IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

THE CITY OF ROCHESTER, Plaintiff, -against- SMITH & WESSON BRANDS, INC.; GLOCK, INC.; STURM, RUGER & CO., INC.; AND TAURUS INTERNATIONAL MANUFACTURING, INC. Defendants.	Case No. 6:23-cv-06061-FPG Honorable Frank P. Geraci, Jr.
THE CITY OF BUFFALO, Plaintiff, -against- SMITH & WESSON BRANDS, INC.; GLOCK, INC.; STURM, RUGER & CO., INC.; AND TAURUS INTERNATIONAL MANUFACTURING, INC. Defendants.	Case No. 1:23-cv-00066-FPG Honorable Frank P. Geraci, Jr.

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINTS FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

Statutes

OTHER AUTHORITIES

INTRODUCTION

Congress enacted PLCAA to foreclose state tort suits just like this one. In particular, Congress determined that it was improper to invoke attenuated theories of causation to hold firearm companies liable for harms "caused by those who criminally or unlawfully misuse firearm products." 15 U.S.C. § 7901(a)(5). For that reason, PLCAA's predicate exception requires plaintiffs to establish "proximate cause," as that term has been understood for "hundreds of years" in the common law. *Id.* §§ 7901(a)(7), 7903(5)(A)(iii). This traditional rule of proximate cause demands that a plaintiff's injuries be "directly" caused by the defendant, rather than by the independent actions of third-party criminals. *See* Defs.' Mem. in Support of Mot. to Dismiss 11-14 (Mar. 23, 2026), Dkt. 176-1 ("MTD"). And under that traditional rule, Plaintiffs' claims clearly fail. Indeed, Plaintiffs do not even try to claim that they could satisfy any requirement of direct causation. Instead, they argue that PLCAA's federal-law immunity turns on whatever standard of proximate cause happens to be adopted by *state law*—including, here, a newly expanded causation standard that New York adopted after PLCAA's enactment.

Plaintiffs' position contravenes PLCAA's plain text and obvious purpose. As Plaintiffs concede, PLCAA creates a *federal* defense. It therefore adopts a uniform *federal* proximate cause standard, not one that differs in every state. After all, the whole point of PLCAA was to create a federal bulwark against expanding state causation theories. Plaintiffs' position, in contrast, would allow states to erase the federal causation limit simply by redefining proximate cause as a matter of state law, thereby defeating the entire purpose of creating a federal immunity. Accordingly, all of Plaintiffs' claims should be dismissed for lack of proximate cause alone.

If this Court were to go further, Plaintiffs' claims also fail for numerous independent reasons. To start, Plaintiffs do not allege a "knowing" violation of state law as PLCAA requires.

They instead seek to hold Defendants liable for violating *unwritten* rules that Defendants could not even know existed, much less know they were violating.

Plaintiffs' general public nuisance claim fails twice over: It does not arise under a valid PLCAA predicate statute, as the Second Circuit squarely held in *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 398 (2d Cir. 2008). And it is also foreclosed as a matter of state law, as the New York Appellate Division squarely held in *People ex rel. Spitzer v. Sturm, Ruger & Co.*, 309 A.D.2d 91 (N.Y. App. Div. 1st Dep't 2003).

As for Plaintiffs' claim under New York General Business Law § 898 ("GBL 898"), Plaintiffs fail to show why the extensive controls and procedures followed by Defendants do not qualify as "reasonable controls." Plaintiffs admit that Defendants follow both (i) the many state and federal laws that govern the sale, marketing, and distribution of firearms and (ii) all relevant industry customs to ensure that firearms are responsibly sold only to federally licensed wholesalers and dealers. Defendants' existing controls are thus "reasonable" as a matter of law. And while Plaintiffs insist that GBL 898 requires adopting their preferred unwritten rules of firearm regulation, that assumption has zero support in the statute's text or any controlling authority.

This Court should therefore dismiss the Amended Complaints in full and with prejudice. Even if all of Plaintiffs' factual allegations are true, it is clear that they cannot satisfy PLCAA's requirement of proximate cause, or clear any of the other legal hurdles identified above. Plaintiffs do not identify any factual issue (or opportunity for more repleading) that could colorably cure the defects in their claims. The need for a rapid dismissal is especially clear because PLCAA provides a federal immunity to avoid litigation burdens, requiring barred claims to be "immediately dismissed." 15 U.S.C. § 7902(b). Consistent with that directive, courts routinely enforce PLCAA immunity at the motion-to-dismiss stage. *See* MTD 8. This Court should now do the same here.

ARGUMENT

I. PLAINTIFFS' CLAIMS ARE BARRED BY PLCAA.

Plaintiffs' claims fall within the heartland of PLCAA immunity because they seek liability for "downstream harms resulting from misuse of [firearms] products." *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 298 (2025). While Plaintiffs try to fit their claims within PLCAA's narrow predicate exception, that effort fails three times over. *First*, Plaintiffs' allegations do not meet the traditional requirement of proximate cause, which PLCAA adopted as a federal bulwark against state-law suits like this one. *Second*, Plaintiffs do not allege any knowing violation of law, but only that Defendants were negligent. And *third*, Plaintiffs' public nuisance claim fails for the additional reason that it is not based on any valid predicate statute. For those reasons, Plaintiffs' claims must "be immediately dismissed." 15 U.S.C. § 7902(b).

A. Defendants Are Not a Proximate Cause of Plaintiffs' Injuries

Plaintiffs' brief is a frontal assault on the traditional rule of proximate cause. The Supreme Court has long held that proximate cause requires a "direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992); *see also* MTD 11-12. In this respect, the traditional rule does more than condition liability on whether a particular injury is "foreseeab[le]," which would "hardly [be] a condition at all." *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 552–53 (1994). Instead, the "central question" under the traditional rule is "whether the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006). Proximate cause is therefore absent, under the traditional rule, when a "new and independent cause interven[es] between the wrong and the injury." *Milwaukee & St. Paul Ry. Co. v. Kellogg*, 94 U.S. 469, 475 (1876).

Plaintiffs do not claim to satisfy that traditional rule here. Instead, Plaintiffs argue that PLCAA's predicate exception does not adopt the federal-law standard articulated by the Supreme Court, but instead incorporates evolving principles of state substantive law. Plaintiffs also attempt to both (i) distinguish the many cases that apply the traditional rule and (ii) construe PLCAA to tolerate capacious theories of causation. Those arguments all fail. This Court should thus dismiss Plaintiffs' claims for failing to satisfy the governing, traditional rule of proximate cause.

1. PLCAA incorporates the traditional rule of proximate cause.

To satisfy PLCAA's predicate exception, a plaintiff must show that a statutory violation was a "proximate cause" of its alleged harms. 15 U.S.C. § 7903(5)(A)(iii). As Plaintiffs concede, that language creates a *federal* defense to state causes of action. *See* City of Rochester Opp. to Mot. to Dismiss 21 (May 22, 2026), Dkt. 182 ("Opp."). And as the Supreme Court has consistently made clear, federal law follows the traditional common-law understanding of proximate cause, which requires "direct" causation, *Holmes*, 503 U.S. at 268, not mere "foreseeability," *Consol. Rail Corp.*, 512 U.S. at 552–53. PLCAA's express "proximate cause" requirement thus incorporates that traditional standard as a matter of federal law. *See Sekhar v. United States*, 570 U.S. 729, 733 (2013) (a federal statute's use of a common-law term brings the "old soil with it").

Congress made "proximate cause" a threshold demand of federal law to stop the "expansion of liability" under novel state-law claims. 15 U.S.C. § 7901(a)(7); *see id.* § 7901 (a)(3), (a)(5), (a)(8), (b)(1). To prevent state law from imposing liability based on causal theories that were not a "bona fide expansion of the common law," PLCAA requires the traditional view of proximate cause that existed for "hundreds of years [at] common law." *Id.* § 7901(a)(7). PLCAA thus recognizes that "the relationship between a tortious act and actual injury [] must be direct, not remote." H.R. 109-124, at 13-15 (2005) ("House Report") (citing *Holmes*, 503 U.S. at 269); *see*

MTD 11-12. And it rejects the "infinite flexibility of the 'foreseeability' doctrine" of proximate cause, which Congress determined could "crippl[e]" the firearms industry. House Report at 26.

PLCAA's separate design-defect exception confirms this conclusion. That exception allows suing firearm companies when the plaintiff's injury "result[s] directly" from a defective firearm. 15 U.S.C. § 7903(5)(A)(v). The exception does not apply, however, if the plaintiff's harm was caused by a "volitional act that constituted a criminal offense," because in that case the intervening criminal act is the "sole proximate cause" of the plaintiff's harm. *Id.* The exception thereby equates "direct[]" cause with "proximate cause." *Id.* It also codifies the traditional rule that independent, intervening "actions carried out by separate parties" disrupt any proximate causal link to the defendant. *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 11 (2010) (plurality op.). And since "identical words and phrases within the same statute should normally be given the same meaning," *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007), it confirms that the words "proximate cause" in the predicate exception likewise codify that traditional rule.

Plaintiffs' contrary position would read "proximate cause" out of the predicate exception. In their brief, Plaintiffs insist that the standard for proximate cause under PLCAA is "supplied by New York law," and thus they claim that PLCAA is no barrier here because they purportedly satisfy the causation "element[s]" in their state-law "cause[s] of action." Opp. 20-21. But that is plainly wrong. If PLCAA's predicate exception merely incorporated the latest state-law causation rules, it would be contrary to PLCAA's explicit goal of preventing the expansion of liability under evolving state-law standards. *See* MTD 7; House Report 11-15. This case perfectly illustrates Congress's concern: New York's traditional proximate-cause rules did not allow liability when PLCAA was passed, *see* MTD 13, but Plaintiffs now rely on new state-court decisions that have expanded liability *after* PLCAA's enactment, *see* Opp. 22, 29.

Plaintiffs' approach would also make PLCAA immunity vary from state to state. Plaintiffs' suits would be barred by PLCAA in states like North Carolina that apply the traditional common law rule, *see Strates Shows, Inc. v. Amusements of Am., Inc.*, 184 N.C. App. 455, 462 (2007), but would be permitted in others, like New York, that have adopted the sweeping "foreseeability" test that Congress adopted PLCAA to foreclose, House Report 26. Indeed, Plaintiffs have rested their entire case on satisfying that "foreseeability" standard here. Opp. 26, 29. As the Supreme Court has warned, however, "[c]onditioning liability on foreseeability … is hardly a condition at all." *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 553 (1994). Thus, by trying to whittle down proximate cause to provide "hardly" any protection at all, Plaintiffs ask this Court to do exactly what the Supreme Court said it should not do—construe PLCAA's predicate exception to be so "capacious" that it would "swallow most of the rule" barring suits based on "a third-party's criminal use of [a] company's product." *Smith & Wesson*, 605 U.S. at 298–99.

Plaintiffs have not identified any controlling authority that supports their attempt to erase PLCAA's federal proximate-cause requirement from the statute. While they invoke non-binding cases that have applied state law when denying PLCAA immunity, none of those cases explicitly addressed the choice-of-law issue, let alone explained why state law would govern here.[1] *See Wiley ex rel. Wiley v. Fleet Farm LLC*, 799 F. Supp. 3d 860, 887, 897-98 (D. Minn. 2025); *Salter v. Meta Platforms, Inc.*, 240 A.D.3d 1378, 1385–86 (4th Dep't. 2025); *Chiapperini v. Gander Mountain Co.*, 48 Misc. 3d 865, 875 (N.Y. Sup. Ct. 2014). In addition, the defendants in Plaintiffs' only federal case (*Wiley*) did not ask the district court to apply any federal-law standard, and

[1] While Plaintiffs invoke *Williams v Beemiller, Inc.*, 100 A.D.3d 143 (4th Dep't 2012), and *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825 (D. Minn. 2023), those cases applied state law to determine whether the plaintiffs had adequately alleged the proximate-cause elements of their state-law causes of action. *Williams*, 100 A.D. at 151-52, 154; *Fleet Farm*, 679 F. Supp. 3d at 843-44. Neither case addressed PLCAA's distinct federal proximate-cause requirement.

thereby gave the court no reason to reach the issue. Plaintiffs' non-binding cases thus provide no basis for "swallow[ing]" PLCAA immunity. *Smith & Wesson*, 605 U.S. at 298–99.

Nor do Plaintiffs have any footing in *Lexmark*. In addressing federal statutes that provide a cause of action, *Lexmark* stated that the federal proximate-cause analysis "is controlled by the nature of the statutory cause of action." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014). But *Lexmark* did not address a statute like PLCAA, which was designed to *bar* state-law causes of action by imposing a freestanding federal proximate-cause limit. In this context, it would be nonsensical to say that the federal standard for proximate cause should be defined by the plaintiff's state-law cause of action, as Plaintiffs now claim. *See* Opp. 21, 26. To the contrary, PLCAA's obvious statutory design was to impose a federal limit on state-law liability by adopting the "general" common-law rule that proximate cause is limited to the "first step" of a causal chain. *Lexmark*, 572 U.S. at 139-40.

Plaintiffs' other arguments for applying state law fare no better. While Plaintiffs claim it would be "unworkable" for PLCAA and their underlying claims to turn on different standards of proximate cause, Opp. 22, that argument is simply wrong. There is nothing odd or unworkable about using a federal-law standard to define a federal defense to a state cause of action. "[A]bsent a clear indication to the contrary, the meaning of words in a federal statute is a question of federal law." *W. Air Lines, Inc. v. Bd. of Equalization of State of S.D.*, 480 U.S. 123, 129–30 (1987). And it is the very nature of federal immunity to create protections that are independent of state law. Contrary to Plaintiffs' claim, PLCAA immunity does not "displace" or "preempt" any "element" of a state cause of action. Opp. 23. Rather, PLCAA simply defines a class of claims against firearm companies that must be immediately dismissed, including claims that fail to satisfy the traditional rule of proximate cause as long understood by the U.S. Supreme Court.

For all those reasons, this Court should hold that PLCAA's predicate exception adopts a federal standard based on the traditional rule of proximate cause, which requires direct causation.

2. Plaintiffs' claims do not satisfy the traditional rule of proximate cause.

Plaintiffs cannot satisfy that traditional rule. As discussed above, Plaintiffs never argue that Defendants' allegedly unlawful conduct "led directly to [their] injuries." *Anza*, 547 U.S. at 461. And for good reason: Plaintiffs' core theory is that Defendants sold firearms to federally licensed distributors; that those distributors sold the firearms to federally licensed retailers; that those retailers resold the firearms to unnamed buyers; that unnamed criminals used the firearms to commit crimes; and that those crimes led Plaintiffs to spend additional money on policing and other public services. *See* MTD 14-15. That is the definition of indirect, non-proximate causation. And because Plaintiffs cannot establish "proximate cause" within the traditional meaning of the predicate exception, PLCAA immunity applies. This Court should dismiss their Complaints in their entirety.

Plaintiffs offer several additional arguments on causation, which aim to either (i) distinguish Defendants' federal-law authorities or (ii) construe PLCAA to tolerate expansive theories of causation. Those arguments fail at every turn.

First, Plaintiffs argue that the Supreme Court's decisions on proximate cause apply only to particular "federal cause[s] of action." Opp. 25. That is wrong. The Supreme Court's decisions consistently recognize that the traditional understanding of proximate cause is a *general* common-law rule that is incorporated by default into federal statutes. *See*, e.g., *Bank of Am. Corp. v. City of Miami, Fla.*, 581 U.S. 189, 202 (2017) (explaining that "proximate cause *generally* bars suits for alleged harm that is too remote from the defendant's unlawful conduct" (emphasis added)); *Lexmark*, 572 U.S. at 139-40 (2014) (recognizing the "general" rule that proximate cause is limited to the "first step" of a causal chain); *Hemi*, 559 U.S. at 11 (emphasizing that the "common-law foundations" of proximate cause require "direct" causation); *Holmes*, 503 U.S. at 268 (noting the "common law" demanded a "direct relation between the injury asserted and the injurious conduct alleged"); *see also Anza*, 547 U.S. at 457, 461 (recounting *Holmes*' approach to the "common-law foundations of the proximate cause requirement"). Those decisions describe the "old soil"—*i.e.*, the traditional background understanding of proximate cause—that PLCAA adopted. *Sekhar*, 570 U.S. at 733. And the decisions thereby confirm that the predicate exception requires "direct" causation, which Plaintiffs cannot satisfy. *Holmes*, 503 U.S. at 268.

Second, Plaintiffs suggest that the traditional rule of proximate cause bars only "derivative" claims based on "harms to third parties." Opp. 26. But that too is wrong. For example, in *Hemi*, the plaintiff's injury (the loss of tax revenue) was not derivative of the harm to any other victim, but proximate cause was still lacking because third-party acts severed the causal chain. 559 U.S. at 10-12. Likewise here, Plaintiffs' alleged injuries admittedly stem from the intervening acts of independent third-party criminals, which alone defeats proximate cause. To be sure, a claim *can* be too indirect because the injury is derivative. *See Laborers Local 17 Health and Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 236-39 (2d Cir. 1999). But a claim can *also* be too indirect when independent intervening acts sever the causal chain. *See Hemi,* 559 U.S. at 10-12; *Anza*, 547 U.S. at 458-61. In both cases, proximate cause is lacking because the law "does not attribute remote consequences to a defendant." *S. Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533 (1918); *see Anza*, 547 U.S. at 461 (asking if violation "directly" led to injury). And here, Plaintiffs' claims arise from both the actions of third-party criminals and harms to third-party crime victims. *See* MTD 14-15. While Plaintiffs point to their own costs of crime prevention, they admit they incur those costs solely to protect their "residents." Buffalo Compl. ¶ 20.

Third, Plaintiffs argue that the predicate exception cannot incorporate the traditional rule of direct causation because it must allow some claims against firearm companies in connection with third parties' conduct. *See* Opp. 24, 27. But the traditional rule readily allows liability for a defendant who acts *jointly* with third-party criminals. As discussed, "independent" third-party acts break the chain of proximate causation. *Milwaukee*, 94 U.S. at 475; *see also Hemi*, 559 U.S. at 15 (referencing "independent actions"). By contrast, when third-party crimes are *not* independent, such as where the defendant deliberately cooperates with the criminal, they do not defeat proximate cause. In that situation, both the defendant and the criminal are direct causes of the resulting harm.

PLCAA thereby embraced a "centuries-old view of culpability": "that a person may be responsible for a crime he has not personally carried out if he *deliberately helps* another to complete its commission." *Smith & Wesson*, 605 U.S. at 291 (emphasis added). For example, if a firearm dealer advises a bank robber on the ideal firearm for his heist, in violation of 18 U.S.C. § 922(d)(10), PLCAA immunity does not apply. By deliberately abetting the bank robber's crime, the dealer becomes "a proximate cause" of resulting harm. 15 U.S.C. § 7903(5)(A)(iii). But when a firearms company engages in no joint action, the third-party criminal is "the sole proximate cause" of his criminal conduct. *Id.* § 7903(5)(A)(v). That legal distinction is dispositive here, as Plaintiffs do not—and cannot—claim that Defendants acted jointly with third-party criminals.

Finally, Plaintiffs attempt to wave away the pre-PLCAA case law that dismissed claims just like their own for lack of proximate cause. *See* Opp. 27-29. In doing so, Plaintiffs do not argue that their theory of causation is any less remote than the theories that failed in *City of Philadelphia v. Beretta U.S.A.*, 277 F.3d 415 (3d Cir. 2002), *People ex rel. Spitzer v. Sturm, Ruger & Co.*, 309 A.D.2d 91 (1st Dep't 2003), and related cases. *See* MTD 12-14 (collecting cases). Instead, Plaintiffs suggest that those cases turned on factors other than causation. *See* Opp. 28-29.

Not so.[2] That some claims in those cases failed for additional, independent reasons hardly helps Plaintiffs here. Similarly, it makes no difference that some pre-PLCAA suits against firearm companies survived dismissal, *see* Opp. 27-28, as it was the survival of those suits—and others like them—that prompted PLCAA's enactment, *see supra* 4-5.

In sum, the predicate exception adopts the traditional standard of proximate cause, that standard requires direct causation, and Plaintiffs' factual allegations do not satisfy that standard. PLCAA immunity thus applies, and for that reason alone, Plaintiffs' claims must be dismissed.

B. Plaintiffs Fail To Allege Any "Knowing" Violation of Law.

This Court should dismiss for the additional reason that Plaintiffs have failed to allege a "knowing[] violat[ion]" of GBL 898. 15 U.S.C. § 7903(5)(A)(iii). It is undisputed that Defendants could not have "knowingly violated" GBL 898 before the statute was enacted in July 2021. *See* MTD 10. Plaintiffs' claims thus fail to the extent that they seek liability for pre-2021 conduct. And for all post-2021 conduct, the parties' disagreement turns on a pure question of law: whether the predicate exception requires knowledge of the *unlawfulness* of a defendant's conduct (as Defendants contend), or only knowledge of facts that *constitute* unlawful conduct (as Plaintiffs counter). This Court should read the predicate exception to require knowledge that a defendant's conduct is unlawful—or, at minimum, knowledge that a defendant's conduct is unreasonable.

---

[2] *See Beretta*, 277 F.3d at 422 (affirming dismissal "for lack of proximate cause"); *Spitzer*, 309 A.D.2d 91, 103 (2003) (holding that "defendants' lawful commercial activity … may not be considered a proximate cause of such harm"); *Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 234 (2001) (declining to impose liability against defendants that were not a "direct link in the causal chain that resulted in plaintiffs' injuries"); *Ganim v. Smith & Wesson Corp.*, 258 Conn. 313, 351-65 (2001) (dismissing for lack of standing, where the standing analysis was "drawn from" *Holmes*' approach to "proximate cause"); *Chicago v. Beretta, U.S.A. Corp.*, 821 N.E.2d 1099, 1136 (Ill. 2004) (deeming firearm companies' conduct to be "so remote from the [City's] resulting injury that legal cause was not established"); *District of Columbia v. Beretta, U.S.A. Corp.*, 872 A.2d 633, 647 (D.C. 2005) (en banc) (dismissing nuisance claim against firearm companies due to "the sheer number of causal links, and resulting attenuation, that underlie the [] claim of injury").

1. The plain text of the predicate exception uses the word "knowingly" to modify both the verb "violated" and its direct object, "a State or Federal statute applicable to the sale or marketing of the product." 15 U.S.C. § 7903(5)(A)(iii). And as a matter of ordinary English, a person cannot knowingly violate an unspecified statute unless he knows that his conduct "violate[s]" that statute. *Id.* § 7903(5)(A)(iii).

To be sure, the meaning of a "knowing violation" can vary based on statutory context. In some cases, when Congress prohibits "knowingly violating" a specific statutory prohibition, the "knowingly" requirement simply must be distributed across that prohibition's "listed elements." *Rehaif v. United States*, 588 U.S. 225, 230 (2019). Here, however, PLCAA's predicate exception turns on whether a defendant "knowingly violated" an open set of unspecified, "applicable" state and federal statutes. 15 U.S.C. § 7903(5)(A)(iii). And in that respect, the meaning of the predicate exception is governed by *Liparota*, which interpreted a similarly open-ended bar on "knowingly" using food stamps "in any manner not authorized by" an entire "chapter" of the U.S. Code. *Liparota v. United States*, 471 U.S. 419, 420 n.1 (1985). Accordingly, per *Liparota*, the predicate exception requires "showing that [a] defendant knew his conduct to be unauthorized." *Id.* at 425.

The basic design of PLCAA confirms that conclusion. Among other protections, the statute "reflects Congress's view that the democratic process, not litigation," should set the rules for the firearms industry. *Smith & Wesson*, 605 U.S. at 301 (Jackson, J., concurring). Requiring "knowing[]" violations fulfills that design by ensuring that legislatures (not courts) enact clear rules so that firearm companies can know what is required of them. It also prevents the imposition of a vague standard that must be defined through "litigation," *id.*, which would make companies liable based on *unwritten* rules—never enacted through any "democratic process," *id.*—that the companies did not even know they had to follow. Indeed, if PLCAA required only knowledge of the "facts and circumstances" that a judge or jury later deems unreasonable, Opp. 19, it would undermine the purpose of ensuring that legislatures rather than courts set the rules. It would also provide virtually no protection for the firearms industry, as it would guard against only those claims in which a company was somehow unaware of its own relevant conduct.

While Plaintiffs claim to find support in the Second Circuit's decision in *NSSF*, that case rejected only a facial challenge to GBL 898. *See Nat'l Shooting Sports Found., Inc. v. James*, 144 F.4th 98, 106-08 (2d Cir. 2025). It did not consider whether the predicate exception allows firearm companies to be held liable for engaging in longstanding conduct that they did not know to be unlawful. Here, by contrast, Defendants argue that in this particular case plaintiffs have failed to plead facts that would establish a "knowing[] violat[ion]" of GBL 898.

Plaintiffs' other authorities on the knowledge issue are also unpersuasive. To start, *Bryan* interpreted a criminal statute that prohibited "knowingly mak[ing]" certain false statements and "knowingly violat[ing]" specific provisions of the federal criminal code. 18 U.S.C. § 924(a)(1)-(B); *see Bryan v. United States*, 524 U.S. 184, 192-93 (1998). Similarly, *Weintraub* interpreted a prohibition on "knowingly violat[ing]" regulations promulgated under specific sections of the Clean Air Act. 42 U.S.C. § 7413(c)(1); *see United States v. Weintraub*, 273 F.3d 139, 145 (2d Cir. 2001). The statutory language in those cases says little about PLCAA's element of "knowingly" violating any "*applicable*" "State or Federal statute." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). Nor did the statutes in *Bryan* or *Weintraub* share PLCAA's purpose of requiring clear rules set by the legislature to provide broad-based protection against "abuse[s] of the legal system." *Id.* § 7901(a)(6).

For all these reasons, this Court should hold that the predicate exception requires pleading knowledge of unlawfulness, which Plaintiffs admittedly have not done. *See* MTD 10.

2. At a minimum, this Court should interpret the predicate exception to require knowledge of unreasonableness. Under *Rehaif*, the proper interpretation of the predicate exception requires "read[ing] the statutory term 'knowingly' as applying to all the [] listed elements" in GBL 898. *Rehaif*, 588 U.S. at 230. Those elements include showing that the defendant failed to utilize "controls and procedures" that are "reasonable." N.Y. Gen. Bus. Law § 898-b(2). So at minimum, the predicate exception requires pleading that Defendants knew their controls and procedures to be unreasonable. Plaintiffs have not attempted to clear that bar here. *See, e.g.*, Compl. ¶¶ 186-95 (alleging Defendants "knowingly failed to establish and utilize reasonable controls," but omitting any allegation that Defendants knew the controls they relied on were not reasonable). Nor could Plaintiffs plausibly allege such knowledge, as Defendants are federally-licensed manufacturers who sell only to federally-licensed distributors who, in turn, sell to federally-licensed retailers. Defendants' *compliance* with all applicable laws for the manufacture and sale of their products forecloses any possible assertion that they "know" their conduct is "unreasonable."

For all those reasons, this Court should dismiss Plaintiffs' claims for failing to plausibly allege any knowing violation of GBL 898.

C. Plaintiffs' Public Nuisance Claim Fails Because It Does Not Arise Under a Valid Predicate Statute.

This Court should dismiss Plaintiffs' common-law public nuisance claim for the additional reason that it does not arise under a valid predicate statute, and thus falls outside PLCAA's predicate exception. MTD 9. Plaintiffs oppose that result by arguing that if the predicate exception applies to their claim under GBL 898, the exception also allows their "entire case to go forward." Opp. 30. There is no need for this Court to reach that issue, as Plaintiffs cannot satisfy the predicate exception even for GBL 898. *See supra* 3-14. Regardless, Plaintiffs' "all or nothing" reading of the statute is wrong.

The predicate exception is narrowly crafted to allow only "an action in which [the defendant] knowingly violated a [predicate statute], and the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). The only sensible reading of this text is to allow only causes of action that seek "relief" for harm proximately caused by a predicate violation. Thus, "while the term 'action' may be most commonly understood to refer to a case, rather than an individual claim, the term is sometimes used instead as shorthand for a single 'cause of action.'" *Ramos v. Wal-Mart Stores, Inc.*, 202 F. Supp. 3d 457, 466 (E.D. Pa. 2016) (providing examples). And PLCAA confirms that this is how "action" is used here. Other provisions in PLCAA use the word "action" in precisely that way. *E.g.*, 15 U.S.C. § 7903(5)(A)(ii) ("an action … for negligent entrustment or negligence per se"), § 7903(5)(A)(iv) ("an action for breach of contract"). That is the only way to harmonize the predicate exception with PLCAA's goal "[t]o prohibit *causes of action*" arising from third parties' "misuse of firearm[s]." *Id.* § 7901(b)(1).

Plaintiffs' contrary reading would allow all claims against firearm companies to proceed even if they are unrelated to any predicate violation. Claims would thus turn solely on whether they happen to be asserted in the same case as a defendant who allegedly violated a predicate statute. For example, here, Plaintiffs' reading would strip *all* Defendants in this case of PLCAA's protections if this Court finds a violation by a *single* Defendant. That would be absurd. So it is no surprise that federal courts across the country have rejected the exact gambit that Plaintiffs raise here. *See Fleet Farm*, 799 F. Supp. 3d at 885–86; *Doyle v. Combined Sys., Inc.*, 2023 WL 5945857, at *6 (N.D. Tex. Sept. 11, 2023); *Parsons v. Colt's Mfg. Co.*, 2020 WL 1821306, at *3–6 (D. Nev. Apr. 10, 2020); *New York v. Arm or Ally, LLC*, 718 F. Supp. 3d 310, 329–34 (S.D.N.Y. 2024).

For those reasons, this Court should dismiss Plaintiffs' public nuisance claim, regardless of whether it also dismisses their claim under GBL 898.

II. PLAINTIFFS FAIL TO STATE A VIOLATION UNDER NEW YORK LAW.

Although the reasons above are dispositive, Plaintiffs also fail to state a valid claim for any violation of New York state law. This, too, requires dismissing their Amended Complaints.

A. There Is No Valid Claim Under GBL 898.

To state a claim under GBL 898, Plaintiffs must plausibly allege that Defendants failed to "establish and utilize reasonable controls and procedures," defined to mean "screening, security, inventory and other business practices to prevent" certain unlawful "sales." N.Y. Gen. Bus. Law §§ 898-a(2), 898-b(2). But Plaintiffs have failed to allege facts showing that the many controls and procedures followed by Defendants are not "reasonable."

Plaintiffs do not dispute that Defendants comply with the many specific rules—prescribed by both state and federal law—designed to prevent unlawful sales. *See* Opp. 15-16; MTD 20-22. For example, they do not dispute that Defendants sell only to federally licensed distributors who, in turn, sell only to federally licensed retailers. Nor do Plaintiffs dispute that Defendants are in full "compliance with federal serialization rules and dealer-licensing requirements," Opp. 15, which are part of the extensive state and federal regulatory framework to ensure that firearms are sold only to legitimate buyers, *see* CRS, Federal Firearms Laws: Overview and Selected Legal Issues for the 116th Congress, at 6-8 (Mar. 25, 2019). Similarly, Plaintiffs do not dispute that Defendants' distribution practices are fully in accordance with longstanding "industry standards." Opp. 15. To the contrary, they allege that the entire firearms industry operates in the same manner as Defendants here. *See* Rochester Compl. ¶¶ 14-15, 56-64; Buffalo Compl. ¶¶ 15-16, 62-70. Thus, Plaintiffs do not provide any basis to conclude that the extensive controls and procedures followed by Defendants do not qualify as "reasonable," within the meaning of GBL 898.

Despite all of this, Plaintiffs assert (without citation) that "the Legislature enacted Section 898 in 2021 *to change* industry standards." Opp. 15. Based on that unsupported premise, they say that Defendants have acted unreasonably by failing to take specific steps that appear nowhere in the statute. In particular, Plaintiffs argue that each manufacturer, "[a]fter it sells firearms to a distributor or dealer," must be "involved with" and "control where the firearms are then sold to retail consumers." Buffalo Compl. ¶ 146. They further claim each manufacturer must "control the use of its products after they have been sold to an independent, federally licensed distributor." *Id.* ¶ 181. And they insist that manufacturers must track "downstream sales," "monitor[] crimes committed with [their] products," *id.* ¶ 171; and "train[]" independent retailers in how to sell firearms, *id.* ¶ 108. *See also* Rochester Compl. ¶¶ 101, 103, 141, 176 (similar); Opp. 12-15.

Plaintiffs' argument fails because these supposed legal requirements are fabricated out of thin air. No legislature has enacted them. And as a matter of law, it is not *unreasonable* for Defendants to follow an alternative course: Defendants follow the longstanding industry standard for distributing firearms, and they comply with all of the state and federal rules designed to ensure firearms remain within legitimate distribution channels. The state and federal rules chosen by legislators across the country are by definition "reasonable controls"—and they involve a variety of "screening, security, inventory and other business practices" that have the purpose of preventing unlawful sales. N.Y. Gen. Bus. Law §§ 898-a(2), 898-b(2); *see also Trimarco v. Klein*, 56 N.Y.2d 98, 105 (1982) (complying with industry standards supports reasonableness).

Plaintiffs' only response is to argue that if compliance with all pre-existing state and federal rules itself satisfies GBL 898, that would render the statute a "nullity." But that is plainly false. Defendants agree that the statute provides a novel firearm-specific nuisance cause of action against firearm companies that act in a truly unreasonable manner, such as by failing to follow state or federal rules (which may not themselves supply a cause of action). To give one example, GBL 898 arguably authorizes state-law damages claims for violations of federal serialization laws, when a plaintiff can satisfy one of PLCAA's exceptions.

Plaintiffs' other main argument is that Defendants should monitor law-enforcement databases to ascertain which downstream dealers sell firearms that are "disproportionately" recovered at crime scenes, and then cut off those federally-licensed dealers (by selling only to distributors who will agree not to sell to those dealers). But federal law-enforcement agencies have the same data, and they do not shut down those dealers for a simple reason: The fact that dealers sell a disproportionate number of firearms used in crimes does not indicate that they engage in unlawful practices or sales. Most firearms used in crimes were sold *lawfully*, and then misused later. *See* DOJ, Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates 2016, at 1 (2019). The number of "crime guns" traced to a dealer can thus result from many factors unrelated to wrongdoing, such as a geographic proximity to high-crime areas, a high volume of sales, or random chance. If the Department of Justice—across multiple Administrations—does not regard tracing statistics as evidence of dealers' wrongdoing, then it cannot be "unreasonable"—much less *knowingly* unreasonable—for Defendants to take the same view.

At bottom, Plaintiffs' claim rests on the theory that the existing rules on firearms sales are not "reasonable controls." No legislature has endorsed that remarkable position. And in *Spitzer*, the First Department rejected a similar request to micromanage which firearms "may be sold in exactly what quantities, to and by which wholesalers, … and to which individual retailers in which communities." 309 A.D.2d at 106. Similarly here, those questions are "best left to the legislative and executive branches." *Id.* at 105. Plaintiffs thus fail to state a claim under GBL 898.

B. There is no valid claim for public nuisance.

That leaves only Plaintiffs' public nuisance claim, which runs headlong into the First Department's decision in *Spitzer*. *See* MTD 17-18. In that case, as here, the plaintiffs alleged that firearms companies "manufacture[d], distribute[d] and market[ed] handguns [] in a manner that knowingly place[d] a disproportionate number of handguns in the possession of people who use them unlawfully." *Spitzer*, 309 A.D. at 93. The First Department affirmed that claim's dismissal, reasoning that New York common law did not impose liability on the "lawful," "strict[ly]" regulated sale of nondefective goods. *Id.* at 104-06. The court also emphasized that the judiciary was "ill-equipped" to assume the legislative role of regulating the firearms industry. *See id.* Those conclusions require dismissing Plaintiffs' indistinguishable claims.

Plaintiffs respond that this case is instead controlled by *Salter* and *Williams*. But both of those cases concerned conduct that independently violated a specific state or federal statute. *See Salter*, 240 A.D.3d at 1387 (plaintiffs alleged that the sale of a magazine lock that violated New York law); *Williams*, 100 A.D.3d at 150, 152 (plaintiffs alleged the knowing sale of firearms to a straw purchaser). Not so here. While Plaintiffs assert that Defendants violated GBL 898, that statute merely imposes the same common-law "reasonable[ness]" test as their public nuisance claim. For those reasons, *Spitzer* squarely controls. The "New York Court of Appeals has never recognized a common-law public nuisance cause of action based on allegations like those [in this case]." *Spitzer*, 309 A.D. at 94. This Court should thus dismiss Plaintiffs' public nuisance claim.[3]

[3] While Plaintiffs debate whether New York has adopted the Third Restatement of Torts, *see* Opp. 32-33, their public nuisance claim fares no better under the Second Restatement. *See* Restatement (Second) of Torts § 821B, cmt. *f* (1979) ("[I]f there has been established a comprehensive set of legislative acts or administrative regulations governing the details of a particular kind of conduct, the courts are slow to declare an activity to be a public nuisance if it complies with the regulation.").

III. CONSTRUING NEW YORK LAW TO IMPOSE LIABILITY ON DEFENDANTS HERE WOULD BE UNCONSTITUTIONAL.

To the extent GBL 898, or any other New York law, could be interpreted to bar Defendants' routine sale of firearms, it would be unconstitutional. Plaintiffs admit that the Second Amendment governs regulations of firearm commerce that "meaningfully constrain the right to possess and carry arms." Opp. 33 (quoting *United States v. Vereen*, 152 F.4th 89, 95 (2d Cir. 2025)). And Plaintiffs' proposed interpretation of GBL 898 would do just that. For example, Plaintiffs' position would require cutting off the supply of lawful firearms to federally-licensed dealers—not because the dealers violated any law, but instead because the firearms they sold were later used by criminals. *See, e.g.*, Buffalo Compl. ¶ 193(c). That would sharply constrain the constitutional rights of law-abiding New Yorkers, as "[t]he right to keep arms[] necessarily involves the right to purchase them." *Gazzola v. Hochul*, 88 F.4th 186, 196 (2d Cir. 2023) (citation omitted).

To be sure, the Supreme Court has described "laws imposing conditions and qualifications on the commercial sale of arms" as "presumptively constitutional." *D.C. v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008). But that presumption "can be overcome," *Gazzola*, 88 F.4th at 195, when a restriction on firearm sales is not "consistent with this Nation's historical tradition of firearm regulation," *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). That is true here. *See* MTD 24-25. After all, Plaintiffs have not identified any law in American history that required firearms manufacturers to supervise downstream sales by licensed firearm dealers, or that would cut off firearm dealers based on how independent criminals misuse their products after the point of sale. *See* Opp. 34-35. This Court should not construe either GBL 898 or the New York common law of public nuisance to impose those novel, unconstitutional restrictions.

CONCLUSION

The Court should dismiss the Amended Complaints with prejudice.

Dated: June 22, 2026

<u>/s/ James B. Vogts</u>
James B. Vogts (admitted PHV)
SWANSON, MARTIN & BELL, LLP
330 N. Wabash, Suite 3300
Chicago, IL 60611
Telephone: (312) 222-8517
Email: jvogts@smbtrials.com

Meghan M. Brown
GOLDBERG SEGALLA LLP
665 Main Street
Suite 400
Buffalo, NY 14203
Telephone: (716) 566-5400
Email: mbrown@goldbergsegalla.com

Counsel for Sturm, Ruger & Co., Inc.

<u>/s/ John F. Weeks IV</u>
John F. Weeks IV (admitted PHV)
SMITH, GAMBRELL & RUSSELL, LLP
1105 West Peachtree Street NE, Suite 1000
Atlanta, GA 30309
Telephone: (404) 815-3500
Email: jweeks@sgrlaw.com

John G. McCarthy
SMITH, GAMBRELL & RUSSELL, LLP
1301 Avenue of the Americas, 15th Floor
New York, NY 10019
Telephone: (212) 907-9700
Email: jmccarthy@sgrlaw.com

Counsel for Taurus International Manufacturing, Inc.

<u>/s/ Noel J. Francisco</u>
Noel J. Francisco (admitted PHV)
Anthony J. Dick (admitted PHV)
JONES DAY
51 Louisiana Ave. NW
Washington, DC 20001
Telephone: (202) 879-3939
Email: njfrancisco@jonesday.com
ajdick@jonesday.com

Andrew Lelling (admitted PHV)
JONES DAY
100 High Street
Boston, MA 02110
Telephone: (617) 449-6856
Email: alelling@jonesday.com

Kelly Holt Rodriguez (admitted PHV)
JONES DAY
90 S 7th St.
Minneapolis, MN 55402
Telephone: (612) 217-8855
Email: kholt@jonesday.com

Barry Nelson Covert
LIPSITZ GREEN SCIME CAMBRIA LLP
42 Delaware Ave.
Suite 120
Buffalo, NY 14202
Telephone: (716) 849-1333
Email: bcovert@lglaw.com

Counsel for Smith & Wesson Brands, Inc.

<u>/s/ Scott C. Allan</u>
Christopher Renzulli
Scott C. Allan
RENZULLI LAW FIRM, LLP
One North Broadway, Suite 1005
White Plains, NY 10601
Telephone: (914) 285-0700
Email: crenzulli@renzullilaw.com
sallan@renzullilaw.com

Counsel for Glock, Inc.