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IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

THE DISTRICT OF COLUMBIA, *et al.* *Plaintiffs,* v. ENGAGE ARMAMENT LLC, *et al.*, *Defendants*.	Case No. C-15-CV-24-004781 Hon. Ronald B. Rubin

PLAINTIFFS' OMNIBUS OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

Plaintiffs, the State of Maryland (the "State") and the District of Columbia ("the District" or "D.C."), by and through their undersigned attorneys, submit the following Omnibus Opposition to All Defendants' Motions to Dismiss.

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INTRODUCTION

Plaintiffs filed this civil suit to hold Defendants accountable for the harm resulting from their illegal sales of firearms to obvious straw purchasers. In making those sales, Defendants profit from transactions that are prohibited by law. Such straw purchasers then transfer the guns to third parties who could not legally purchase them on their own. By illegally disseminating firearms in this way, Defendants have contributed to the proliferation of crime guns and the nuisance of gun-related crime, including gun violence, in the Washington, D.C. metropolitan area.[1]

Defendants are three Maryland firearm dealers that ignored obvious indicators of illegal straw purchasing and sold a straw purchaser, Demetrius Minor, a combined 34 handguns in a six-month period.[2] Unsurprisingly, Mr. Minor transferred nearly all of the handguns that he purchased from Defendants to individuals who—because of their criminal backgrounds—could not lawfully purchase or own firearms. Almost a third of the handguns that Defendants sold to Mr. Minor have already been used in connection with criminal activity in the State and the District.

Plaintiffs allege that Defendants' sales to Mr. Minor are just the tip of the iceberg. Discovery is likely to uncover many more examples of Defendants having ignored red flags associated with illegal sales in the interest of profit. Indeed, the Bureau of Alcohol, Tobacco,

[1] Plaintiffs use the term Washington, D.C. metropolitan area to refer to Washington, D.C. and its surrounding areas in Maryland.

[2] Each Defendant sold Mr. Minor two or more similar handguns in transactions that occurred within five days of each other. Each Defendant's sales to Mr. Minor are illustrated in Exhibits 1-3 to the Complaint, and reproduced as Ex. A to this brief for the Court's convenience. Defendant Engage Armament LLC ("Engage") sold Mr. Minor 25 handguns over five months, *see* Compl. ¶ 62; Defendant ACEJ Holdings LLC d/b/a United Gun Shop ("United") sold Mr. Minor five handguns over less than two months, *id.* ¶ 67; and Defendant Atlantic Guns, Inc. ("AGI"), sold Mr. Minor four handguns within one month, *id.* ¶ 73.

Firearms and Explosives ("ATF") identified two of the Defendants as being among the top sellers of "crime guns"—firearms recovered by law enforcement in connection with criminal activity—in the entire country. And the Maryland Office of the Attorney General identified Defendants as the top three in-state retailers of traced crime guns recovered in the State during the period in which they sold firearms to Mr. Minor. The proliferation of illegally obtained firearms—including those firearms that Defendants sold illegally—has injured and adversely affected the State, the District, and communities therein.

Defendants' arguments for dismissal under the Protection of Lawful Commerce in Arms Act ("PLCAA"), Maryland's statute of limitations, and Maryland's anti-SLAPP law are without merit. Moreover, Plaintiffs have adequately pleaded the required elements of each of their tort claims. Dismissing Plaintiffs' properly alleged claims before discovery would be premature at best. Defendants' arguments are largely based on disputed factual inferences, but at this stage, Plaintiffs' allegations must be accepted as true, and all reasonable inferences must be drawn in their favor. Defendants will have their opportunity to attempt to disprove that they knowingly and repeatedly facilitated illegal gun sales. But having more than adequately pleaded their case, Plaintiffs are entitled to discovery and an opportunity to develop the evidence to further support their claims. Accordingly, Defendants' motions should be denied.

BACKGROUND

I. DEFENDANTS' STRAW SALES TO DEMETRIUS MINOR.

Engage, AGI, and United (collectively, "Defendants") are firearm dealers that operate brick-and-mortar retail stores in Rockville, Maryland. Compl. ¶¶ 17-19. Firearm dealers are the first line of defense against gun crimes. *Id.* ¶¶ 11, 52. When firearm dealers fulfill their legal obligations and conduct their business responsibly, those dealers can (and do) prevent the flow of

guns from their stores to criminals. *Id.* Conversely, firearm dealers that fail to follow the law are a significant source of guns for the criminal market. *Id.* ¶ 39.

As noted above, one way that firearm dealers supply guns to the criminal market is by engaging in illegal "straw sales," in which the ostensible buyer (the "straw purchaser") purchases the firearm for a third party (the "actual buyer") rather than for himself. *See id.* ¶¶ 27-28; Md. Code Ann., Pub. Safety § 5-101(v) (LexisNexis 2022). Often, the actual buyer is unable to obtain a gun legally due to his criminal history. Compl. ¶ 28. By using a straw purchaser, the actual buyer can obtain a firearm from a licensed dealer without presenting his identification or undergoing a background check. *Id.* ¶¶ 27-28. When firearm dealers sell guns to straw purchasers, they profit from transactions that are prohibited by law. *Id.* ¶ 28.

Federal and Maryland law require firearm dealers to recognize red flags commonly associated with straw purchasing and gun trafficking and to take steps to prevent such sales. *Id.* ¶ 53. These red flags include a purchaser (1) purchasing a large number of firearms in a short period of time, commonly referred to as "multiple purchases" or "multiple sales"; (2) purchasing the same or similar firearms (especially commonplace or non-collectible firearms) within a short period of time; (3) taking photographs or videos in the store; and (4) paying in cash. *Id.* ¶¶ 46, 53 & n.36. Firearm dealers and their employees have access to numerous trainings on these red flags, including through seminars by the National Shooting Sports Foundation ("NSSF"), ATF compliance inspections, and publications by the ATF, NSSF, and other industry actors. *Id.* ¶ 53. Each Defendant was aware of these common red flags of straw purchasing and had an obligation to train its employees to recognize those signs. *Id.* ¶ 54.

Despite their training, in the six-month period between April 6 and October 5, 2021, each of the Defendants ignored multiple telltale signs of straw purchasing when they sold a combined

total of 34 firearms to Mr. Minor. *Id.* ¶ 55. Mr. Minor—a 29-year-old who Defendants knew was unemployed at the time of each purchase—visited Defendants' retail locations numerous times in a span of weeks or even days and often paid in cash, spending tens of thousands of dollars on substantially similar, commonplace handguns that are not collectors' items. He sometimes bought two, three, or even four handguns in the same day.[3] *See id.* ¶¶ 58, 62, 67, 58 n.36; Ex. A. According to an ATF official, Mr. Minor's actions were "consistent with a firearm trafficker" because, among other reasons, he "purchased a large number of firearms in a short period of time," and sometimes "purchased multiple firearms in a single transaction." Compl. ¶ 58.[4]

Mr. Minor promptly transferred most of those firearms to Donald Willis, a convicted felon who was legally prohibited from purchasing a firearm. *See id.* ¶¶ 59, 65, 70-71, 79-80. Mr. Willis then used one of those firearms in a violent assault in the District and resold many of the other guns to other prohibited persons—who could not themselves legally purchase firearms—in the Washington, D.C. metropolitan area. *See id.* At the time Plaintiffs filed their Complaint, at least nine of the firearms that Defendants sold to Mr. Minor had been recovered by law enforcement in connection with criminal activity. *Id.* ¶¶ 60, 64, 69, 75.

[3] Most of the Maryland regulated firearm applications (known as 77Rs) documenting Defendants' firearms sales to Mr. Minor are attached to Defendants' motions to dismiss. *See* Mot. to Dismiss of Engage [hereinafter "Engage MTD"] Ex. A; Mot. to Dismiss of AGI [hereinafter "AGI MTD"] Ex. H. Each form indicates that Mr. Minor was 29 years old and was unemployed. The forms submitted by Engage further reveal that each of their sales to Mr. Minor involved one of just three different employees, and that one employee, Rachel Rabanales, was involved in 15 of Engage's 25 handgun sales to Mr. Minor. *See* Engage MTD Ex. A. And owner Carlos Rabanales signed off on all of Mr. Minor's "multiple sales." *See id.*

[4] Aff. in Supp. of a Criminal Compl. & Arrest Warrant ¶ 79, *United States v. Minor*, No. 22-CR-401 (D.D.C. July 21, 2022) [hereinafter "*Minor* Aff."], *available at* Engage MTD Ex. C.

As alleged in the Complaint, Defendants' transactions with Mr. Minor are not anomalous. *See id.* ¶ 59. Rather, Plaintiffs allege that Defendants unlawfully sold numerous additional firearms to other straw purchasers and gun traffickers, which is consistent with their identification by government regulators as top sources of crime guns. *See id.*

II. DEFENDANTS' CONDUCT HAS CAUSED SIGNIFICANT HARM IN THE STATE AND THE DISTRICT.

Plaintiffs allege that Defendants' sales of firearms to obvious straw purchasers like Mr. Minor have contributed to the proliferation of crime guns and the nuisance of gun-related crime, including gun violence, in the region. *Id.* ¶¶ 2, 39. Each of Defendants' illegal straw sales effectively places a gun in the hands of an individual who cannot legally purchase one for himself. *Id.* ¶¶ 28, 60. This dissemination of guns to prohibited persons directly harms Plaintiffs by endangering their residents and public servants, and by requiring Plaintiffs to expend funds and resources to investigate the use of guns in connection with crimes in the area and to find and recover unlawfully possessed guns before they can be used in the commission of further crimes. *Id.* ¶¶ 91, 104. Plaintiffs' residents are also harmed by the threat and nuisance of gun violence and gun-related crime, and are deprived of the peaceful use of streets, parks, schools, and other public amenities as a result of the circulation of these illegally obtained firearms in their neighborhoods. *Id.* ¶¶ 88-89, 91.

Defendants' straw sales to Mr. Minor illustrate the harm their misconduct has caused Plaintiffs. Specifically, both the State and the District expended law enforcement resources in connection with the investigation and arrest of individuals unlawfully in possession of firearms that Defendants sold to Mr. Minor. *Id.* ¶¶ 92, 102, 113, 121, 131. This includes, but is not limited to, resources required (1) to pursue and arrest Mr. Willis after he assaulted partygoers at his ex-wife's house using a gun Mr. Minor purchased from United; (2) to recover a firearm Mr.

Minor purchased from Engage from the residence of a man suspected of stabbing someone near the Hyattsville Crossing Metro station; (3) to arrest a Prince George's County man who rammed a hotel security gate while in possession of illegal large-capacity magazines and a gun that Mr. Minor purchased from Engage; and (4) to recover a handgun, one that Mr. Minor purchased from AGI, from a District man with an active warrant for second-degree assault. *See id.* ¶¶ 64, 69, 75, 92. In addition, unrecovered firearms that Defendants sold to Mr. Minor—and, on information and belief, to other straw purchasers—remain in circulation among felons and other prohibited individuals in the area who are legally barred from possessing guns. *Id.* ¶¶ 59-60, 91. For obvious reasons, the circulation of unlawful guns also makes the Washington, D.C. metropolitan area less safe for the public.

STANDARD OF REVIEW

A complaint only needs to "contain a clear statement of the facts necessary to constitute a cause of action." Md. Rule 2-305. "The paramount purpose of this requirement is to give defendants notice of the claims against them." *Tierco Md., Inc. v. Williams*, 381 Md. 378, 421 n.20 (2004). "Upon review of a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, a court must 'assume the truth of all well-pleaded facts and allegations in the complaint, as well as all inferences that can reasonably be drawn from them,' and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, i.e., the allegations do not state a cause of action." *Lloyd v. General Motors Corp.*, 397 Md. 108, 121 (2007) (internal citation omitted). Accordingly, the Court "must view all well-pleaded facts and the inferences from those facts in a light most favorable to the plaintiff." *Id.* at 122.

ARGUMENT

I. MARYLAND LAW APPLIES TO THE STATE'S CLAIMS, WHILE D.C. LAW APPLIES TO THE DISTRICT'S CLAIMS.

Plaintiffs agree with Defendants that Maryland substantive law applies to *the State's* claims. *See* Corrected Mem. in Supp. of Engage MTD 15 n.14 [hereinafter "Engage Mem."]; Mem. in Supp. of AGI MTD 18 [hereinafter "AGI Mem."].

AGI and Engage incorrectly assert, however—without conducting any choice of law analysis—that Maryland law also applies to *the District's* claims. *See* AGI Mem. 16; Engage Mem. 15 n.14. That unsupported assumption cannot be squared with Maryland's choice of law rules.

Because Maryland is the forum state, Maryland's choice of law rules determine which jurisdiction's substantive law applies, and courts must conduct a choice of law analysis separately as to each plaintiff. *See, e.g.*, *Doctor's Weight Loss Ctrs., Inc. v. Blackston*, 487 Md. 476, 478 (2024); *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 699 (2000) (recognizing the need for a separate choice of law analysis as to each plaintiff). In tort cases, Maryland's choice of law rules provide that the law of the state where the last event required to constitute a tort occurred applies; that is, the applicable law is based on where the injury occurred. *See, e.g.*, *Doctor's Weight Loss*, 487 Md. at 491; *Laboratory Corp. of Am. v. Hood*, 395 Md. 608, 615-16 (2006); *Philip Morris*, 358 Md. at 746 ("[U]nder Maryland conflict of law jurisprudence, 'the law of the place of injury applies. The place of injury is the place where the injury was suffered, not where the wrongful act took place.'" (citation omitted)); *accord.* Engage Mem. 15 n.14; AGI Mem. 16.

Here, the District brings claims for public nuisance, negligence, negligence per se, and negligent entrustment, all of which include as an element injury *to the District*.[5] The District alleges that it suffered injury in various ways, including through costs it has incurred in responding to crimes committed in the District in connection with guns illegally sold by Defendants and costs it has incurred as a result of the prevalence of gun-related crime and gun violence in the District, which Defendants have fueled through illegal sales. Compl. ¶¶ 102, 104. As these injuries occurred *in the District*, its claims are therefore governed by the District's substantive law. *Doctor's Weight Loss*, 487 Md. at 491; *see also DiFederico v. Marriott Int'l, Inc.*, 130 F. Supp. 3d 986, 990 (D. Md. 2015), *aff'd*, 677 F. App'x 830 (4th Cir. 2017).

II. THE COMPLAINT SUFFICIENTLY ALLEGES THAT DEFENDANTS ENGAGED IN UNLAWFUL AND TORTIOUS CONDUCT RELATING TO FIREARM SALES.

Defendants argue that their actions were "perfectly lawful," Engage Mem. 35, and that they followed "all legal requirements," Memo. in Supp. of United's Mot. to Dismiss 16 [hereinafter "United Mem."]. Those conclusory assertions are contradicted by the well-pleaded allegations in Plaintiffs' Complaint and should be disregarded. *See* Background. As described in the Complaint and explained in more detail below, selling firearms to an obvious straw purchaser violates the law. Compl. ¶¶ 53-59. It is not a defense that Defendants may have complied with *some*—but not all—aspects of the law. *Cf.* AGI Mem. 18; Engage Mem. 40. At

[5] *See, e.g.*, *Hedgepeth v. Whitman Walker Clinic*, 22 A.3d 789, 793 (D.C. 2011) (citing "injury" as an element of negligence); *McNeil Pharm. v. Hawkins*, 686 A.2d 567, 578 (D.C. 1996) (same for negligence per se); *Young v. U-Haul Co. of D.C.*, 11 A.3d 247, 249 (D.C. 2011) (a negligent entrustment claim requires a showing that the supplier "'knows or should have known [that] the user is likely to use [the entrusted chattel] in a manner involving risk of physical harm to others'" (quoting *Phelan v. City of Mt. Rainier*, 805 A.2d 930, 941 (D.C. 2002))).

this stage and in the absence of factual development, it is premature to credit Defendants' arguments regarding the legality of their sales. *See Lloyd*, 397 Md. at 120-21.

Maryland law expressly prohibits straw sales and forbids firearm dealers from selling a handgun to anyone whom the dealer knows or has reasonable cause to believe is "a participant in a straw purchase." Pub. Safety § 5-134(b)(13); *see also* COMAR 29.03.01.08(E). The Public Safety Article defines "straw purchase" 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." Pub. Safety § 5-101(v).[6]

Knowingly selling firearms to straw purchasers also violates federal law. Before completing a firearm sale, the buyer and dealer must complete ATF Form 4473. *See* 27 C.F.R. § 478.124(a). Form 4473 warns buyers and dealers that transferring a firearm to someone who is not the "actual transferee/buyer" is prohibited. Compl. ¶ 41; *see, e.g.*, AGI MTD Ex. G. It warns dealers that a purchaser is "not the actual transferee/buyer if [he is] acquiring the firearm(s) on behalf of another person." Compl. ¶ 41; *see, e.g.*, AGI MTD Ex. G. The form further warns firearm dealers that "[t]he transferor/seller of a firearm must determine the lawfulness of the transaction" and "must stop the transaction if there is reasonable cause to believe that the transferee/buyer is prohibited from receiving or possessing a firearm." Compl. ¶ 43. And it states, "Any person who transfers a firearm to any person he/she knows or has reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, 18 U.S.C. § 922(d), even if the transferor/seller has complied with the Federal background check

[6] The term "regulated firearm" is defined to include any "handgun." Pub. Safety § 5-101(r)(1).

requirements." *Id.* Federal law prohibits buyers from knowingly making a false statement in connection with the purchase of a firearm. 18 U.S.C. § 922(a)(6). Similarly, it is a federal crime for a firearm dealer to knowingly accept a false statement by a buyer, including by entering into the dealer's written records that a straw purchaser is the actual buyer of the firearm. *See id.* § 922(m). Finally, it is a federal crime to aid and abet or conspire to advance the unlicensed dealing of firearms by another person, such as a straw purchaser. *See id.* §§ 2, 371, 922(a)(1)(A) (forbidding unlicensed persons "to engage in the business of . . . dealing in firearms").

Because Mr. Minor was an obvious straw purchaser, Defendants' sales to him violated state and federal law. Plaintiffs expressly allege that each Defendant knew or should have known the common signs of straw purchasing, including "bulk purchases [and] repetitive buying of the same or similar firearms[, especially commonplace or non-collectible firearms,] within a short time period," and that each Defendant signed an Acknowledgment of Federal Firearms Regulations, "acknowledging that the dealer is responsible for understanding and complying with laws and regulations applicable to the sale of firearms." *See e.g.*, Compl. ¶¶ 53, 58. Moreover, Plaintiffs allege that each Defendant knew or should have known that Mr. Minor was in fact a straw purchaser because Mr. Minor's conduct exhibited "obvious warning sign[s]" and "obvious red flags" of a straw purchaser. *Id.* ¶¶ 63, 68, 74.

Engage sold Mr. Minor at least 25 substantially similar handguns between April 6, 2021, and September 15, 2021, including three separate occasions when Engage sold Mr. Minor three handguns on the same day, and six occasions when Engage sold Mr. Minor multiple firearms within a five-day period. *Id.* ¶¶ 61-63. United sold Mr. Minor five similar handguns, including three firearms in the span of nine days, and later another two firearms on the same day. *Id.* ¶ 66.

And AGI sold Mr. Minor four 9mm handguns in a one-month period, including two in a two-day span. *Id.* ¶ 72.

These transactions fit Maryland's statutory definition of a straw purchase: Mr. Willis used Mr. Minor, the straw purchaser, to complete the applications to purchase regulated firearms, pay the firearm dealer for the firearms, take possession of the regulated firearms, and subsequently transfer them. *See id.* ¶ 2; *see also Minor* Aff. ¶ 38 (Mr. Minor told ATF Agent that numerous firearms he applied for and obtained were for Mr. Willis). And Plaintiffs allege that it was "obvious" to Defendants that Mr. Minor—a physically distinctive, unemployed 29-year-old, who made multiple purchases of substantially similar, non-collectible handguns in a short period—was engaged in straw purchasing. *See, e.g.*, Compl. ¶ 8. After all, firearm sales are a far cry from the brief grocery store transaction. Each firearm purchase in Maryland requires the buyer to visit the store twice, the buyer and the seller to fill out two separate forms, and the seller to certify that it is the seller's belief that the sale is not unlawful. *Id.* ¶¶ 40-44, 49-50. In short, Defendants had far more than "reasonable cause to believe" that Mr. Minor was "a participant in a straw purchase." Pub. Safety § 5-134(b)(13).

These transactions also violated federal law. Mr. Minor violated Section 922(a)(1)(A) when he, without a license, transferred handguns that he purchased from Defendants to Mr. Willis for profit. *See* United's Mot. to Dismiss [hereinafter "United MTD"] Ex. A (indictment); *see also id.* Ex. B (plea agreement). Mr. Minor also violated § 922(a)(6) when he falsely represented to Defendants that he was the "actual transferee/buyer" of the handguns. *See, e.g.*, Engage MTD Ex. B, at B2; United MTD Ex. C, at 1; *United States v. Abramski*, 573 U.S. 169, 175-77 (2014) (upholding conviction of straw purchaser for falsely representing that he was "actual buyer" of firearm); *see also* AGI MTD Ex. H, at 3 (falsely representing that he was not

"participating in a straw purchase"). By selling Mr. Minor guns despite knowing or having reason to know that he was a straw purchaser, Defendants aided and abetted his violations of federal law. *See* Compl. ¶¶ 55, 57. That is enough for accomplice liability. *See, e.g.*, *United States v. Carney*, 387 F.3d 436, 445-46 (6th Cir. 2004) (upholding conviction of gun dealer for aiding and abetting violation of Section 922(a)(1)(A) based on knowing sales to straw purchasers).[7]

Defendants' claims that they are immune from liability because they ran a background check on Mr. Minor miss the point and purpose behind the legal prohibitions against straw purchasing. Since the guns were meant for Mr. Willis and others, those individuals should have been the subject of a background check, which would have prevented the purchase. Defendants' conclusory pronouncement that they complied with certain legal requirements changes nothing. *See* Engage Mem. 35; United Mem. 16. Compliance with one legal requirement does not excuse noncompliance with *additional* legal requirements. Further, "[c]ompliance with a legislative enactment or an administrative regulation"—including one part of a statutory scheme—"does not prevent a finding of negligence where a reasonable man would take additional precautions." Restatement (Second) of Torts § 288C, cmt. a (1979); *see also Stottlemyer v. Crampton*, 235 Md. 138, 140 (1964) (concluding that even lawful activity may constitute a public nuisance). Simply because Defendants may have complied with some aspects of the firearms regulatory scheme by completing paperwork and interacting with government agencies does not absolve them from liability where, as here, Plaintiffs allege that they ignored obvious indicators of straw purchasing.

[7] Accordingly, AGI's objection that Section 922(d)(10) had not yet been enacted at the time of its sales to Mr. Minor, *see* AGI Mem. 37-38, is of no moment. Plaintiffs do not rely on that provision in the Complaint, nor do Plaintiffs need it, because straw purchasing and knowingly selling to straw purchasers already violated federal law. *See Abramski*, 573 U.S. at 175-77; *Carney*, 387 F.3d at 445-46.

See City of Gary ex rel. King v. Smith & Wesson Corp., 801 N.E.2d 1222, 1235 (Ind. 2003) ("[G]un regulatory laws leave room for the defendants to be in compliance with those regulations while still acting unreasonably and creating a public nuisance.").

Similarly, Defendants miss the mark in asserting that Mr. Minor's "designated collector" status allowed him to "make multiple purchases without limit." Engage Mem. 40; *see also id.* at 55; AGI Mem. 18, 36. Although Maryland law generally limits most buyers to the purchase of one handgun per 30-day period, some buyers seeking to purchase handguns more frequently attempt to circumvent that limitation by stating that the handguns are for a "private collection or collector's series" and applying to the Maryland State Police ("MSP") for "designated collector status." *See* Pub. Safety §§ 5-128(b), 5-129(a). A buyer whose application for designated collector status is approved is exempt from Maryland's one-handgun-a-month restriction, but only insofar as their purchases are "for a private collection or a collector series" (or meet other limited circumstances not relevant here), Pub. Safety § 5-129(a)(2)(i)-(iv). The purchaser still remains subject to all the other laws described above, as do any firearm dealers involved in sales to such buyers. Thus, regardless of Mr. Minor's designated collector status, Defendants had an obligation to prevent straw purchases—because designated collector status does not confer a license to participate in straw purchases or gun trafficking.

Nor does the fact that Mr. Minor had designated collector status make his purchases innocuous. As Plaintiffs allege, the firearms that Defendants sold Mr. Minor were "substantially similar commonplace semiautomatic pistols"—not collectibles—and it was clear to Defendants that Mr. Minor was not purchasing the guns for himself. Compl. ¶¶ 8, 53, 55.[8] Indeed, even

[8] To the extent that AGI argues that the four firearms purchased from it "vary in their features, manufacturer, popularity, intended purpose, dimensions, weight, design age, and

when confronted by the ATF, Mr. Minor did not assert that his purchases were for a personal collection—he instead stated that he had given the guns to family members, for their protection. *See Minor* Aff. ¶ 31.

In short, the fact that Mr. Minor was able to pass a background check, that he purported to be a collector, and that his purchase applications were "not disapproved" by MSP, does not relieve Defendants—who are best positioned to detect straw purchasing—of their clear obligation under Maryland's anti-straw purchasing law to refuse purchases where there is reasonable cause to believe they are meant for someone else. Questions about the lawfulness of Defendants' conduct must be assessed with the benefit of factual development and cannot be resolved now.

III. THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT DOES NOT BAR THIS CASE.

The Protection of Lawful Commerce in Arms Act ("PLCAA") protects certain members of the gun industry from liability for certain types of conduct when their guns or ammunition are misused without their fault. *See* 15 U.S.C. §§ 7902-03. PLCAA protects defendants only when their conduct is "lawful." *See, e.g., id.* § 7903(5)(A)(iii). *Unlawful* commerce in arms is not protected. Accordingly, PLCAA excludes from protection six specifically enumerated types of claims. *See id.* §§ 7902(a)-(b), 7903(4)-(5)(A). All of Plaintiffs' claims fall squarely within PLCAA's well-established predicate exception. *See id.* § 7903(5)(A)(iii). Moreover, the exception for negligent entrustment and negligence per se claims independently allows those claims to proceed here. *See id.* § 7903(5)(A)(ii).

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appearance" and that 9mm is "the most common handgun chambering in the United States," AGI Mem. 18-19, 28, this is a factual dispute not suited for a motion to dismiss. *See* Md. Rule 2-501. In any event, AGI offers nothing to support these claims, nor could it at this stage.

A. Plaintiffs' Entire Case May Proceed Under PLCAA's Predicate Exception.

The predicate exception to PLCAA permits an action in which (1) "a . . . seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm]," and (2) "the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). When a civil action adequately pleads one or more such statutory violations (commonly known as "predicate" violations) against a particular defendant, all claims against that gun-industry defendant may proceed. *See Brady v. Walmart Inc.*, No. 8:21-CV-1412-AAQ, 2022 WL 2987078, at *12 (D. Md. July 28, 2022); *see also Englund v. World Pawn Exch., LLC*, No. 16CV00598, 2017 WL 7518923, at *4 (Or. Cir. Ct. June 30, 2017) ("[T]he predicate exception's broad language provides that an entire 'action' survives—including all alleged claims."). Moreover, a violation of the predicate statute need not be the plaintiff's direct cause of action for the exception to apply. If a plaintiff properly alleges a predicate violation, any common law claims may proceed. *See, e.g.*, *Brady*, 2022 WL 2987078, at *6, *17; *Williams v. Beemiller, Inc.*, 952 N.Y.S.2d 333, 336, 338, 342 (App. Div. 2012).

1. Plaintiffs Sufficiently Allege that Defendants Violated a State or Federal Statute Applicable to the Sale of Firearms.

The predicate exception squarely applies because Plaintiffs allege that Defendants knowingly violated both state and federal firearm statutes. 15 U.S.C. § 7903(5)(A)(iii). As explained above, Plaintiffs allege that Defendants violated Section 5-134(b)(13) of the Public Safety Article, which prohibits a dealer from selling or transferring a regulated firearm to an individual who the dealer "knows or has reasonable cause to believe . . . is a participant in a straw purchase." *See* Compl. ¶ 57; Pub. Safety § 5-134(b)(13); Argument II.[9]

[9] Engage argues that a violation of Section 5-134(b)(13) of the Public Safety Article does not fall under subclause (II) of PLCAA's predicate exception. *See* Engage Mem. 37-38. But

Additionally, Plaintiffs allege that Defendants aided and abetted Mr. Minor's violation of various provisions of the Gun Control Act, including 18 U.S.C. § 922(a)(1)(A) and (6), which prohibit unlicensed firearm sales and the making of false statements in connection with a firearm transaction, respectively. *See* Compl. ¶ 57; 18 U.S.C. § 2(a).[10] Aiding and abetting the violation of a federal firearm statute also falls squarely under PLCAA's predicate exception. *See* 15 U.S.C. § 7903(5)(A)(iii)(I) (predicate exception applies to "any case in which the . . . seller . . . aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale.").[11]

Plaintiffs do not need to meet subclause (II); they must satisfy the language of the predicate exception generally, not one of the illustrative, non-exhaustive list of examples in the subclauses. *See Minnesota v. Fleet Farm, LLC*, 679 F. Supp. 3d 825, 842 (D. Minn. 2023). Thus, a violation of any State or Federal statute applicable to the sale of firearms is sufficient. *See, e.g.*, *Brady*, 2022 WL 2987078, at *7; *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262, 308 (Conn. 2019); *City of New York v. Beretta USA Corp.*, 524 F.3d 384, 404 (2d Cir. 2008).

Moreover, Plaintiffs also *do* allege violations of the Gun Control Act that *do* meet subclause (II). *See* n.11. If the Court agrees that Plaintiffs have adequately alleged a violation of Maryland law, it need not reach the question of whether Plaintiffs also adequately alleged a violation of the Gun Control Act.

[10] The fact that Mr. Minor was not prosecuted for violating 18 U.S.C. § 922(a)(6) obviously does not mean that he did not actually violate it. *Cf.* Engage Mem. 14, 37 n.23. The U.S. Supreme Court has squarely held that falsely representing that one is the "actual buyer" of a firearm is a paradigmatic violation of Section 922(a)(6). *Abramski*, 573 U.S. at 175, 188.

[11] Subclause (II) also clarifies that the predicate exception applies to "any case in which the . . . seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18." That describes this case as well. Inasmuch as the "typical straw purchase" is made on behalf of "[a] felon or other person who cannot buy or own a gun," *Abramski*, 573 U.S. at 180, Defendants' knowledge that Mr. Minor was a straw purchaser provided them with reasonable cause to believe that the actual buyer was prohibited. *See* Compl. ¶¶ 52-55 (alleging that Defendants were trained not to sell to straw purchasers in order to "prevent[] firearms from getting in the hands of criminals"). Engage's objection that Mr. Minor was not a prohibited purchaser, Engage Mem. 36-37, falls flat because *Mr. Minor* was not the "actual buyer" of the firearms—Mr. Willis was. *See, e.g.*, Engage Mot. Ex. B, at B2 ("You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person."); Compl. ¶ 41 (same); *Abramski*, 573 U.S. at 173 (same).

2. Plaintiffs Sufficiently Allege that Defendants' Violations Were "Knowing."

Plaintiffs are not required to show that Defendants knew their conduct was unlawful for the predicate exception to apply. Rather, they must allege only that Defendants *knew the facts* that made their conduct unlawful. *See Bryan v. United States*, 524 U.S. 184, 193 (1998); *Rehaif v. United States*, 588 U.S. 225, 234 (2019); *New York v. Arm or Ally, LLC*, 718 F. Supp. 3d 310, 330-31 (S.D.N.Y. 2024) (applying this rule to PLCAA's predicate exception), *appeal docketed*, No. 24-773 (2d Cir. argued Sept. 25, 2024).[12] In the context of straw purchasing, and particularly under Maryland's strong anti-straw purchasing law, Plaintiffs need only allege that Defendants had "reasonable cause to believe" that Mr. Minor was not buying all those handguns for himself (as opposed to actual knowledge that he was, in fact, a straw purchaser). *See* Pub. Safety § 5-134(b).

Nevertheless, Plaintiffs more than adequately allege that Defendants' violations of Maryland and federal law were knowing. *See* Compl. ¶¶ 57, 85-86, 99. Specifically, Plaintiffs allege that, given the multiple red flags of straw purchasing, detailed in paragraphs 53-58 of the Complaint, Defendants knew or at least had reasonable cause to believe that Mr. Minor was

[12] Engage's argument to the contrary is wrong. *See* Engage Mem. 32-33 ("The 'knowing' violation *mens rea* standard is thus the most demanding of all *mens rea* requirements."). Engage quotes the United States Supreme Court's *Bryan* decision for the proposition that a *willful* violation requires knowledge that the conduct is unlawful, ignoring that the Court goes on in the very next page of that opinion to explain that "knowing" is a lesser standard. *See Bryan*, 524 U.S. at 191-93. Engage then quotes an unrelated civil case for the proposition that "knowing violations are . . . a more serious subcategory of willful ones," Engage Mem. 32 (quoting *Safeco Ins. Co. v. Burr*, 551 U.S. 47, 58-60 (2007)). But as that decision explains, "willful" has different meanings in the criminal and civil contexts. *See Safeco Ins. Co.*, 551 U.S. at 57 n.9. In the criminal context of *Bryan*, "willfulness" requires "knowledge that [the] conduct was unlawful"; but in the civil context of *Safeco*, willfulness includes both knowing and reckless conduct. *Id.* at 57 & n.9 (quoting *Bryan*, 524 U.S. at 193).

purchasing handguns for other people, and not for his own use or for a personal collection. *See id.* ¶¶ 55, 63, 68, 74.

3. Plaintiffs Sufficiently Allege Proximate Causation.

Finally, Plaintiffs' claims qualify for the predicate exception because Defendants' straw sales were a proximate cause of Plaintiffs' harm. *See* Argument IV. Engage assumes, without authority, that PLCAA's reference to proximate cause imports federal common law into the analysis. *See* Engage Mem. 43. But it makes no sense to ask whether the violation of state common law—and a Maryland statute—harmed Plaintiffs under a federal proximate-cause standard. And in any event, Engage concedes that "the Maryland law of proximate causation is broadly in accord with the federal law." *Id.* at 48. Plaintiffs thus analyze the question of proximate cause under Maryland and D.C. law. As the issue of proximate causation is relevant to multiple claims, Plaintiffs analyze that issue separately in Argument IV.

Engage argues that "[t]he imposition of a 'proximate cause' requirement makes clear that Congress intended to ban suits in which the alleged harm was caused by 'criminal or unlawful' use by a third party," Engage Mem. 29-30. That describes the set of cases that are addressed by PLCAA generally, but the predicate exception recognizes that, even in those circumstances, a gun seller's violation of the law can nevertheless be a proximate cause of the resulting harm. *See* 15 U.S.C. § 7903(5)(A)(iii). If Congress wanted to bar *every* case arising from third parties' criminal or unlawful use of firearms, it would not have created the predicate exception (or any of PLCAA's exceptions) in the first place. Stated differently, to adopt Engage's argument would be to read the predicate exception out of PLCAA entirely. Indeed, the statute contains non-exhaustive examples of violations by firearm dealers that can give rise to liability despite third-party criminality, including where a "seller knowingly made a[] false entry" in its required records or where a "seller aided, abetted, or conspired with any other person" to sell a firearm,

"knowing, or having reasonable cause to believe, that the actual buyer . . . was prohibited from possessing or receiving a firearm." *Id.* § 7903(5)(A)(iii)(I)-(II).

B. PLCAA Expressly Permits Plaintiffs' Claims for Negligent Entrustment and Negligence Per Se.

Plaintiffs' negligent entrustment and negligence per se claims fall within the PLCAA exception for such claims. This provision of PLCAA provides a blanket exception for any "action brought against a seller for negligent entrustment or negligence per se," 15 U.S.C. § 7903(5)(A)(ii), and allows such claims to proceed even where a plaintiff's other claims are precluded by the statute. *See id.* § 7903(5)(A); *e.g.*, *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 324, 326 (Mo. 2016) (ruling that negligent entrustment claim could proceed though other claims were preempted by PLCAA). Indeed, none of the Defendants disputes that the District's negligence per se claim qualifies for this PLCAA exception.

Engage argues that Plaintiffs' negligent entrustment claims are beyond the scope of PLCAA's negligent entrustment exception. PLCAA defines "negligent entrustment" as the "supplying of a [firearm] by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the [firearm] is supplied is likely to, and does, use the [firearm] in a manner involving unreasonable risk of physical injury." 15 U.S.C. § 7903(5)(B); *see* Engage Mem. 53. According to Engage, this exception does not apply to Plaintiffs' negligent entrustment claims because Mr. Minor did not "use" the firearms in such a manner. *See* Engage Mem. 54 ("Minor is alleged to have trafficked the firearms; he is not alleged to have 'used' the firearms.").

Engage reads the term "use" too narrowly. Courts have interpreted the word "use" expansively, in firearm cases and in other contexts, to mean "employ" or to "put into action or service." *E.g.*, *Voisine v. United States*, 579 U.S. 686, 692-95 & n.3 (2016). For example, the

United States Supreme Court has held that the trading of a firearm for drugs constitutes a "use" of that firearm, under the ordinary meaning of the word. *Smith v. United States*, 508 U.S. 223, 228-29 (1993). The exchange of a firearm for *money* (as is often the case with straw purchasing and gun trafficking) is surely just as much of a "use." *See id.* And selling a firearm to an individual with a felony record of violent assaults, as Mr. Minor did, *see* Compl. ¶ 60, is a "use" that plainly involves "unreasonable risk of physical injury to . . . others," 15 U.S.C. § 7903(5)(B). Indeed, Congress specifically recognized that cases involving straw purchasing would qualify under PLCAA's negligent entrustment exception. *See* 151 Cong. Rec. 17377 (2005) (stating that if a firearm dealer knew it was selling to a straw purchaser, "it would be a negligent entrustment or violation of the statute").

IV. PLAINTIFFS SUFFICIENTLY ALLEGE THAT DEFENDANTS PROXIMATELY CAUSED THEIR HARM.

A defendant's conduct is the proximate cause of a plaintiff's injury if it is "(1) a cause in fact, and (2) a legally cognizable cause." *Kiriakos v. Phillips*, 448 Md. 440, 465 (2016) (citing *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 428-29 (2012)); *accord. District of Columbia v. Carlson*, 793 A.2d 1285, 1288 (D.C. 2002). Proximate cause is a question reserved for the trier of fact unless "the facts admit of but one inference." *Pittway Corp. v. Collin*, 409 Md. 218, 253 (2009) (citing *Caroline v. Reicher*, 269 Md. 125, 133 (1973)). Plaintiffs adequately allege that Defendants' conduct meets both prongs.

A. Defendants' Conduct Was the Cause in Fact of Plaintiffs' Injuries.

In assessing causation, the critical question is whether Plaintiffs' injuries "were the *ordinary* and *foreseeable*" result of Defendants' actions. *Pittway*, 409 Md. at 254. As discussed in Argument VII.A, they were, and Plaintiffs' allegations satisfy the "cause in fact" prong of the causation test.

When multiple acts contribute to a plaintiff's injury, Maryland and D.C. courts ask "'if it is "more likely than not" that the defendant's conduct was a substantial factor in producing the [plaintiff's] injuries.'" *Kiriakos*, 448 Md. at 464 (quoting *Pittway*, 409 Md. at 244) (alterations in original); *accord White v. United States*, 780 F.2d 97, 106 (D.C. Cir. 1986). Relevant considerations in this analysis include (1) "the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it," (2) "whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm," and (3) "lapse of time." *Pittway*, 409 Md. at 245 (citing Restatement (Second) of Torts § 433).

Plaintiffs more than adequately allege that Defendants' conduct was a substantial factor in bringing about Plaintiffs' damages. *See* Compl. ¶¶ 3-7 (alleging that Defendants sold Mr. Minor the trafficked firearms); *id.* ¶ 10 (alleging that the trafficked firearms were used in crimes in the District); *id.* ¶ 2 (alleging that Defendants are the top three suppliers of traced crime guns in Maryland). Here, each sale of firearms by Defendants to an obvious straw purchaser was the key factor in the chain of events that resulted in Plaintiffs' harm, which started in the months following the sales and continued thereafter.

In their motions to dismiss, Defendants misstate the harm that Plaintiffs allege in this case. For example, AGI suggests that Plaintiffs seek "millions of dollars" relating to gun violence generally rather than damages relating to AGI's "four handgun sales" to Mr. Minor. AGI Mem. 40. But AGI is incorrect. Plaintiffs do not allege that Defendants are the proximate cause of *all* gun-related crime in the Washington, D.C. metropolitan area. Nor are Plaintiffs seeking compensation from the three Defendants for all harm caused by gun-related crime in the region. Rather, Plaintiffs seek injunctive relief and "a reasonable sum of money that will fairly

compensate [Plaintiffs] for the damages they have suffered." Prayer for Relief at C. Specifically, Plaintiffs seek to hold Defendants accountable for harm caused by the numerous firearms *Defendants* sold to straw purchasers. *See* Background II. While that harm may be only a fraction of the total harm Plaintiffs suffer from the proliferation of illegal guns and gun-related crime, that does not absolve Defendants of legal responsibility for the portion attributable to their illegal conduct.

AGI further argues that because "none [of the firearms AGI sold to Mr. Minor] were alleged to have been used in a crime involving gun violence," Plaintiffs have not shown causation-in-fact. AGI Mem. 21. But this, too, misstates the harm alleged. Plaintiffs do not allege harm resulting only from gun *violence*, but from the proliferation of illegal guns sold by Defendants and gun-related crimes related to those sales. Moreover, as Plaintiffs allege—and AGI acknowledges—at least two of the firearms it sold to Mr. Minor were used and recovered by law enforcement in connection with other crimes. Compl. ¶ 102; AGI Mem. 40. One was used to facilitate drug distribution in the District, and another was found in the possession of a fugitive with an active warrant for assault. *See* Compl. ¶ 102. AGI's negligence in selling those firearms to Mr. Minor, an obvious straw purchaser, was a substantial factor in the chain of events that led to those firearms ending up in the hands of criminals and the resulting damage to Plaintiffs.

B. Defendants' Conduct Was the Legal Cause of Plaintiffs' Injuries.

Plaintiffs also sufficiently allege that Defendants' actions were the legal cause of their injuries. Legal causation "is a policy-oriented doctrine" that asks "whether the actual harm to the litigant falls within a general field of danger that the actor should have anticipated or expected." *Pittway*, 409 Md. at 245 (internal citations omitted).

Defendants argue that Mr. Minor's involvement is a "superseding cause" that limits their liability for any subsequent harms. *See* AGI Mem. 22-23; United Mem. 14-16; Engage Mem. 20, 49-52. A third party's involvement will absolve the defendant of liability, however, only "if it so entirely supersedes the operation of the defendant's negligence that it alone, without his negligence contributing thereto to the slightest degree, produces the injury." *Moore v. Myers*, 161 Md. App. 349, 367 (2005) (citing *State ex rel. Schiller v. Hecht Co.*, 165 Md. 415, 421 (1933)) (finding no superseding cause where defendant allowed son to take dog outside without a leash, and the dog frightened a girl who ran into the street and was hit by a negligently driven vehicle). Where, as here, Defendants' unlawful sales placed the very firearms in the hands of the straw seller, it cannot be said that Defendants' negligence did not "contribut[e] in the slightest degree" to Plaintiffs' injuries. *Moore*, 161 Md. App. at 637; *see* Compl. ¶¶ 61-80.

As Defendants acknowledge, even a third party's criminal conduct does not necessarily sever the chain of causation in a negligence action. *See* Engage Mem. 51 ("Thus, 'a third-party's criminal act *often* constitutes an unforeseeable superseding cause.'") (emphasis added); United Mem. 15 ("Generally, 'a third-party's criminal act *often* constitutes an unforeseeable superseding cause.'") (emphasis added). Rather, a defendant's negligent conduct is the legal cause of the plaintiff's injury even where there is third-party criminal conduct where, as here, the defendant's "negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime" and "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." *Troxel v. Iguana Cantina, LLC*, 201 Md. 476, 510-11 (2011) (citing Restatement (Second) of Torts § 448 (1965)). *See, e.g.*, *Henley v. Prince George's Cnty.*, 305 Md. 320, 336 (1986) ("Foreseeability as an

element of proximate cause permits a retrospective consideration of the total facts of the occurrence, including the criminal acts of a third person occurring after the original act of negligence of a tortfeasor."); *Westfarm Assocs. Ltd. P'ship v. Washington Suburban Sanitary Comm'n*, 66 F.3d 669, 688 (4th Cir. 1995) ("Proximate cause may be found even where the conduct of the third party is tortious or criminal, so long as the conduct was facilitated by the first party and reasonably foreseeable, and some ultimate harm was reasonably foreseeable.").[13]

Here, Plaintiffs allege that Defendants' illegal and negligent actions in selling firearms to Mr. Minor created an opportunity for Mr. Minor to illegally transfer those firearms to criminals. Compl. ¶¶ 8, 55-60. Plaintiffs further allege that Defendants knew or should have known that they were creating a situation that would result in the firearms being transferred into the criminal market and used in crimes in the surrounding area. *Id.* Accordingly, the existence of a third-party criminal act does not defeat causation. *See, e.g.*, *Fleet Farm*, 679 F. Supp. 3d at 843-44 (observing that "firearm sales [to straw purchasers] can give rise to the foreseeability of subsequent gun trafficking and violence" and collecting cases). In any event, the issue of causation is one for the jury. *Pittway*, 409 Md. at 253.

[13] See also Restatement (Third) of Torts, § 34 cmt. e (2010) ("intervening criminal acts do not categorically bar liability"); *Cain v. Vontz*, 703 F.2d 1279, 1282-83 (11th Cir. 1983) (holding landlord could be liable for wrongful death of tenant where defendant was negligent in repairing a lock because "if the intervening criminal act was foreseeable, the original negligent party could still be liable"); *Rieser v. District of Columbia*, 563 F.2d 462, 479 (D.C. Cir. 1977) ("If a negligent, intentional or even criminal intervening act or end result was reasonably foreseeable to the original actor, his liability will not ordinarily be superseded by that intervening act."), *opinion reinstated in part on reh'g*, 580 F.2d 647 (D.C. Cir. 1978); *In re Nat'l Prescription Opiate Litig.*, 452 F. Supp. 3d 745, 760 (N.D. Ohio 2020) (liability for marketing and distributing opioid products in a manner that foreseeably increased the risk of illegal diversion, resulting in addiction-related injury and death).

V. THE STATUTE OF LIMITATIONS HAS NOT YET RUN ON PLAINTIFFS' CLAIMS.

Maryland law applies a three-year statute of limitations to each of Plaintiffs' claims, which begins to run from "the date [each claim] accrues."[14] Md. Code Ann., Cts. & Jud. P. § 5-101 (LexisNexis 2020). "A cause of action does not accrue until *all elements are present, including damages*, however trivial." *Doe v. Archdiocese of Wash.*, 114 Md. App. 169, 177 (1997) (emphasis added); *see also, e.g.*, *Fitzgerald v. Bell*, 246 Md. App. 69, 94 (2020) ("We have noted the obvious point that 'the date of accrual for an independent cause of action cannot be any earlier than the date(s) of the actual injury.'" (quoting *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*,152 Md. App. 698, 716 (2003))). Plaintiffs' claims could not "accrue" under Maryland law until Plaintiffs suffered damages, which—contrary to Defendants' contention—occurred after Defendants completed their course of sales to Mr. Minor. *See Supik*, 152 Md. App. at 710-16*; Doe*, 114 Md. App. 175-78.

Moreover, Maryland has adopted the discovery rule, which provides that a limitations period does not begin to run until "a [plaintiff] gains knowledge sufficient to put her on inquiry." *Oak Plaza, LLC v. Buckingham*, No. CV DKC 22-0231, 2024 WL 1283508 (D. Md. Mar. 26, 2024) (citation omitted). In other words, "[a] cause of action accrues when (1) [the cause of action] comes into existence . . . *and* (2) the claimant *acquires knowledge* sufficient to make inquiry, and a reasonable inquiry would have disclosed the existence of the allegedly negligent act and harm." *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 447 (2000) (emphasis added) (alterations in original) (internal citation and quotations omitted).

[14] Plaintiffs do not dispute that for purposes of this motion the Court can apply Maryland statute of limitations law to both the State and the District's claims, at least insofar as there is no conflict with District law on this issue, *see* p. 28.

In this case, the earliest Plaintiffs' claims could have accrued was when Mr. Minor transferred the firearms, thereby placing guns into the hands of prohibited persons and harming the State and the District. As explained in Background II, the harm to Plaintiffs from Defendants' repeated unlawful straw sales stems from the public nuisance and costs Plaintiffs have incurred—and will continue to incur—in addressing and responding to the illegal possession of those guns by prohibited persons. Specifically, Defendants' dissemination of guns to prohibited persons, via straw purchasers, harms Plaintiffs by endangering their residents and public servants, and by requiring Plaintiffs to expend resources investigating and mitigating gun violence and gun-related crime arising from Defendants' unlawful conduct. *Id.* ¶¶ 91, 104.

But Plaintiffs did not discover their claims—and therefore the statute of limitations did not begin to run—until those firearms were recovered by law enforcement. Indeed, the State and the District did not—and could not—know who was responsible for the harm until their law enforcement officials recovered and traced the firearms back to Mr. Minor and Defendants. Accordingly, based on the allegations in the Complaint, the *earliest* the statute of limitations on Plaintiffs' claims began to run against *any* of the Defendants is November 2021, when the District's Metropolitan Police Department recovered one of the firearms United sold to Mr. Minor, after it was used in conjunction with an assault by a felon involving multiple victims. *Id.* ¶ 69. Given that Plaintiffs filed the Complaint on September 3, 2024, their claims were well within the three-year statute of limitations period for each Defendant.

Defendants misconstrue the role of the Maryland discovery rule by arguing that it starts the clock ticking before any damage has occurred. *See* Engage Mem. 15-18; AGI Mem. 44-46; United Mem. 9-10. AGI argues that "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" because at that point "Maryland gained sufficient knowledge of allegedly improper straw sales." AGI Mem. 44-45; *see also* Engage Mem. 17 (similar).[15] But Maryland had not yet suffered harm at the time Mr. Minor submitted his Form 77R, or even when AGI's sale to him was completed on September 4, 2021. Rather, Plaintiffs suffered harm after the firearm entered the criminal market, and they did not discover the harm until the firearms were first recovered. Only then, when "all elements [were] present, including damages," did the statute of limitations begin to run. *Doe*, 114 Md. App. at 177.

AGI's contention that "the accrual date does not turn on when the harm or alleged wrongful acts were completed," AGI Mem. 44, misstates Maryland law. The single case that AGI cites for its proposition, *Jacobson v. Sweeny*, 82 F. Supp. 2d 458 (D. Md. 2000), merely restates the general definition of the discovery rule discussed above and does not support AGI's argument. *See id.* at 461.[16]

[15] Defendants make no argument that the District had contemporaneous knowledge of Mr. Minor's purchases—nor could they. *See* AGI Mem. 44-45; Engage Mem. 17.

[16] Even if Defendants' articulation of the discovery rule were correct, which it is not, Plaintiffs' claims are still within the statute of limitations under the continuing harm rule. Engage admits that it made one sale within the limitations period, on September 15, 2021, but argues that Plaintiffs' claims relating to its other sales to Mr. Minor are time-barred. Engage Mem. 15. This argument is unavailing because "the 'continuing harm' or 'continuing violation' doctrine . . . tolls the statute of limitations in cases where there are continuing violations" such that "violations that are continuing in nature are not barred by the statute of limitations merely because one or more of them occurred earlier in time." *Litz v. Md. Dep't of Env't*, 464 Md. 623, 646 (2013) (internal citation omitted); *see also Singer Co. v. Baltimore Gas & Elec. Co.*, 79 Md. App. 461, 476 (1989) (noting that where negligence causes of action were "premised" upon an electric company's breach of "ongoing duties owed [to] its customers," causes of action for damages incurred "within three years of the commencement of the present action" were not barred by the statute of limitations). Thus, in the unlikely event that the statute of limitations pertaining to any of Engage's sales started to run before September 3, 2021, Plaintiffs have clearly pleaded a continuing harm that tolls it for any sales that may have occurred outside the applicable three-year window. United makes a similar argument and it fails for the same reason.

Moreover, even if Defendants' argument about the State's purported contemporaneous knowledge of the sales had merit, dismissal would not be appropriate because the State's knowledge is a question of fact that cannot be resolved on a motion to dismiss. *See Litz*, 464 Md. at 641 ("[W]hen it is necessary to make a factual determination to identify the date of accrual, . . . those factual determinations are generally made by the trier of fact, and not decided by the court as a matter of law.").

The District is positioned differently. Under D.C. law, negligence or public nuisance claims brought by the District are not subject to any statute of limitations. D.C. Code § 12-301(a)(8), § 12-301(b) ("This section does not apply to actions . . . brought by the District of Columbia government."); *Solid Rock Church, Disciples of Christ v. Friendship Pub. Charter Sch., Inc.*, 925 A.2d 554, 560 (D.C. 2007) ("The District is immune from statutes of limitation in suits relating to a public function."). Maryland courts recognize that where the application of Maryland's statute of limitations would terminate a plaintiff's right to maintain an action under a foreign statute, the foreign statute of limitations should apply. *See, e.g., Akinmeji v. Jos. A. Bank Clothiers, Inc.*, 399 F. Supp. 3d 466, 472 (D. Md. 2019) (finding the statute of limitations is a substantive issue where the foreign law "(a) contain[s] a specific statute of limitations; and (b) create[s] a new liability that does not exist at common law" (citing *Turner v. Yamaha Motor Corp., U.S.A.*, 88 Md. App. 1, 3 (1991))). Accordingly, if the application of Maryland's statute of limitations would bar the District's claims, this Court should apply D.C. law to save them.

VI. THE COMPLAINT STATES A COGNIZABLE PUBLIC NUISANCE CLAIM UNDER BOTH MARYLAND AND D.C. LAW.

Both Maryland and D.C. courts follow the Second Restatement of Torts, which defines a public nuisance as "an unreasonable interference with a right common to the general public." *See* Restatement (Second) of Torts § 821B (1979); *see also, e.g., Tadjer v. Montgomery Cnty.*,

300 Md. 539, 552 (1984) (citing section 821B); *B & W Mgmt., Inc. v. Tasea Inv. Co.*, 451 A.2d 879, 881 (D.C. 1982) (same). An interference is unreasonable if it (a) prejudices public health or safety; (b) is already proscribed by statute or regulation; or (c) is continuing in nature or has produced a long-lasting effect, of which the actor knows or should know, on the public right. *See Tadjer*, 300 Md. at 552 (citing Restatement (Second) of Torts § 821B(2)(a)-(c) (1979)); *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 210-11 (4th Cir. 2022) (same), *cert. denied*, 143 S. Ct. 1795 (2023). A public right—as opposed to a merely individual or private right—is one in which the general public shares a common interest. *See Horner v. State*, 49 Md. 277, 279 (1878); *Acosta Orellana v. CropLife Int'l*, 711 F. Supp. 2d 81, 101 (D.D.C. 2010).

Here, Plaintiffs sufficiently allege that Defendants' repeated unlawful firearm sales to Mr. Minor (and other straw purchasers) created a public nuisance in the State and the District. *See* Compl. ¶¶ 87-88, 92. Specifically, Plaintiffs allege that the fueling of the illegal secondary gun market and threat of gun-related crime and violence caused by Defendants' illegal sales unreasonably interferes with the numerous public rights common to Washington, D.C. metropolitan area residents, including but not limited to, "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." *Id.* ¶¶ 88, 89. That interference is unreasonable because it endangers public health, *id.* ¶ 88, is prohibited by law, *id.*, *and* is continuing in nature, *id.* ¶¶ 91, 94, 95.

AGI attempts to reframe Plaintiffs' claim, asserting that "there is not a public right to be free from being assaulted by criminals." AGI Mem. 24. Plaintiffs' allegations, however, are rooted not in an individual right to be free from assault, but in the common interests of public

health and safety, which Maryland and D.C. courts recognize as valid bases for public nuisance claims. *See, e.g.*, *Tadjer*, 300 Md. at 551 (noting that "interference with the interests of the community" includes interferences "with the public safety" (quoting W. Prosser, *Law of Torts* § 88, at 583 (4th ed. 1971))); *Collins v. Tri-State Zoological Park of W. Md., Inc.*, 514 F. Supp. 3d 773, 780 (D. Md. 2021) ("[C]onduct may amount to an unreasonable interference with a public right if it . . . 'involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience.'" (quoting Restatement (Second) of Torts § 821B(2)(a) (1979))); *Acosta Orellana*, 711 F. Supp. 2d at 101. Plaintiffs also specifically allege that Defendants' conduct infringes on the public's right to safely travel and access public roads, parks, and sidewalks, Compl. ¶ 88, all of which have been expressly recognized as valid public rights by Maryland courts.[17]

Courts in numerous jurisdictions have upheld public nuisance claims against firearm sellers and manufacturers based on their contributions to widespread gun-related crime and gun violence. *See, e.g.*, *City of Gary*, 801 N.E.2d at 1232; *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1143-44 (Ohio 2002); *James v. Arms Techs., Inc.*, 820 A.2d 27, 52-53 (N.J. Super. Ct. App. Div. 2003); *Ileto v. Glock Inc.*, 349 F.3d 1191, 1213 (9th Cir. 2003); *Fleet Farm*, 679 F. Supp. 3d at 844-45; *City of New York v. A-1 Jewelry & Pawn, Inc.*, 247 F.R.D. 296, 348 (E.D.N.Y. 2007). Each of these cases implicitly or expressly rejects the contention, advanced by Engage, that the Second Amendment precludes public nuisance claims premised on the sale of firearms, much less the *unlawful* sale of firearms, as alleged here. *See* Engage Mem. 25-26. The

[17] *See, e.g.*, *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 94 (2013) (public right of travel) (quoting Restatement (Second) of Torts § 821C cmt. b (1979)); *Horner*, 49 Md. at 286 (public highways); *State v. Exxon Mobil*, 406 F. Supp. 3d. 420, 467 (D. Md. 2019) (fishing and swimming).

constitutional right to bear arms "is not unlimited," *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), and it certainly does not encompass a right to sell arms to anyone under any circumstances, particularly when the sales are alleged to violate other laws and regulations. *See, e.g.*, *Teixeira v. County of Alameda*, 873 F.3d 670, 690 (9th Cir. 2017) ("[T]he Second Amendment does not independently protect a proprietor's right to sell firearms."); *Morehouse Enters., LLC v. ATF*, No. 3:22-cv-116, 2022 WL 3597299, at *8 (D.N.D. Aug. 23, 2022) ("There is a longstanding distinction between the right to keep and bear arms and commercial regulation of firearm sales."), *aff'd*, 78 F.4th 1011 (8th Cir. 2023).

The two cases on which Defendants rely in support of their argument are readily distinguishable from Plaintiffs' lawsuit. *See* United Mem. 12; Engage Mem. 25. *First*, in *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099 (Ill. 2004), the court concluded that sales by firearm dealers were not the proximate cause of gun violence because the sales at issue complied with all applicable laws. *Id.* at 1111, 1134, 1136. That is not this case, as Defendants' sales violated both Maryland and federal laws. *See* Compl. ¶¶ 85-86; *see also* Argument II. *Second*, in *Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp.*, 273 F.3d 536 (3d Cir. 2001), the court held that a public nuisance claim was not cognizable against the lawful conduct of firearm *manufacturers* because the harms were not sufficiently foreseeable. *Id.* at 540. That decision is even less helpful to the Defendants, who are firearm *dealers* that interacted directly with straw purchasers such as Mr. Minor and easily could have foreseen that the predictable result of their illegal sales would endanger the public. *See* Compl. ¶ 93.[18]

[18] Similarly, AGI's digression about courts' "refus[al] to hold manufacturers and distributors liable in public nuisance for downstream harms traceable to their lawful products," AGI Mem. 24-26 (emphasis added), is irrelevant on the facts of this case.

Defendants' other scattershot attacks on Plaintiffs' public nuisance claim are no more persuasive. *First*, AGI misstates the applicable legal standard when it asserts that conduct significantly interferes with public health and safety *only* when it is proscribed by statute *and* is of a continuing nature. AGI Mem. 24. To the contrary, the Restatement is clear that an unreasonable interference with a public right may be established by showing (a) a significant interference with public health or safety, *or* (b) a violation of a statute, *or* (c) conduct of a continuing nature. *See* Restatement (Second) of Torts § 821B cmt. e (1979) ("They are listed in the disjunctive; any one may warrant a holding of unreasonableness. They also do not purport to be exclusive."). In any event, as discussed above, Plaintiffs allege all three grounds here. *See* Compl. ¶¶ 88, 89, 91, 94, 95.

Second, Engage asserts that public nuisance claims require that a defendant have a preexisting duty to abate the nuisance. Engage Mem. 24. But that is true only when the defendant's liability is premised on its *failure* to act. *See* Restatement (Second) of Torts § 824 (1979); *Cangemi v. United States*, 13 F.4th 115, 137 (2d Cir. 2021). Here, Defendants' public nuisance liability is premised primarily on *affirmative* acts—selling to Mr. Minor (and other straw purchasers) in the face of numerous red flags. *See, e.g.*, Compl. ¶¶ 82, 87-88, 93.

Third, United erroneously states that property damage is required to bring a public nuisance claim. United Mem. 11-12. But, "[u]nlike a private nuisance, a public nuisance does not necessarily involve interference with use and enjoyment of land." Restatement (Second) of Torts § 821B cmt. h (1979); *see also Collins*, 514 F. Supp. 3d at 781 (describing as "mistaken"

the argument that "public nuisance . . . requires . . . interference with property rights or enjoyment of the land").[19]

Fourth, contrary to Defendants' suggestions, *see* AGI Mem. 25; Engage Mem. 25, Maryland law does not require a defendant to retain exclusive control over the nuisance-causing instrumentality. *See Exxon Mobil*, 406 F. Supp. 3d at 468 ("To the contrary, Maryland courts have found that a defendant who created or substantially participated in the creation of the nuisance may be held liable even though he (or it) no longer has control over the nuisance-causing instrumentality."); *see also Fleet Farm*, 679 F. Supp. 3d at 845 ("Unlike in other cases where a product is legally sold and later used in a way that endangers the public, the very act of selling firearms to suspected straw purchasers endangers the public and is part of the nuisance.").

Finally, AGI's and United's protests that the handguns they sold to Mr. Minor were too few to constitute a nuisance, *see* AGI Mem. 26; United Mem. 13, ignore both (1) Plaintiffs' allegations that Defendants' sales to Mr. Minor were "only a fraction of the guns that the store[s] sold illegally," Compl. ¶¶ 71, 80, and (2) that "[n]o matter how many other separate and independent offenders there may be, the [nuisance] defendant must answer for his individual contribution," *Fox v. Ewers*, 195 Md. 650, 659 (1950). Indeed, United's assertion that gun violence in the Washington, D.C. metropolitan area does not rise to the level of a nuisance because "gun crimes in the [District of Columbia, Maryland, and Virginia ("DMV")] do not even reach one percent of the DMV's population," United Mem. 12-13, is unsupported both legally and factually. United cites no authority requiring a nuisance to affect a threshold percentage of the population, nor does it support its claim that gun-related crime does not "reach" one percent

[19] In any event, Plaintiffs allege that Defendants' nuisance *has* harmed their residents' "use and enjoyment of property." Compl. ¶ 88.

of the population. Ultimately, whether a Defendant's interference with public rights is sufficiently unreasonable to constitute a nuisance is a question of fact that is suitable for resolution after discovery. *See Wietzke v. Chesapeake Conf. Ass'n*, 421 Md. 355, 380 (2011) (noting that the "reasonableness of a landowner's use of land was 'a matter for the fact-finder'" in a private nuisance suit).

VII. PLAINTIFFS ADEQUATELY PLEAD NEGLIGENCE UNDER BOTH MARYLAND AND D.C. LAW.

To state a negligence claim under Maryland or D.C. law, a plaintiff must allege (1) the existence of a duty owed to that plaintiff; (2) breach of that duty; (3) causation; and (4) damages.[20] *Kiriakos*,448 Md. at 456; *Jarrett v. Woodward Bros, Inc.*, 751 A.2d 972, 977 (D.C. 2000). Maryland, for its part, "has gone almost as far as any jurisdiction . . . in holding that meager evidence of negligence is sufficient to carry the case to the jury." *Moore*, 161 Md. App. at 363 (citing *Fowler v. Smith*, 240 Md. 240, 246 (1965)) (discussing motions for judgment in negligence actions). Plaintiffs more than sufficiently allege all four elements of their negligence claims against each Defendant.

A. Defendants Owe Plaintiffs a Duty to Take Reasonable Care to Conduct Firearm Sales Lawfully and to Avoid Selling Firearms to Straw Purchasers.

1. Plaintiffs Allege the Existence of a Duty Under Maryland's Multi-Factor Test.

In determining whether a defendant owes a duty to a particular plaintiff, Maryland courts consider the following factors:

> the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered the injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and

[20] Plaintiffs have sufficiently alleged proximate causation, as discussed in Argument IV.

> consequences to the community of imposing a duty to exercise reasonable care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved.

Kiriakos, 448 Md. at 486 (applying these factors and finding the existence of a duty); *see Kennedy Krieger Inst. v. Partlow*, 460 Md. 607, 661 (2018) (same); *Eisel v. Board of Educ. of Montgomery Cnty.*, 324 Md. 376, 391 (1991) (same). Taken together, and, as relevant here, the test requires courts to consider the foreseeability of harm to Plaintiffs, the application of laws relating to Defendants' conduct, and the burden to Defendants and the community of imposing a duty balanced against the consequences of failing to do so. These factors,[21] applied to Plaintiffs' allegations and construed in the light most favorable to Plaintiffs, weigh in favor of a finding that Plaintiffs sufficiently allege that Defendants owe Plaintiffs a duty to conduct firearm sales lawfully and to refrain from selling firearms to straw purchasers.

i. Defendants' Negligence Foreseeably Caused Plaintiffs' Harm.

The first three factors focus on the foreseeability of harm to a plaintiff as a result of a defendant's conduct. Where, as here, the risk of harm created by Defendants' conduct is "not solely economic," "[f]oreseeability is the principal determinant of whether a duty of care in tort should be recognized." *Cash & Carry Am., Inc. v. Roof Sols., Inc.*, 223 Md. App. 451, 464 (2015) (citing *Jacques v. First Nat. Bank of Md.*, 307 Md. 527, 534-535 (1986)).[22] The relevant

[21] Because this litigation is at the motion to dismiss stage, there are no allegations in the record about the availability of insurance. *See Kiriakos*, 448 Md. at 492 (declining to address seventh factor when there was no evidence in the record about insurance). For that reason and others, this factor is irrelevant. Because factors one through three address foreseeability and causation, they are addressed as one in Argument VII.A.1.i. Factors four and five, which both consider societal attitudes towards the defendant's conduct, are similarly addressed together in Argument VII.A.1.ii.

[22] There is no reasonable dispute that Plaintiffs have sufficiently alleged that they have suffered at least *some* harm, such as by incurring increased costs for providing public services directly linked to gun-related crime resulting from straw sales, including from the firearms that

consideration when assessing harm in this context is "the *nature of the risk of harm* created by the defendant's conduct—not the harm that actually materialized." *Id.* at 61 (emphasis in original).

The risk of harm posed to the public by straw sales is "obvious." Compl. ¶¶ 27-29, 78; *see, e.g.*, *Fleet Farm*, 679 F. Supp. 3d at 843 ("[T]he sale of firearms to individuals that [Defendant] had reason to believe were straw purchasers created a foreseeable risk of injury."). *Cf. Kiriakos*, 448 Md at 487 (noting that the rates of death associated with drunk driving make the risk of harm "to the general public obvious"). The foreseeable risks when firearms are transferred to unauthorized and dangerous individuals are exactly why straw sales of firearms are illegal. *See* Pub. Safety § 5-134(b)(13); COMAR 29.03.01.08(E). Straw purchasing, in addition to being a crime in and of itself, fuels further criminal activity.

Here, Defendants are aware of the risks posed to the public by straw purchasing, are specifically trained to recognize indicia of straw purchasing, and are required by law to refuse such purchases. Compl. ¶¶ 40-51, 53. Defendants knew the importance of retail firearm dealers in preventing straw sales, *id.* ¶¶ 52-54, and the likelihood that selling guns to straw purchasers would contribute to criminal activity, *id.* ¶ 78. Despite such knowledge, Defendants are the top in-state sources of traced crime guns recovered in Maryland. *Id.* ¶ 2. Moreover, Plaintiffs allege, among other things, that Mr. Minor—who repeatedly indicated on his paperwork that he was unemployed—displayed multiple hallmarks of straw purchasing, including "high-volume purchases over short periods of time, [and] repeated purchases of substantially similar commonplace handguns" that a gun store reasonably would know were not collectors' items. *Id.*

Defendants sold to Mr. Minor. Compl. ¶¶ 60, 64, 69, 75, 104-06; *see* Background; *see also Kiriakos*, 448 Md. at 487 (holding this factor favored civil liability where third-party pleaded guilty to injuring plaintiff).

¶¶ 55, 58; *see Minor* Aff. ¶ 79; Background I. Yet despite these hallmarks and their knowledge of the danger posed by straw sales, Defendants collectively sold Mr. Minor at least 34 handguns over a mere six-month period. *See* Compl. ¶¶ 2, 61-78. Unsurprisingly, at least nine of those weapons have since been recovered by police, and the vast majority are presumed to have been trafficked to individuals who are prohibited from possessing such firearms. *Id.* ¶ 60. Plaintiffs allege that those unlawful sales are just the tip of the iceberg. *Id.* ¶ 59.

Because Plaintiffs sufficiently allege that Defendants knew or should have known that Mr. Minor (and numerous others) were acting as straw purchasers, *see* Compl. ¶¶ 55-56, 58 & n.36, the subsequent harm to Plaintiffs resulting from these sales was readily foreseeable, if not obvious. Moreover, "where the risk is death or personal injury, a close connection between [the parties] is not required." *Kiriakos*, 448 Md. at 488.

ii. Existing Laws Show That Defendants' Conduct is Morally Blameworthy.

Factors four and five look to whether society ascribes moral blame to a defendant's conduct, considering in part whether a defendant's conduct is prohibited by law. *Kiriakos*, 448 Md. at 489 ("Under [the fourth] factor, our standard is not evidence of 'intent to cause harm.' Rather, we consider 'the reaction of persons in general to the circumstances.'" (quoting *Eisel*, 324 Md. at 390)). Here, it is unjust for three firearm dealers to not be held responsible for flouting their legal responsibilities and for their role in directly fueling gun-related crime in the District and State. Indeed, the court in the criminal cases against Mr. Minor and Mr. Willis stated as much at Mr. Minor's sentencing, questioning, "What sense does it make that a gun shop can sell 25-plus weapons to someone without incurring any consequence?" Compl. ¶ 13 (citing Tr. of Sentencing Proceedings 37:23-14, *United States v. Minor*, No. 22-CR-401 (D.D.C. July 21, 2023)).

Plaintiffs unquestionably allege conduct that is morally blameworthy. Even Defendants do not contend that sales to straw purchasers are acceptable. Nor could they, given the clear prohibitions regarding straw sales under Maryland and federal law. *See* Pub. Safety §§ 5-123(a), 5-124(a)(1); *Abramski*, 573 U.S. at 177-89. Instead, they quibble with Plaintiffs' allegations about the factual circumstances of the specific sales identified in the Complaint. *See* AGI Mem. 17-19; Engage Mem. 12-15. But Plaintiffs allege that Mr. Minor was an obvious straw purchaser, and that Defendants nevertheless "kept taking his money and selling him more guns." Compl. ¶ 8. These well-pleaded allegations—which must be accepted as true at the motion to dismiss stage—demonstrate the moral blameworthiness of Defendants' actions.

iii. The Burden on Defendants of Conducting Their Business Lawfully is Minimal.

The final factor weighs the burden to the defendant of imposing a duty against the resulting liability for breach. Where, as here, the risk of harm to the community is high and potentially includes the loss of life, the burden on a defendant to uphold its duty to exercise reasonable care "hardly warrants discussion." *Kiriakos*, 448 Md. at 491 (consequences of underage drinking are significant); *see Eisel*, 324 Md. at 391 ("[T]he consequence of the risk [of teenage suicide] is so great that even a relatively remote possibility of a suicide may be enough to establish duty.").

The potential for harm caused by Defendants' illegal straw sales is obvious. And this is not merely an academic argument. The Complaint details the real-life harm caused by Defendants' conduct. *See* Background; *see also* Compl. ¶ 10. For example, one of the handguns United sold to Mr. Minor was used in a violent assault at a party in the District. Compl. ¶ 69. Moreover, while the harm caused by Defendants' conduct is significant, there is minimal—if any—burden on Defendants to abide by firearm laws and be vigilant in their efforts to thwart

illegal purchasing. *See Kiriakos*, 448 Md. at 491("The burden on [defendant] was not great—he could have easily conformed his conduct to the law.").

Accordingly, each of the six relevant factors in Maryland's duty test weighs in favor of a finding that Defendants owe Plaintiffs a duty to exercise reasonable care not to sell firearms to straw purchasers.

2. Plaintiffs Allege the Existence of a Duty Under D.C. Law.

Under D.C. law, all parties are charged with "with the duty to act with reasonable care under the circumstances." *Washington Metro. Area Transit Auth. v. Barksdale-Showell*, 965 A.2d 16, 24 (D.C. 2009). Because this general rule applies, and because none of Defendants' arguments against the application of this duty have merit, *see* Argument VII.A.1, Plaintiffs have sufficiently pleaded the existence of a duty under D.C. law.

3. Defendants' Arguments Lack Merit Under Both Maryland and D.C. Law.

Defendants offer two primary arguments against the finding of a duty: *first*, they argue that there can be no duty to protect the general public; and *second*, Defendants suggest that they are not under a duty to protect Plaintiffs from criminal acts of third parties. *See* Engage Mem. 18-20; United Mem. 13-16; AGI Mem. 28-32. As set forth below, neither of these arguments has merit, because courts in both jurisdictions recognize a duty to the general public, and a party can owe a duty to protect others from the criminal acts of third parties even without a special relationship.

i. Maryland and D.C. Courts Recognize a Duty to the General Public in Negligence Cases.

Defendants' assertion that there is no duty in tort to the public is contradicted by controlling case law. *See* AGI Mem. 29-30; Engage Mem. 22. Courts applying Maryland and D.C. law have recognized such a duty in negligence cases. *See Kiriakos*, 448 Md. at 484-93

(holding that plaintiff adequately alleged a cognizable duty to the general public); *Smith v. Hope Vill.*, 481 F. Supp. 2d 172, 193 (D.D.C. 2007) (holding that defendant "owe[d] a duty to the community at large").

Moreover, Defendants are incorrect that the "*Valentine* [case] is determinative." AGI Mem. 29 (citing *Valentine v. On Target, Inc.*, 353 Md. 544, 551-53 (1999)). The Supreme Court of Maryland stated that *Valentine* does not foreclose a lawsuit like this one:

> We caution that the holding in this case does not mean that a gun store owner may never be held liable to another party for negligence in the display and sale of guns when that other party is injured as a result of the negligence but rather that under the specific facts alleged in this particular case no duty was owed to this petitioner's decedent.

Valentine, 353 Md. at 558-59. This case presents precisely the set of allegations that the *Valentine* court indicated could proceed. Indeed, *Valentine* is readily distinguishable for at least three reasons.

First, *Valentine* dealt with the one-time *theft* of a firearm *from* a retailer, not the *repeated* illegal *sales* of firearms *by* a retailer.[23] *Valentine*, 353 Md. at 546-48. It is far from clear that the court in *Valentine* would have declined to hold the defendant liable if the defendant had secured

[23] The presence of affirmative acts like those of the Defendants has weighed heavily in favor of a duty in other jurisdictions. *See City of Cincinnati*, 768 N.E.2d at 1144 ("Taking Plaintiffs' allegations as true, Defendants have engaged in affirmative acts (i.e., creating an illegal, secondary firearms market) by failing to exercise adequate control over the distribution of their firearms. Thus, it is affirmative conduct that is alleged—the creation of the illegal, secondary firearms market."); *Ileto*, 349 F.3d at 1207 ("Glock was in a position to prevent the harms alleged. 'The key . . . is that the defendant's relationship with either the tortfeasor or the plaintiff places the defendant in the best position to protect against the risk of harm.'" (quoting *Hamilton v. Beretta U.S.A. Corp.*, 750 N.E.2d 1055, 1060 (N.Y. 2001))); *Kesner v. Superior Ct.*, 384 P.3d 283, 295 (Cal. 2016) (noting that the court had previously "relied in part on" moral blame in finding a duty "where the plaintiffs are particularly powerless . . . or where the defendants exercised greater control over the risks at issue" and noting that the defendants "benefitted financially from their use of asbestos and had greater information and control over the hazard than [plaintiffs]").

its premises in such a lax manner that firearms were stolen dozens of times in a matter of months. *Second*, nothing in *Valentine* suggests that the defendant firearm dealer had reason to suspect that its guns would be stolen. In contrast, here, Defendants have been publicly identified as Maryland's top three in-state sources of traced crime guns (and United and AGI have been identified as among the top sellers of recovered crime guns in the *country*), s*ee* Compl. ¶¶ 65, 70, 79, giving rise to the reasonable inference that they were on notice that straw purchasers and traffickers were frequenting their stores. Moreover, unlike the dealer in *Valentine*, Defendants here knew, or had reasonable cause to believe, that Mr. Minor was a straw purchaser and that by selling to Mr. Minor, their firearms were likely to end up in the hands of dangerous individuals. *Third*, in *Valentine*, the plaintiff did not "describe how the handguns were displayed or what could have been done by respondent's agents to prevent the theft." 353 Md. at 547. Here, Plaintiffs allege Defendants *should* have reacted to the obvious red flags exhibited by Mr. Minor, followed the law, and declined the transactions. Compl. ¶¶ 43, 55, 96.

Warr v. JMGM Group, LLC, 433 Md. 170 (2013), another case on which Defendants rely, is similarly inapposite. *See* Engage Mem. 57 (describing *Warr*, along with *Valentine*, as standing for the absence of a duty to the public); AGI Mem. 28-28 (same); United Mem. 14 (same). *Warr* dealt with the very specific issue of dram shop liability. *See Warr*, 433 Md. at 175-78. The liability of a commercial provider of alcoholic beverages for the subsequent negligent actions of its patrons is the subject of decades' worth of Maryland case law and is of little help to the Defendants here. The facts of the *Warr* case are similarly distinct from those at issue here. *Warr* dealt with only one instance of negligent conduct, whereas Plaintiffs allege a series of interactions and transactions with numerous red flags that Defendants ignored.

ii. A Special Relationship is Not Required to Establish Duty Where Criminal Conduct Has Occurred.

Defendants argue that for a duty to exist, Maryland law requires that Plaintiffs and Defendants have a "special relationship." *See* Engage Mem. 19-20; United Mem. 16; AGI Mem. 30. It does not. Rather, a "duty can be established in other ways," *Kennedy Krieger Inst.*, 460 Md. at 651, such as through the multifactor test discussed in Argument VII.A.1. Where, as here, Defendants' actions created the risk of personal injury, a special relationship is not required and "the principal determinant [is] foreseeability." *Id.* Even where criminal conduct is involved, "special relationships are not the exclusive means to justify imposition of a duty to third parties." *See Kiriakos*, 448 Md. at 482; *see also* Argument VII.A.1.

Similarly, D.C. law does not require the existence of a special relationship between a plaintiff and a defendant for a duty to exist to protect the plaintiff from third-party criminal conduct; instead, a plaintiff can establish the existence of a duty by "demonstrat[ing] defendants' 'increased awareness of the danger of a particular criminal act.'" *Miango v. Democratic Republic of the Congo*, 243 F. Supp. 113, 140 (D.D.C. 2017) (quoting *Board of Trs. of the Univ. of the Dist. of Columbia v. Disalvo*, 974 A.2d 868, 892 (D.C. 2009)).

In determining whether a defendant owes a duty to "take precautions against intentional or criminal misconduct," D.C. courts balance the magnitude of the risk against the utility of the defendant's conduct. *See District of Columbia v. Doe*, 524 A.2d 30, 34 n.3 (D.C. 1987) (quoting Restatement (Second) of Torts § 302B cmt. f). In negligence cases "involving intervening criminal conduct," a plaintiff must make a "heightened showing of for[e]seeability," which can be met "by a combination of factors which give defendants an increased awareness of the danger of a particular criminal act." *Id.* at 33. Relevant factors include "the known character, past conduct, and tendencies of the person whose intentional conduct causes the harm, the temptation

or opportunity which the situation may afford him for such misconduct, the gravity of the harm which may result, and the possibility that some other person will assume the responsibility for preventing the conduct of the harm, together with the burden of the precautions which the actor would be required to take." *Id.* at 34 n.3.

In *District of Columbia v. Doe*, 524 A.2d 30 (D.C. 1987), for example, the D.C. Court of Appeals applied the heightened foreseeability test to hold that the District owed a duty of reasonable care to protect an elementary school student from criminal conduct by an unknown intruder in the school. *Id.* at 33-34. There, the plaintiff alleged that other crimes committed near the school and the school's dysfunctional security system could allow "reasonable factfinders" to find that the danger from intruders was foreseeable to the District. *Id*. Specifically, "the danger posed by an unlocked rear door was apparent from the high level of criminal activity in the neighborhood." *Id.* at 34 n.3. On the other hand, "the burden to the District in repairing the doors and implementing other basic security measures was minimal." *Id.* This "combination of factors" put school officials "on notice of the danger to students from assaultive criminal conduct by intruders" and gave them "an increased awareness of the danger of a particular criminal act." *Id.* at 33-34.

In contrast, the D.C. Court of Appeals held in *District of Columbia v. Beretta U.S.A. Corp.*, 872 A.2d 633 (D.C. 2005), that firearm manufacturers did not owe a duty to protect the plaintiffs from third-party criminal conduct. *Id.* at 639. This holding was based in significant part on two interrelated findings: (1) that plaintiffs had not satisfied a "heightened showing of foreseeability" related to the specific harms alleged, and (2) a perceived lack of directness due to "the sheer number of causal links . . . between the licensed manufacture and distribution of firearms and their use to kill or injure others." *Id.* at 643. Here, in contrast, Plaintiffs allege with

specificity and "precise proof," *id.* at 644, that Defendants had reason to believe that they were selling firearms to at least one straw purchaser. Moreover, critically, this case involves sales by a *retailer* as opposed to a *manufacturer*, and the harms alleged entail far fewer links in the causal chain.[24]

Here, Plaintiffs have sufficiently alleged a "heightened showing" of foreseeability. Defendants are in the business of selling firearms, which are inherently dangerous, and the risks associated with straw sales of firearms are well known to Defendants. Indeed, Plaintiffs allege that Defendants knew or should have known that a considerable number of crime guns come from straw sales. *See* Compl. ¶¶ 39, 65, 70, 79. All three Defendants were on notice that firearms they sold were being recovered in conjunction with crimes in Maryland at an alarming rate. *Id.* ¶ 2. Defendants' awareness of the risks posed by straw sales and their important role in guarding against those risks created a duty to protect against that harm. Like the danger posed by an unlocked rear door in the school at issue in *Doe*, the danger posed by selling handguns to straw purchasers who then transfer the handguns to dangerous individuals is more apparent to Defendants than it was to the firearms manufacturers in *Beretta*.

Moreover, the burden on Defendants to comply with applicable laws and appropriately respond to red flags associated with illegal sales is minimal. Defendants are already subject to specific laws intended to prevent straw purchasing and are required to be vigilant in their efforts

[24] *Beretta* also relied heavily on *Delahanty v. Hinckley*, 564 A.2d 758 (D.C. 1989), emphasizing that plaintiffs had "suggested no reasonable way that gun manufacturers could screen the purchasers of their guns to prevent criminal misuse." *See Beretta*, 872 A.2d at 640 (quoting *Delahanty*, 564 A.2d at 762). Plaintiffs' allegations here suffer from no such infirmities, particularly since Section 5-134(b)(13) of the Public Safety Article effectively requires licensed dealers like Defendants to "screen" purchasers by ensuring that there is no reasonable cause to believe that they are purchasing the firearm for someone else who may put it to criminal misuse.

to stop such sales. They participate in training to help them identify straw purchasers. Nevertheless, each Defendant disregarded multiple obvious indicators that Mr. Minor was a straw purchaser. *Id.* ¶¶ 40-51, 53-54, 63, 68, 74. Because Plaintiffs have adequately pleaded facts to show heightened foreseeability, the presence of third-party criminal conduct does not operate to defeat the finding of a duty to Plaintiffs here.

B. Plaintiffs Adequately Allege that Defendants Breached Their Duty to Plaintiffs.

Plaintiffs sufficiently allege that Defendants breached their duty to take reasonable actions to prevent straw purchasing and gun trafficking. *See* Compl. ¶¶ 99-100. Each Defendant knew, consciously avoided knowing, or had reasonable cause to believe that the unemployed Mr. Minor was not purchasing dozens of similar, non-collectible firearms over a short time period for his own use. Yet Defendants sold the guns to Mr. Minor anyway and then falsely certified that they did not believe that these sales were unlawful. *Id.* In doing so, Defendants breached the duty of reasonable care that they owe to Plaintiffs and Plaintiffs' residents.

VIII. THE STATE ADEQUATELY ALLEGES A PRIMA FACIE CASE OF NEGLIGENCE BASED ON THE STATUTE OR ORDINANCE RULE.

The Statute or Ordinance Rule provides that a prima facie case of negligence is established where a plaintiff shows (1) "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." *Kiriakos*, 448 Md. at 457 (citing *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 78 (2003)). Proximate cause is established when the plaintiff shows that they are "within the class of persons sought to be protected by the statute and that the harm suffered is of a kind which the drafters intended the statute to prevent." *Id.* at 462-63. "[W]here there is an applicable statutory scheme designed to protect a class of person which includes the plaintiff, . . . the defendant's duty ordinarily 'is prescribed by the statute' or ordinance and . . . the violation of the statute or

ordinance is itself evidence of negligence." *Moore*, 161 Md. App. at 363 (quoting *Brooks*, 378 Md. at 78).

Defendants argue that a statutory scheme designed to protect the public at large cannot provide the basis for a claim under the Statute or Ordinance Rule. Defendants are incorrect. In *Moore*, the court held that the Statute or Ordinance Rule *was* satisfied by the violation of an animal control statute, which was designed to protect the public at large. *Id.* at 364-65; *see* Engage Mem. 22 (incorrectly describing the holding of *Moore*); United Mem. 10 (same). The court reversed the grant of judgment for defendant because the plaintiff, "[a]s a member of the public . . . fell within the protected class" and her injuries (being hit by a car while fleeing an approaching pitbull) "are the kind of injuries that the ordinance was meant to prevent." *Id.*

The State alleges that Defendants violated a multitude of statutes designed to prevent illegal firearm sales, including straw sales. *See* Compl. ¶¶ 109-10. As *Moore* illustrates, the fact that these statutes are intended to protect the general public is not a bar to establishing negligence under the Statute or Ordinance Rule. And the harms to the State—including threats to public servants' lives and costs of responding to illegal guns, gun violence, and gun-related crimes—are the exact sorts of harm that prohibitions on sales to straw purchasers are intended to prevent. Because the State is within the class to be protected and alleges a violation of these statutes, and because the State states a viable claim for negligence against each Defendant, *see* Argument VII, Defendants' motions to dismiss the State's negligence claims based on the Statute or Ordinance Rule should be denied.

IX. THE DISTRICT ADEQUATELY PLEADS NEGLIGENCE PER SE UNDER D.C. LAW.

Because Defendants violated a number of laws intended to protect the District and its residents, and the violation of those laws proximately caused harm to the District, the District has adequately pleaded a negligence per se claim under D.C. law.

"[W]here a particular statutory or regulatory standard is enacted to protect persons in the plaintiff's position or to prevent the type of accident that occurred, and the plaintiff can establish his relationship to the statute, unexplained violation of that standard renders the defendant negligent as a matter of law." *Ceco Corp. v. Coleman*, 441 A.2d 940, 945 (D.C. 1982). If a party offers "competent evidence" to explain the violation of the statute or regulation, the violation is still evidence of negligence but not negligence as a matter of law. *Id.*

Therefore, (1) the violation of a statute (2) with a "public safety purpose" is negligent as a matter of law where (3) the statutory violation was the proximate cause of the plaintiff's injury and (4) the defendant does not establish that the violation was excused. *Rong Yao Zhou v. Jennifer Mall Rest., Inc.*, 534 A.2d 1268, 1275, 1277 (D.C. 1987). Defendants here violated certain statutes with a public safety purpose, Pub. Safety § 5-134(b)(13); 18 U.S.C. § 922(a)(6), (m); *see also* Argument II, and those violations were the proximate cause of harm to the District. The District has therefore adequately pleaded a claim for negligence per se.

Neither the fact that the statute is intended to protect the general public nor the presence of an intervening criminal act by a third party operate as bars to negligence per se claims. *See Rong Yao Zhou*, 534 A.2d at 1274 (collecting cases). Indeed, a third party's intervening actions *cannot* defeat proximate cause here because "the conduct of [Defendants] was negligent precisely because it created a risk that a third person would act improperly. In such circumstances, the fact that a third person does not act improperly is not an intelligible reason for excusing the defendant." *Id.* at 1277. The District's negligence per se claim should therefore be allowed to proceed.

X. PLAINTIFFS ADEQUATELY ALLEGE A CLAIM FOR NEGLIGENT ENTRUSTMENT.

Under Maryland and D.C. law, "[t]he elements of negligent entrustment are: '(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."' *Moore*, 161 Md. App. at 370 (quoting *Mackey v. Dorsey*, 104 Md. App. 250, 258 (1995)); *see also Young*, 11 A.3d at 249.

Defendants argue that Plaintiffs fail to satisfy the second and third elements. Engage also argues that the State fails to allege that Defendants exercised control over the firearms they sold to Mr. Minor. But as detailed below, Plaintiffs have adequately alleged all the elements of a negligent entrustment claim, and control is not required.

A. Defendants Knew or Should Have Known that Their Firearms Would Likely Harm Others.

Under Maryland and D.C. law, the "knowledge" element of a negligent entrustment claim can be satisfied through a defendant's actual *or* constructive knowledge. *Moore*, 161 Md. App. at 371 (quoting *Herbert v. Whittle*, 69 Md. App. 273, 282 (1986)); *Young*, 11 A.3d at 249-50. Defendants argue that Plaintiffs fail to properly allege that Defendants knew or should have known that Mr. Minor would use the firearms they sold him in a way that presented an unreasonable risk of harm to others. That argument rests on an unduly narrow reading of Plaintiffs' allegations.

Plaintiffs expressly allege that each Defendant *knew or should have known* the common signs of straw purchasing, including "bulk purchases [and] repetitive buying of the same or similar firearms within a short time period (especially commonplace or non-collectible firearms)," and that each Defendant signed an Acknowledgment of Federal Firearms Regulations, "acknowledging that the dealer is responsible for understanding and complying with laws and regulations applicable to the sale of firearms." *See* Compl. ¶ 53; *see also id.* ¶ 58. Moreover, Plaintiffs allege that each Defendant *knew or should have known* that Mr. Minor was in fact a straw purchaser because Mr. Minor's conduct exhibited the "obvious warning sign[s]"

and "obvious red flags" of a straw purchaser. *Id.* ¶¶ 63, 68, 74. Contrary to AGI's argument, Plaintiffs do not simply allege indicia of straw purchasing in the abstract; rather, Plaintiffs specifically allege that the *type* of firearms (including identical or near-identical handguns that are not collectors' items), the total *volume* of guns purchased, and the number of purchases within a short timeframe—during which the record now shows the stores also knew the purchaser was unemployed at the time he was paying for multiple handguns with cash—provided constructive knowledge to Defendants. *See id.* ¶ 61 (Engage "sold Mr. Minor multiple guns within a five-day period"); *id.* ¶ 66 (United "sold Mr. Minor three pistols in the span of nine days and then later sold Mr. Minor two pistols on the same day"); *id.* ¶¶ 72, 74 (AGI sold "two [similar] handguns within a two-day span"); *cf.* AGI Mem. 36.

Defendants' attempts to disclaim their knowledge through references to purported comments by government officials or Mr. Minor's status as a designated collector lack merit. *See* AGI Mem. 36; Engage Mem. 50-51, 55; United Mem. 16, 18.[25] As alleged in the Complaint, Defendants' sales to Mr. Minor were inconsistent with purchases by bona fide firearm collectors. Compl. ¶ 53 (repeat sales of "commonplace or non-collectible firearms" within a short period of time is a red flag for straw purchasing); *id.* ¶ 63 (Engage's repeat sales of identical firearms to Mr. Minor); *id.* ¶ 68 (United's repeat sales of identical firearms to Mr. Minor); *id.* ¶ 74 (AGI's repeat sales of similar, commonplace firearms to Mr. Minor). Accordingly, as addressed in detail in Background I and Argument II, Plaintiffs properly allege that Mr. Minor's purchases

[25] For example, United argues, without support, that it "was told . . . by the ATF [that Mr. Minor was not a straw purchaser] and relied on that information." United Mem. 18. But United cannot rely upon extrinsic evidence to support its arguments. *See D'Aoust v. Diamond*, 424 Md. 549, 572 (2012) ("When ruling on a motion to dismiss, 'consideration of the universe of "facts" pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.'" (quoting *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (Md. 2004))).

exhibited sufficient indicia to place Defendants on notice that Mr. Minor was a straw purchaser, *regardless* of his status as a designated firearm collector or any purported comments by ATF personnel. "[F]irearms dealers are the first line of defense against gun crime." *Id.* at ¶ 11. Defendants—who are the only ones dealing directly and in person with the purchaser and are therefore best positioned to detect straw purchasing—cannot offload their legal gatekeeping obligations onto authorities who rely upon Defendants' diligence in identifying and reporting illegal purchases.

B. Plaintiffs Properly Allege that Those Harmed Were Foreseeable.

A negligent entrustment claim requires proof that those harmed by the entrusted chattel are those whom the "supplier should expect to be endangered by [the chattel's] use." *Moore*, 161 Md. App. at 370 (quoting *Mackey*, 104 Md. App. at 258); *see also Young*, 11 A.3d at 249. Plaintiffs need not allege that the individuals at risk of endangerment were specifically identifiable to the supplier at the time of the entrustment. Rather, it is enough that a supplier is able to identify a *class of persons* whom the supplier should expect to be endangered by the chattel's use. *See, e.g., U-Haul Co. v. Rutherford*, 10 Md. App. 373, 380 (1970) ("[I]t was legally sufficient to show that U-Haul had reason to know, because its truck was to be operated on the highways, that anyone driving on the highways would be endangered by the use of the truck."); *Phelan*, 805 A.2d at 942 (measuring victim foreseeability in a negligent entrustment case involving a police-issued firearm used to kill a civilian while off-duty, by whether the police department knew or should have known the officer "might recklessly or deliberately use his weapon *in a private dispute*") (emphasis added).

Plaintiffs properly allege that those harmed by the firearms Defendants sold to Mr. Minor and other discernible straw purchasers are persons whom Defendants should have expected to be harmed by the use of trafficked firearms. As the Complaint alleges, "each Defendant knew that

the foreseeable and entirely predictable result of . . . illegal gun sales and trafficking is gun violence and other criminal activities that endanger the public." Compl. ¶ 93; *see also id.* ¶¶ 103, 114, 122, 126, 132. It is axiomatic that a firearm dealer should expect that illegally purchased firearms could be used to fuel crime and harm members of the public, as well as the District and the State generally—as the recovered firearms here did. *See id.* ¶ 69.

C. Plaintiffs Adequately Allege Physical Harm.

Engage and United both argue that a negligent entrustment claim under Maryland law is *only* available as a cause of action when physical harm to a third party results from the entrustment of chattel. Engage Mem. 57; United Mem. 18. Although Maryland has adopted Section 390 of the Restatement (Second) of Torts—which mentions "physical harm"—and Maryland courts have found negligent entrustment in situations where physical harm occurred, Maryland courts have *never* expressly limited negligent entrustment claims to cases involving physical harm. *See, e.g.*, *Mackey*, 104 Md. App. at 258 (recognizing Maryland's adoption of Restatement § 390); *Moore*, 161 Md. App. at 370-373 (applying negligent entrustment to a situation involving physical harm).

Even if Engage and United were correct, the State *has* properly alleged that physical harm occurred and that Defendants proximately caused such harm. Of particular note, the Complaint alleges that "illegal and improper handgun sales to Mr. Minor had repercussions throughout the Washington, D.C. metropolitan area and have resulted in harm throughout the region." Compl. ¶ 10. For example, "[o]ne handgun was used by Mr. Willis to terrorize partygoers at his ex-wife's house in the District, including by pointing the gun at people's heads[,]" and the criminal complaint against Mr. Minor strongly suggests that this handgun was purchased from United and transferred to Mr. Willis. *Id.*; *Minor* Aff. ¶¶ 5-6. These allegations in the context of the overall Complaint are sufficient to allow Plaintiffs to engage in discovery

and collect further evidence of gun recoveries to more specifically tie each store to specific harms.

Notwithstanding these allegations of physical harm, Defendants argue that Plaintiffs must allege that "*Minor* used the purchased firearms in a way that caused physical injury to himself or others." United Mem. 18 (emphasis added); Engage Mem. 57-58.[26] This argument fails because Maryland law permits negligent entrustment claims to proceed even where the physical harm at issue is caused by a third party, as long as the harm would not have occurred without the entrustee engaging in conduct that created an unreasonable risk of that physical harm. *See, e.g.*, *Moore*, 161 Md. App. at 358-59, 370 (parents of a girl fleeing a pitbull struck by a third-party driver alleged "sufficient evidence of [the] elements for [a negligent entrustment] claim [against a pitbull owner] to have gone to the jury"). As detailed in Background, because the Complaint alleges that Mr. Minor transferred the firearms to individuals who then used those guns in connection with criminal activity, this requirement is readily satisfied.[27]

D. Proof of Control by the Supplier is Not Required.

Engage cites *Broadwater v. Dorsey*, 344 Md. 548 (Md. 1997), a case involving the entrustment of an automobile, to argue that a supplier may only be liable for negligent entrustment under Maryland law if the supplier has control over the chattel in question '"at the time of the accident."' Engage Mem. 56-57 (quoting *Broadwater*, 344 Md. at 550). But *Broadwater's* control requirement has been repeatedly undermined by courts in Maryland (and a

[26] None of the Defendants alleges that physical harm is a requisite element for negligent entrustment under D.C. law. Nonetheless, even if physical harm is required under D.C. law, for the reasons detailed above, Plaintiffs allege such harm.

[27] Although not controlling, it is notable that other jurisdictions have specifically recognized that a firearm dealer can be held liable for negligent entrustment for engaging in a straw sale where the straw purchaser was not the person who inflicted the physical harm. *See, e.g.*, *Shirley v. Glass*, 44 Kan. App. 2d 688 (2010), *aff'd in pertinent part*, 297 Kan. 888 (2013).

federal court applying Maryland law) since its holding almost 30 years ago. *Brady v. Walmart*, No. 8:21-CV-1412, 2022 WL 2987078 (D. Md. July 28, 2022), a recent federal case applying Maryland law, casts doubt on *Broadwater*'s application to firearm retailers. *Id.* at *10-12 (denying defendant firearm retailers' motion for judgment on the pleadings as to the plaintiffs' negligent entrustment claim); *see also id.* at *11 (recognizing that *Valentine* "called into question the applicability of *Broadwater* outside of the automobile context"); *West v. East Tenn. Pioneer Oil Co.*, 172 S.W.3d 545, 555 (Tenn. 2005) (citing *Broadwater* as an example of a case that "appear[s] to misconstrue the basic premise underlying negligent entrustment" because control "need only exist at the time of the entrustment for a prima facie case of negligent entrustment").

Indeed, as recognized by the *Brady* court, "*Broadwater* is inconsistent with the Restatement of Torts § 390, upon which it supposedly relies." *Brady*, 2022 WL 2987078, at *12, *17. Not only does the Restatement not require "that the entruster of the chattel . . . controlled the chattel at the time the injury . . . it specifically includes an example of a successful claim analogous to this case which contradicts *Broadwater*'s control requirement." *Id.* at *12; *see also Kiriakos*, 448 Md. at 483-484 ("the doctrine of negligent entrustment . . . . imposes no requirement of a special relationship *or control of another's conduct*") (emphasis added); *Kahlenberg v. Goldstein*, 290 Md. 477, 488 (1981) (opining that there is "no reason" to "broadly decline to apply the negligent entrustment theory . . . exclusively on the basis that title is transferred in addition to possession").[28]

[28] None of the Defendants allege that control of chattel is a requisite element for negligent entrustment under D.C. law. And they cannot so allege because D.C. courts have not expressly stipulated that negligent entrustment claims may only be brought when the supplier exercises control over the entrusted chattel.

Holding firearm sellers such as Defendants liable under a negligent entrustment theory is consistent with extant case law in Maryland (and elsewhere[29]) because negligent entrustment "is an out-growth of the rule that a vendor who sold an inherently dangerous instrumentality [is] liable to third persons for injuries sustained." *Rutherford*, 10 Md. App. at 376. As United and Engage acknowledge, Maryland courts have adopted Section 390 of the Restatement (Second) of Torts. United Mem. 17; Engage Mem. 56-57. Commentary to that section states that Section 390 applies to "anyone who supplies a chattel for the use of another," including "*sellers*." Restatement (Second) of Torts § 390 (1965) (emphasis added).

It would be inconsistent with the bedrock of negligent entrustment theory and the consensus of courts that have expressly addressed the issue to require that Defendants controlled the firearms they entrusted to Mr. Minor and other discernible straw purchasers when the harm to third parties occurred.

XI. PLAINTIFFS ARE NOT FORECLOSED FROM SEEKING MONETARY AND INJUNCTIVE RELIEF.

Defendants offer a patchwork of theories in an effort to argue that certain relief that Plaintiffs seek is precluded as a matter of law. In particular, Defendants (1) argue for the application of the municipal cost recovery rule, which is not controlling law in either the State or the District; (2) question Plaintiffs' standing to pursue injunctive relief; and (3) mischaracterize

[29] *See, e.g.*, *Fleet Farm LLC*, 679 F. Supp. 3d at 846 (concluding that plaintiff plausibly plead negligent entrustment claim against firearm seller where plaintiff "specifically alleges that [the firearm seller] already knew or had reason to know that [certain individuals] were straw purchasers based on red flags that were or should have been apparent to" firearm seller); *Delana*, 486 S.W.3d at 325-26 (noting that "Missouri common law recognizes that the defendant's status as a seller does not preclude liability when the defendant sells a dangerous product to a purchaser with knowledge that that the purchaser will likely be unable to use the product without posing an unreasonable risk of physical harm to herself or others" and allowing negligent entrustment claim against firearm seller to proceed).

Plaintiffs' prayer for relief as an attempt to pursue remedies for criminal violations. *See* Engage Mem. at 21-22, 46; AGI Mem. at 41-44, 46-48; United Mem. at 18-19. As demonstrated below, none of these theories are convincing. And it is premature at this early stage to determine the parameters of relief to which Plaintiffs are entitled. *See Simba v. Fenty*, 754 F. Supp. 2d 19, 23 (D.D.C. 2010) ("'[I]njunctive relief is not a claim but a remedy,' making a motion to dismiss . . . an inappropriate method of challenge."); *Steinberg v. Gray*, 815 F. Supp. 2d 293, 303 n.9 (D.D.C. 2011) (holding that "the question of whether [plaintiff] is entitled to injunctive relief will be decided at a later stage of this litigation").

A. Monetary Relief is an Available Remedy.

Defendants mistakenly argue that the municipal cost recovery rule bars any monetary recovery in this case. *See* Engage Mem. 46; AGI Mem. 46-48. This common-law doctrine, which is largely outdated and disfavored, provides that a public entity cannot recover the costs of carrying out taxpayer-funded public services from a tortfeasor whose conduct created or contributed to the need for those services. *See City of Flagstaff v. Atchison, Topeka & Santa Fe Ry. Co.*, 719 F.2d 322, 323 (9th Cir. 1983).

In making this argument, Defendants fail to mention that the municipal cost recovery rule does not govern in either the State or the District. Four decades ago, a federal court in the District applied the municipal cost recovery rule after "look[ing] to other jurisdictions for assistance in determining how [D.C.] courts would rule, were they to face this question." *District of Columbia v. Air Fla., Inc*., 750 F.2d 1077, 1079 (D.C. Cir. 1984). In the years since *Air Florida*, however, the D.C. Court of Appeals has never confirmed that proposed interpretation of D.C. law. Even more notably, no Maryland court has explicitly adopted the municipal cost recovery rule. In fact, the courts have implicitly rejected it by allowing local governments to recover costs they incurred while correcting dangerous conditions created by

corporate wrongdoing. *See, e.g., U.S. Gypsum Co. v. Mayor & City Council of Baltimore*, 336 Md. 145, 157 (1994) (permitting Baltimore to recover costs for removal of asbestos). That approach is consistent with the "current trend" in other jurisdictions. *See, e.g., In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804, 2019 WL 3737023, at *8 (N.D. Ohio June 13, 2019); *see also Arms Techs.*, 820 A.2d at 49 (endorsing "recent criticism" that "[t]he rule 'should be eliminated'").

Even if Maryland or D.C. had adopted the municipal cost recovery rule, the facts of this case would not compel its application in any event. *First*, even in jurisdictions that have adopted the municipal cost recovery rule, it is a long-standing principle that the doctrine does not apply when public entities seek damages for the costs of abating a public nuisance. *See, e.g.*, *City of Flagstaff*, 719 F.2d at 324; *City of Philadelphia v. Beretta U.S.A. Corp.*, 277 F.3d 415, 420 n.4 (3d Cir. 2002).

Second, as AGI acknowledges, the municipal cost recovery rule is typically applied to "a single, discrete incident requiring a single emergency response," like a train derailment or plane crash. *City of Cincinnati*, 768 N.E.2d at 1149. *Cf. City of Flagstaff*, 719 F.2d at 323 (train derailment); *Air Fla.*, 750 F.2d at 1080 (plane crash). Accordingly, jurisdictions that recognize the municipal cost recovery rule have nevertheless allowed governmental entities to recover expenditures related to gun violence where the defendant's misconduct is continuous. *See* AGI Mem. 47 (citing *City of Cincinnati*, 768 N.E.2d at 1149-50; *Arms Tech., Inc.*, 820 A.2d at 49). AGI incorrectly asserts that such cases are "completely unlike the instant case," arguing that, in this case, "the alleged harm began and ended in summer 2021." AGI Mem. 47. To the contrary, the Complaint alleges that Defendants' illegal sales began "in or around early 2021 or before" and "continu[e] to the present," and that the harms from completed illegal sales continue to be

felt as many straw-sold firearms are still circulating in the secondary criminal market. Compl. ¶ 59; *see also id.* ¶¶ 65, 71, 80. In *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136 (Ohio 2002), much like this case, the plaintiffs alleged that the defendants "distributed their firearms in ways that ensure the widespread accessibility of the firearms to prohibited users, including . . . criminals" and in so doing "helped sustain the illegal firearms market in Cincinnati." *Id.* at 1140; *see also City of Boston v. Smith & Wesson Corp.*, 12 Mass. L. Rptr. 225, 2000 WL 1473568, at *8 (Mass. Super. Ct. 2000) ("Plaintiffs allege wrongful acts which are neither discrete nor of the sort a municipality can reasonably expect. Plaintiffs allege that Defendants maintained and exploited an illegal firearms market, knowing that the market would and did cause Plaintiffs harm.").

Third, even in jurisdictions that apply the municipal cost recovery rule, courts routinely allow governments to recover their expenditures where, as here, a defendant's conduct has caused or contributed to a public health crisis. *See* Compl. ¶ 95; U.S. Surgeon General's Advisory 2024, *Firearm Violence: A Public Health Crisis in America* (June 25, 2024), https://www.hhs.gov/sites/default/files/firearm-violence-advisory.pdf; *e.g.*, *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 497 F. Supp. 3d 552, 643-45 (N.D. Cal. 2020) (collecting cases concerning opioids and firearms, analogizing them to the youth e-cigarette crisis, and permitting governmental entities to recover monetary damages for their public nuisance and negligence claims). *Finally*, the rule concerns "*municipal* rather than state government costs," and thus definitionally does not apply to the *State* of Maryland or *District* of Columbia's claims. *Commonwealth v. Monsanto Co.*, 269 A.3d 623, 674 (Pa. Commw. Ct. 2021) (emphasis in original).

B. Injunctive Relief is Also an Available Remedy.

Contrary to United's arguments, injunctive relief is also available to Plaintiffs because Plaintiffs have sufficiently stated a claim for public nuisance. *See Whitaker v. Prince George's Cnty.*, 307 Md. 368, 377-78 (1986) ("Where . . . the acts complained against constitute a nuisance . . . a court of equity may, on the request of a duly constituted authority, grant the relief sought by the injunction."); *see also Becker v. State*, 363 Md. 77, 87 (2001) ("[I]n nuisance cases . . . the equity court will grant an injunction where the injury is irreparable and cannot be adequately compensated in damages." (quoting *Adams v. Commissioners of Trappe*, 204 Md. 165, 169-70 (1954))).

United first argues that there is nothing for the Court to enjoin because, according to United, it has not violated any federal or state laws. United Mem. 19; *see also* AGI Mem. 14. That is sharply disputed, and Plaintiffs have expressly pleaded otherwise. *See* Compl. ¶ 57 (enumerating Defendants' violations of state and federal law); *id.* ¶¶ 40-80 (demonstrating that Defendants' sales to Mr. Minor bore hallmarks of illegality in violation of these laws); Argument II. At bottom, if Plaintiffs succeed in proving those allegations, then the Court may properly enjoin Defendants' illegal business practices.

Next, United argues that Plaintiffs lack standing to seek injunctive relief. United Mem. 19. The cases United cites in support of this argument, however, are inapposite. *See id.* (citing *Nanni v. Aberdeen Marketplace, Inc.*, 878 F.3d 447 (4th Cir. 2017), *Thomas v. Salvation Army S. Territory*, 841 F.3d 632 (4th Cir. 2016)). Both cases concern Article III standing—which is irrelevant to Plaintiffs' standing in this Court—and injunctive relief under the federal Americans with Disabilities Act, which presents considerations distinct from this case. The law more directly on point recognizes that Plaintiffs are unquestionably empowered to seek injunctive relief. *See* Restatement (Second) of Torts § 821C, cmt. j (1979) ("A public official who is

authorized to represent the state or an appropriate subdivision in an action to abate or enjoin a public nuisance may of course maintain the action."); *see also* Md. Const. Art. V, § 3(a)(2) (conferring standing on the State of Maryland); D.C. Code § 1-301.81(a)(1) (conferring standing on the District of Columbia).

Moreover, even assuming United's cases apply here—they do not—they actually support the viability of Plaintiffs' claim for injunctive relief. Plaintiffs allege "continuing, present adverse effects," *Nanni*, 878 F.3d at 454, which amount to a "showing of a[] real or immediate threat that the plaintiff will be wronged again," *Thomas*, 841 F.3d at 638. Plaintiffs allege that not all the guns that Defendants sold to Mr. Minor have been recovered and that, in fact, "many others are still unaccounted for and presumably trafficked." Compl. ¶ 130; *see also id.* ¶¶ 10, 60. Those firearms, which entered the criminal market, are likely to be used to perpetuate crime and contribute to an ongoing public nuisance. *See id.* ¶¶ 10, 30, 36, 88-89, 91, 95. Furthermore, the Complaint alleges that Defendants have made, and continue to make, additional illegal sales to additional unidentified straw purchasers. *See id.* ¶¶ 59, 65, 71, 80, 91.

C. Defendants' Argument that Plaintiffs Cannot Pursue Civil Remedies for Criminal Violations is a Red Herring.

Defendants' argument that Plaintiffs cannot pursue remedies for criminal conduct via civil litigation is misguided. *See* Engage Mem. 21-22; AGI Mem. 41-44. None of the claims Plaintiffs has asserted is statutory (criminal or otherwise), and Plaintiffs do not rely on any implied causes of action. *See* Compl. ¶¶ 81-133. The alleged statutory violations provide support and context for Plaintiffs' common law claims; they do not supply the civil remedies and Plaintiffs have not alleged that they do.

Plaintiffs allege that Defendants' conduct constitutes criminal violations for two discrete reasons. *First*, Defendants' violations of criminal statutes support the application of PLCAA's

predicate exception. *Cf. Brady*, 2024 WL 2273382, at *8, *23 (defendants' alleged misdemeanor provided a sufficient basis for plaintiffs' lawsuit to proceed under the predicate exception); *see* Argument III.A. *Second*, the alleged criminal violations support Plaintiffs' common-law causes of action. *See* Compl. ¶¶ 82-86 (supporting Plaintiffs' claim for public nuisance); *id.* ¶¶ 109-112 (supporting Plaintiff District of Columbia's claim for negligence per se), *id.* ¶¶ 117-120 (supporting Plaintiff State of Maryland's claim for negligence (Statute or Ordinance Rule)); Argument VI-X. These alleged criminal violations provide, for example, "presumptive evidence of negligence" in the context of the statute or ordinance rule, *Kiriakos*, 448 Md. at 458 (internal citation and punctuation omitted); information relevant to "the duty of care" in the negligence per se context, *Zhou*, 534 A.2d at 1273 (citation omitted); and information relevant to the public nuisance claim, *see* Restatement (Second) of Torts § 821B (1979) ("Circumstances that may sustain a holding that an interference with a public right is unreasonable include . . . whether the conduct is proscribed by a statute.").

Notably, none of the cases that Defendants cite for the contention that Plaintiffs cannot pursue remedies for criminal conduct via civil litigation resemble the matter before the Court. Nearly all those cases concern private defendants that relied directly on criminal or regulatory statutes (without provisions authorizing private enforcement) to seek civil damages.[30]

[30] *See Tribble v. Reedy*, 888 F.2d 1387, 1989 WL 126783 (4th Cir. Oct. 20, 1989) (per curiam) (dismissing claims brought under the federal criminal code); *Phair v. Zambrana*, No. CCB-14-2618, 2016 WL 3125081 (D. Md. June 3, 2016) (dismissing claims brought under criminal statutes but allowing certain constitutional claims to proceed under 42 U.S.C. § 1983); *McMillan v. Templin*, No. CV JKB-22-1675, 2023 WL 3996477 (D. Md. June 14, 2023) (dismissing claims brought under the federal criminal code and a provision of the Truth in Lending Act that imposes criminal liability only); *Fangman v. Genuine Title, LLC*, 447 Md. 681 (2016) (dismissing claim brought under a provision of the Maryland Real Property Code that imposes criminal liability only); *Bauer v. Elrich*, 8 F.4th 291, 299 (4th Cir. 2021) (dismissing claim brought under federal statute prohibiting immigrants from receiving state and local

Finally, Engage is wrong that "the absence of [criminal] enforcement efforts speaks volumes" about the legitimacy of Plaintiffs' civil claims. Engage Mem. 24. Under circumstances such as these, where "the acts complained against constitute a nuisance or a danger to the public health and public welfare and a more complete remedy is afforded by injunction than by criminal prosecution," it is entirely appropriate for governmental entities to pursue civil remedies in lieu of criminal ones. *Whitaker*, 307 Md. at 378. In addition, if anything, the record here suggests that at least one judge familiar with facts of this case thought the opposite: that the absence at that time of criminal or civil enforcement against any of the stores was a failure and made no sense. *See* Compl. ¶ 13.

XII. AGI'S ANTI-SLAPP DEFENSE HAS NO MERIT.

Maryland law prohibits "strategic lawsuit[s] against public participation," also known as "SLAPPs." Cts. & Jud. Proc. § 5-807. The purpose of Maryland's anti-SLAPP statute is "to weed out and deter lawsuits brought for the improper purpose of harassing individuals who are exercising their protected right to freedom of speech." *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 286 (2021) (internal citations omitted).

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benefits, which does not authorize private enforcement); *Erie Ins. Co. v. Chops*, 322 Md. 79, 585 (1991) (dismissing claim brought under a statute requiring auto insurers to notify the Motor Vehicle Administration of the cancellation of an insured's policy, which authorizes private enforcement); *Love v. Delta Air Lines*, 310 F.3d 1347 (11th Cir. 2002) (dismissing claim brought under the Air Carrier Access Act, which does not authorize private enforcement); *Alaji Salahuddin v. Alaji*, 232 F.3d 305 (2d Cir. 2000) (dismissing claim brought under the Child Support Recovery Act, a criminal statute).

Engage attempts to analogize this case to *In re Lead Paint Litigation*, 191 N.J. 405 (2007), but that decision has no applicability here. *See* Engage Mem. 21-22. There, the court held that a state statute banning lead paint did not exempt a lead-paint-based action from the ambit of the state's products-liability statute. *See In re Lead Paint Litig.*, 191 N.J. at 503-05. The remaining case cited by AGI is also plainly inapposite, insofar as it concerned the constitutionality of a county ordinance that imposed criminal liability. *See* AGI Mem. 43 (citing *Miller v. Maloney Concrete Co.*, 63 Md. App. 38 (1985)).

This case, however, is *not* a SLAPP case. And contrary to AGI's argument, Maryland's anti-SLAPP law does not provide blanket immunity to any defendant who engages in First Amendment activity.

To warrant dismissal under Maryland's anti-SLAPP law, AGI must show that: (1) Plaintiffs brought this lawsuit "in bad faith"; (2) AGI made "protected communications to a government body or the public on a matter within the authority of government body or on an issue of public concern"; (3) this lawsuit is "materially related to the protected communications"; and (4) with this lawsuit, Plaintiffs "intended to inhibit or to have inhibited the making of those protected communications." *MCB Woodberry*, 253 Md. App. at 297; *see* Cts. & Jud. P. § 5-807(b). Importantly, because AGI seeks to dismiss the entire lawsuit, AGI must satisfy each anti-SLAPP element against *both* the State *and* the District.[31] While Plaintiffs do not dispute that AGI satisfies the second element, AGI does not and cannot meet the remaining three as to the State or the District, let alone both.

A. Plaintiffs Did Not Bring Their Lawsuit in Bad Faith.

A lawsuit is brought in "bad faith" under Maryland's anti-SLAPP law if it is filed "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *MCB Woodberry*, 253 Md. App. at 308 (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 368 (1991)). "Bare allegations" of bad faith are not enough to dismiss a complaint under the anti-SLAPP statute, and "all reasonable inferences" must be drawn in Plaintiffs' favor. *Knox v. Mayor & City Council*, No. JKB-17-1384, 2017 WL 5903709, at *11

[31] Even then, this would only dismiss AGI from the lawsuit, not the other two Defendants who do not raise SLAPP.

(D. Md. July 30, 2010) (declining to dismiss counterclaim under anti-SLAPP statute because movant only "made bare allegations of bad faith").

Here, AGI asserts that the Court can infer bad faith from the timing of the Complaint, the damages Plaintiffs seek, Plaintiffs' discovery requests, and the purported lack of detail in Plaintiffs' allegations. AGI Mem. 49-52. These bare allegations are insufficient to support a finding of bad faith.[32]

AGI contends that the timing of the Complaint is evidence of bad faith because it "suggests retaliation" against AGI for its recent legal advocacy on two issues relating to firearm legislation in Maryland. AGI Mem. 49-50. In *MCB Woodberry Developer, LLC v. Council of Owners of Millrace Condominium, Inc.*, 253 Md. App. 279 (2021) —the only case cited by AGI in support of its timing argument—the court determined that a plaintiff filing its complaint four days after an "arguably adverse" ruling *suggested* retaliation. *Id.* at 307-09. But no such circumstances or inferences are present here, and neither of the events AGI cites could reasonably lead to a finding of bad faith.

First, AGI argues that Plaintiffs filed the Complaint in September 2024 in retaliation for the United States Court of Appeals for the Fourth Circuit's decision—two weeks earlier—that rejected AGI's challenge to a 2013 Maryland law requiring a specific license to purchase a handgun. *See Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211 (4th Cir. 2024). AGI argues

[32] AGI claims that Maryland courts consider these four factors to determine bad faith under Maryland's anti-SLAPP law. AGI Mem. 49. AGI's presentation of the legal standard is misleading. A *single* Maryland circuit court found four reasons why the plaintiff in that case brought a lawsuit in bad faith, a determination which was affirmed by the Court of Special Appeals. But neither court held that those four considered arguments *determine* whether a lawsuit was brought in bad faith or make up the relevant bad faith standard. Moreover, both courts determined that *all four arguments* led to the conclusion of bad faith. So, if AGI is correct that the relevant test consists of those four factors, AGI must also show that *all four are present*.

that Plaintiffs filed this lawsuit "to intimidate AGI to stop its advocacy" in that action and not seek certiorari review in the United States Supreme Court. AGI Mem. 50. This argument is illogical and implausible. The Fourth Circuit's recent decision ruled *against* AGI on the merits, holding that Maryland's handgun qualification license is constitutional.[33] Further, AGI filed that lawsuit in 2016. *Id.* at 49. It is implausible that, after eight years of "hard fought" litigation that the State has now won on the merits, the State would now seek "to intimidate AGI to stop its advocacy." *Id.* at 50. Instead, the implication of AGI's argument is that it would be entitled to blanket immunity against civil action brought by the State so long as it has a pending suit against the State. That is not what the anti-SLAPP law intended.

Second, AGI points to its "recent opposition earlier this year to MD H.B. 947." *Id.* Specifically, on February 28, 2024—more than six months before the filing of this lawsuit—AGI and 30 other individuals and organizations testified against a bill that nevertheless became law. AGI Mem. 6 n.8. Again, AGI's argument is nothing more than a set of bare allegations of bad faith. It is not plausible that the State would bring this lawsuit simply to "punish" AGI for participating in the normal legislative process.

Moreover, neither the lawsuit nor the Maryland bill has anything to do with the District, and AGI offers no explanation whatsoever as to why the District would bring this lawsuit in bad faith. This alone is fatal to AGI's anti-SLAPP argument.

AGI also claims that Plaintiffs seek "exorbitant" damages in a bad faith effort to inhibit AGI's advocacy and put it out of business. *Id.* at 50-51. Yet the plain language of the Complaint suggests no such motive. Specifically, Plaintiffs allege that they are "entitled to damages

[33] AGI's claim that it won a minor standing ruling that will allow it to seek review by the United States Supreme Court adds nothing to its argument.

incurred as a result of Defendants' negligence as well as injunctive relief," Compl. ¶ 123; *see* Prayer for Relief at C. In contrast to *MCB Woodberry*, where plaintiffs sought $25 million in punitive damages against individual residents of a housing development, *see* 253 Md. App. 309-10, AGI itself acknowledges that Plaintiffs seek "unspecified money damages." AGI Mem. at 50. And, for the reasons discussed in Background and Argument VI-X, Plaintiffs have supported their claims with more than sufficient facts to continue this case. Plaintiffs pleaded facts sufficient to show that AGI acted with actual malice, which facts are necessary components of punitive damages. *See, e.g.*, Compl. ¶¶ 2, 55-86. And Plaintiffs expect to obtain additional information to *prove* those allegations through discovery.

AGI contends that Plaintiffs' discovery requests are "extensive, overbroad, and burdensome," and therefore evidence of bad faith. AGI Mem. 51. As an initial matter, only the District has served AGI with discovery; the State has served none.[34] Accordingly, AGI cannot attribute any purportedly burdensome discovery to the State. Further, AGI fails to demonstrate how the District's discovery requests are "abusive" or otherwise indicative of bad faith. *Cf. MCB Woodberry*, 253 Md. App. at 309-10 (plaintiff's request for five years' worth of personal banking records, documents which were untethered to the dispute at issue and deeply personal, was "abusive"). To the contrary, AGI's arguments raise only the familiar boilerplate objections often found in routine discovery disputes, not anything suggesting bad faith. AGI can address any burden or scope issues in the regular course of discovery. Moreover, Defendants have already collected some of the information requested in discovery and have even appended selected excerpts to their motions to dismiss. *See generally* Engage MTD Exs. A-C; United

[34] On October 31, 2024, the District served 29 requests for production, 17 interrogatories, and no requests for admission on AGI. The District served nearly the same requests on all Defendants. Plaintiffs have not served other discovery on AGI to date.

MTD Exs. A-D; AGI MTD Exs. A-J. Finally, the Court has already rejected Defendants' arguments, made in their request to stay discovery pending resolution of the motions to dismiss, that the discovery served by the District was overly burdensome. *See* Order Den. Defs.' Mot. to Stay Disc. Pending Resolution of Defs.' Mots. to Dismiss (Nov. 27, 2024).

Finally, AGI contends that Plaintiffs assert merely conclusory allegations and lack any specific facts about AGI's liability. AGI Mem. 52. For the same reasons discussed in Background and Arguments VI-X above, those arguments fail.

AGI thus fails to demonstrate that either the State or the District, let alone both, brought this suit in bad faith. Without this necessary element, AGI's motion to dismiss the case based on Maryland's anti-SLAPP law must be denied.

B. Plaintiffs' Lawsuit is Not "Materially Related" to AGI's Advocacy.

AGI does not—and could not—offer any argument that Plaintiffs' lawsuit is "materially related" to AGI's protected activity, which alone dispenses with its SLAPP claim. AGI's cited advocacy is related to firearms regulation generally, as opposed to anything specifically related to the claims in the Complaint. *See, e.g.*, AGI Mem. 4 (citing advocacy "in 2020 regarding MD H.B. 1257, which sought to require firearms deadlines to store all firearms in vaults, safes, or reinforced display cases"); *id.* (citing testimony "regarding MD S.B. 773 in 2022, which sought to penalize firearm dealers for failing to have a vault on the premises"); *id.* (citing testimony regarding 2024 MD H.B. 947 in 2024, which codified a public nuisance cause of action for those in the firearms industry). It, of course, makes sense that AGI's advocacy would relate broadly to its sole business: selling firearms. Indeed, to find this lawsuit "materially related" to AGI's advocacy before the legislature and other courts would effectively render AGI immune from *any* suit related to firearms.

C. Plaintiffs' Lawsuit is Not Intended to Silence AGI.

AGI is a party to this action not because the State or the District "intended to inhibit or to have inhibited the making of [AGI's] protected communications," *MCB Woodberry,* 253 Md. App. at 297, but because publicly available information demonstrated that it had facilitated Mr. Minor's straw purchases and has previously been identified as a top source of traced crime guns within Maryland and nationally. In arguing to the contrary, AGI merely rehashes its bad-faith arguments, *see* AGI Mem. 53, which fail for the reasons described above. Neither AGI's eight-plus years litigating Maryland's handgun-license requirement nor AGI's mixed record of success in lobbying legislators "regarding firearm-related bills" over the last four years, *see* AGI Mem. 53, establishes an inference of retaliatory motive.

* * *

AGI has failed to establish three of the four elements required for its anti-SLAPP defense, and its attempt to dismiss the case on this basis should be denied. Notably, AGI has almost entirely ignored *the District* in its analysis, for there is no claim that AGI has testified before any D.C. legislative body or brought suit against the District, and no allegation that the District brought its claims in bad faith or with the intent to silence AGI. *See* AGI Mem. 48-54.

Regardless, AGI's motion to dismiss claims brought by the District must be denied because the District's anti-SLAPP law expressly excludes cases, like this one, brought by the District itself. D.C. Code § 16-5505(a)(2); *Public Media Lab, Inc. v. District of Columbia*, 276 A.3d 1, 8, 11 (D.C. 2022) (D.C.'s anti-SLAPP Act does not apply to "[a]ny claim brought by the District government.").

CONCLUSION

For the reasons stated above, Plaintiffs have sufficiently stated causes of action against Defendants for public nuisance, negligence, negligence per se, negligence (statute or ordinance rule), and negligent entrustment. Defendants' motions to dismiss should be denied.

Dated: December 31, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on December 31, 2024, I served the foregoing on all counsel of record for Defendants via the MDEC System.

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