as slaughterhouses, livery stables, etc.; third, those which in their nature are not nuisances, but may become so by reason of their locality, surroundings, or the manner in which they may be maintained.

*Id.* at 312. Plaintiffs fail to allege facts consistent with precedent. Generally, Plaintiffs’ public nuisance claim is like the one alleged in *Miller v. Maloney Concrete Co.* because “there [is] no evidence of the kind and quantity of detriment or interference that is usually required to find a common law nuisance” alleged in this case. 63 Md. App. 38, 54 (1985). There is no damage to property or statute cited by Plaintiffs that establishes public nuisance per se. In fact, one of the reasons the *Brady* court dismisses the public nuisance claims was the lack of property damage

involved “in light of applicable Maryland caselaw.” 2022 WL 2987078, at \*17. The lack of specific property damage requires dismissal of this claim.

Other jurisdictions similarly have dismissed public nuisance claims against firearm sellers, finding that the alleged “events were not reasonably foreseeable” or not applicable under the state’s public nuisance common law precedents. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 412, 414 821 N.E.2d 1099, 1137, 1137-38 (2004) (holding the nuisance would not cease to exist even if the defendants stopped selling firearms and that “[b]ased on the pleadings before us, we conclude that the alleged public nuisance is not so foreseeable to the dealer defendants that their conduct can be deemed a legal cause of a nuisance that is the result of the aggregate of the criminal acts of many individuals over whom they have no control.”); *Camden County Bd. of Chosen Freeholders v. Beretta U.S.A. Corp.*, 273 F.3d 536, 539 (3d Cir. 2001) (affirming dismissal of public nuisance claim against gun manufacturers under New Jersey law in *Camden County Bd. of Chosen Freeholders v. Beretta U.S.A. Corp.*, 123 F. Supp. 2d 245 (D.N.J. 2000)).

Plaintiffs allege harm and damages that stem from the illegal actions of Minor and Willis. Plaintiffs vaguely plead those sales related to Minor caused some unspecified amount of harm, but not “the kind and quantity of detriment or interference that is usually required to find a common law nuisance.” *Miller*, 63 Md. App. at 54. Maryland law requires damage to property or interference, but Plaintiffs have failed to sufficiently allege facts supporting this allegation. Plaintiffs claim United Gun Shop’s firearm sales contribute to gun violence in the DMV. *See* Compl. ¶¶ 30-39. Although Plaintiffs have failed to define “DMV,” it is often recognized as an area encompassing over six million people according to census data.<sup>3</sup> Plaintiffs assertion that gun

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<sup>3</sup> <https://censusreporter.org/profiles/31000US47900-washington-arlington-alexandria-dc-va-md-wv-metro-area/>, last accessed on November 12, 2024.

violence in the DMV has reached a level of public nuisance is belied by the fact gun crimes in the DMV do not even reach one percent of the DMV's population nor do Plaintiffs allege that the harm contributes to the destruction of property. In fact, Plaintiffs have on their government websites, data stating that "most gun violence is tightly concentrated on a small number of very high risk young Black male adults that share a common set of risk factors."<sup>4</sup> Plaintiffs cannot sufficiently allege facts reflecting that any ongoing gun violence is so widespread as to rise to be a public nuisance nor can Plaintiffs attribute United Gun Shop's two October 2021 sales to Minor as the proximate cause for gun violence in the DMV. Accordingly, Plaintiffs' claim for public nuisance should be dismissed.

### **E. Count II: Negligence**

In a negligence action, a plaintiff bears the burden of proving: "1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Rowhouses, Inc. v. Smith*, 446 Md. 611, 631 (2016) (citation omitted). "Duty is a foundational element in a claim of negligence because, as [Maryland's highest Court has] said, 'negligence is a breach of a duty owed to one, and absent that duty, there can be no negligence.'" *Barclay v. Briscoe*, 427 Md. 270, 293 (2012) (quoting *Ashburn v. Anne Arundel Cnty.*, 306 Md. 617, 627 (1986)).

Although Plaintiffs allege that United Gun Shop had a "general duty" to "not expose others to reasonably foreseeable risks of injury" (Compl. ¶ 98), Maryland law imposes no such general

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<sup>4</sup> Washington, DC Gun Violence Problem Analysis Summary Report, National Institute for Criminal Justice Reform and Criminal Justice Coordinating Council, at 9, [https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/release\\_content/attachments/DC%20Gun%20Violence%20Problem%20Analysis%20Summary%20Report.pdf](https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/release_content/attachments/DC%20Gun%20Violence%20Problem%20Analysis%20Summary%20Report.pdf), last accessed on November 12, 2024.

and unspecified duty. See *Conrad v. City of Takoma Park*, 208 Md. 363, 367–68 (1955) (“There must, however, be certain and definite allegation of the circumstances sufficient to show a duty owed by defendant to plaintiff and a breach by defendant of that duty, as well as resulting injury. [] And the general characterization of an act or omission as negligent, or of a condition as unsafe is not usually a sufficient statement of the supposed ground of liability.”) (cleaned up and internal citations and quotations omitted); see also *Barclay*, 427 Md. at 299-300 (“we have repeatedly stated that ‘foreseeability’ must not be confused with ‘duty.’ The fact that a result may be foreseeable does not itself impose a duty in negligence terms”) (quoting *Ashburn*, 306 Md. at 628)).

In *Valentine v. On Target, Inc.*, Maryland’s highest court granted review “to answer the question of what, if any, tort duty a gun store owner owes 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.” 353 Md. 544, 546-547 (1999). The Court held that 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. The Court emphasized, that “[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.” *Id.* The Court of Appeals reached the same result in *Warr v. JMGM Group, LLC*, where it applied *Valentine* to hold that a bar owner owed no duty to third parties or to the public when an intoxicated bar patron caused an accident after leaving the bar. See 433 Md. at 199.

Maryland requires “proximate causation” for negligence actions. See *Walton v. Premier Soccer Club, Inc.*, 261 Md. App. 53, 73 (2024) (“It is a basic principle that ‘[n]egligence is not actionable unless it is a proximate cause of the harm alleged.’”) (quoting *Pittway Corp. v. Collins*,

409 Md. 218, 243 (2009)). Maryland Courts first review “considerations of fairness and social policy” in deciding whether a defendant “should be held liable for the injury, even when cause in fact has been established.” *Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 261-62 (2015). Under Maryland’s adoption of the Restatement (Second) of Torts § 435 (1965), liability may not be imposed on a defendant if an “intervening” negligent act or omission “rises to the level of a superseding cause[.]” *Pittway*, 409 Md. at 247-53. Many jurisdictions recognize that proximate cause requires a direct link between the alleged injury and the alleged negligent act—for that reason 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)

In deciding whether to impose liability, Maryland Courts look at whether the “operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;” whether the intervening cause “is or is not a normal result of such a situation;” whether “the operation of the intervening force is due to a third person’s act or to his failure to act;” whether the “intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him;” and “the degree of culpability of a wrongful act of a third person which sets the intervening force in motion.” *Id.* at 248-49. *See also* Restatement (Second) of Torts § 440 (1965).

Generally, “a third-party’s criminal act often constitutes an unforeseeable superseding cause.” *Mitchell v. Rite Aid of Maryland, Inc.*, 257 Md. App. 273, 320 (2023). Criminal acts are thus an

intervening or superseding cause unless “the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime.” *Id.* (quoting *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 509-10 (2011)). United Gun Shop lacked a special relationship with Minor, and Plaintiffs cannot allege facts that would suggest otherwise. Further, Minor’s indictment and guilty plea did not allege that Minor lied when he represented to United Gun Shop that the firearms purchases were made on his own behalf. *See* Exhibit C.

The Court should dismiss the negligence claim against the United Gun Shop as Plaintiffs fail to plead facts showing a duty owed to the public by United Gun Shop. *See Tchorzewski v. Musick*, No. CV CCB-21-1243, 2022 WL 2135376, at \*3 (D. Md. June 13, 2022) (applying *Barclay* and dismissing the negligence claim because without the creation of a duty owed under Maryland law, “there can be no negligence”). None of the facts alleged demonstrate knowledge or notice on behalf of United Gun Shop that would connect any subsequent criminal act with the purchases by Minor. By failing to show a duty owed to the public based on third parties’ interactions with United Gun Shop, Plaintiff’s argument must fail as a matter of law especially where as here the seller followed all legal requirements and even interacted with ATF and relied on its guidance.<sup>5</sup> In the same vein, Plaintiffs fail to establish a direct link or special relationship

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<sup>5</sup> In *United States v. Pennsylvania Industrial Chemical Corporation*, 411 U.S. 655 (1973), the defendant was alleged to have violated the Rivers and Harbors Act of 1899, which forbids pollution of any refuse of any kind in waters. The defendant relied on a public authority defense pointing to the Army Corps of Engineers “long standing regulations interpreting the Act” to be limited to water deposits that affected navigation. The district court refused to permit the defendant from presenting evidence that it had been affirmatively misled by Army Corps. The Court of Appeals reversed and Supreme Court affirmed, reasoning that “there can be no question that PICCO had a right to look to the Corps of Engineers’ regulations for guidance” and that it was “certainly true that their designed purpose was to guide persons as to the meaning and requirements of the statute.” *Id.* at 674. United Gun Shop’s reliance on the ATF should inform the Court’s analysis on duty and proximate causation.



between Minor and United Gun Shop that would demonstrate proximate cause for Plaintiff's alleged injury and United Gun Shop's firearm sales. The Court should find that Plaintiffs failed to plausibly allege a duty owed by United Gun Shop or the requisite proximate cause and dismiss the negligence claim against them.

#### **F. Count V: Negligent Entrustment**

For negligent entrustment, Maryland Courts have adopted Section 390 of the Restatement (Second) of Torts which provides:

One who supplies directly or through a third person a chattel for use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

To establish a negligent entrustment claim under Maryland law, a plaintiff must prove: “(1) [t]he making available to another a chattel which the supplier (2) knows or should have known the user is likely to use in a manner involving risk of physical harm to others (3) the supplier should expect to be endangered by its use.” *Mackey v. Dorsey*, 104 Md. App. 250 (1995). Similarly, the federal statute governing negligent entrustment requires that the supplier sell an item “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).

In *Brady*, the Court permitted the negligent entrustment claim to proceed because the plaintiff had plead facts demonstrating that at the time of the firearm sales, employees of the defendant were aware that: (1) the purchaser had severe mental health problems; and (2) the severe mental health problems would likely cause the purchaser to use the firearm in a way that would cause physical injury to the person or others. 2024 WL 2273382 \*17. Further, there were signs that suggested that defendant should have made a reasonable inquiry into the seller. *Id.* The court found that there were sufficient facts at the summary

judgment stage to proceed on the claim as the facts also suggested that the seller was a foreseeable victim.  
*Id.*

Plaintiffs have not sufficiently plead facts establishing that United Gun Shop had knowledge that the sale to Minor would use the purchased firearms in a way that would cause the unreasonable risk of physical injury to him or others. Tellingly, Plaintiffs are not alleging that Minor used the purchased firearms in a way that caused physical injury to himself or others. Plaintiffs fail to make more than conclusory statements that United Gun Shop “knew or had reason to know, or reasonably should have known” that sales to Minor would be straw purchases. Compl. ¶¶ 125-32. None of the facts alleged demonstrate what indicia of straw purchase behavior should have been known to United Gun Shop at the time of Minor’s purchases. Section 390 of the Restatement (Second) of Torts emphasizes that recovery for negligent entrustment extends only to claims for “physical harm” inflicted by the person who was entrusted with the product, yet Plaintiffs fail to plead facts alleging that Minor used any purchased firearms to inflict physical harm on himself or others. Plaintiffs are attempting to hold United Gun Shop liable for the decisions of Minor without first creating a link between Minor’s conduct and any factual allegations suggesting that United Gun Shop knew or should have known that Minor was allegedly a straw purchaser. Indeed, United Gun Shop was told the opposite by the ATF and relied on that information. Plaintiffs’ pleadings are silent on any suggestion that they or the ATF had removed any of Minor’s special privileges that allowed him to freely make certain firearm purchases. Accordingly, the Court should dismiss Plaintiffs’ claim for negligent entrustment against United Gun Shop.

#### **G. Plaintiffs Are Not Entitled To Injunctive Relief**

For reasons stated herein, Plaintiffs’ claims for compensatory and punitive damages fail as they have failed to plead a cognizable claim against United Gun Shop. In addition to compensatory

and punitive damages, Plaintiffs seek injunctive relief predicated on their contention that United Gun Shop “continu[es] to contribute to and maintain a public nuisance, by selling firearms to individuals who the Defendant knows or has reasonable cause to believe are straw purchasers or firearms traffickers, as alleged in Count I.” Compl. at 39. Plaintiffs seek to enjoin such violations from occurring. However, United Gun Shop denies that it is in violation of any federal or state laws regarding straw purchasers.

Further, Plaintiffs lack standing to seek injunctive relief, as they have only alleged a past injury; they have not alleged (nor can they) ““continuing, present adverse effects.”” *Nanni v. Aberdeen Marketplace, Inc.*, 878 F.3d 447, 454 (4th Cir. 2017) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992)). An injunction cannot be issued without a “showing of any real or immediate threat that the plaintiff will be wronged again.” *Thomas v. Salvation Army S. Terr.*, 841 F.3d 632, 638 (4th Cir. 2016) (quotations omitted). As discussed throughout this Memorandum, Plaintiffs failed to allege any facts that support their claims. Instead, in conclusory fashion, Plaintiffs allege that United Gun Shop “continued to engage in such sales for the sake of profit.” Compl. ¶ 132. As it is clear Plaintiffs did not suffer any past harm, they also do not suffer any continuing or future harm. Therefore, Plaintiffs lack standing to seek injunctive relief.

## **V. UNITED GUN SHOP JOINS OTHER DEFENDANTS’ ARGUMENTS**

United Gun Shop joins in the arguments made in *Atlantic Guns, Inc.* and *Engage Armament LLC*’s respective Motions to Dismiss and Memorandum in support of their Motions to Dismiss.

## **VI. CONCLUSION**

For all the foregoing reasons, the Court should grant the Motion and dismiss all claims against United Gun Shop.

Dated: November 12, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 12th day of November 2024, a copy of the foregoing was filed electronically and served upon all counsel of record.

/s/ Chukwukpee Nzegwu

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