



2-25-0274

E-FILED
Transaction ID: 2-25-0274
File Date: 6/18/2026 1:38 PM

No. 2-25-0274

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

IN THE
APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

KEELY ROBERTS, individually and as
parent and next friend of C.R. and L.R., and
JASON ROBERTS, individually and as
parent and next friend of C.R. and L.R.,

Plaintiffs-Appellees,

v.

Smith & Wesson Brands, Inc., Smith &
Wesson Sales Company, and Smith &
Wesson, Inc.,

Defendants-Appellants,

and

Budsgunshop.com, LLC, Red Dot Arms,
Inc., Robert Crimo, Jr., and Robert Crimo,
III,

Defendants.

On Appeal from the Circuit Court
of Lake County, Illinois, County
Department, Law Division

No. 22 LA 00000487; Consolidated
for Pretrial Purposes with Case
Nos.

22 LA 00000488, 22 LA 00000489,
22 LA 00000490, 22 LA 00000491,
22 LA 00000492, 22 LA 00000493,
22 LA 00000494, 22 LA 00000495,
22 LA 00000496, 22 LA 00000497,
22 LA 00000532, 24 LA 00000201,
24 LA 00000203, 24 LA 00000206,
24 LA 00000466, 24 LA 00000471,
24 LA 00000474, 24 LA 00000475,
24 LA 00000476, 24 LA 00000477,
24 LA 00000478, 24 LA 00000479,
24 LA 00000480, 24 LA 00000481

The Honorable Judge Jorge L.
Ortiz, Presiding.

BRIEF OF PLAINTIFFS-APPELLEES

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ORAL ARGUMENT REQUESTED

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NATURE OF THE ACTION

Plaintiffs are victims of the July 4, 2022, mass shooting in Highland Park and their families. A59-60 ¶ 19.¹ In 25 consolidated cases, Plaintiffs allege that, in the decade leading up to the shooting, Defendants Smith & Wesson Brands, Inc., Smith & Wesson Sales Company, and Smith & Wesson, Inc. (collectively, “Smith & Wesson”) marketed the assault rifle used in the shooting in violation of Illinois laws prohibiting unfair and deceptive trade practices. A53-56. The circuit court largely denied Smith & Wesson’s motion to dismiss and certified six questions for interlocutory appeal under Illinois Supreme Court Rule 308. A2754-57. Following a supervisory order from the Illinois Supreme Court, this Court granted Smith & Wesson’s application for leave to appeal. A2923. This appeal is on the pleadings.

¹ This brief denotes Smith & Wesson’s brief as “S&W Br. __” and its appendix as “A __.” Plaintiffs’ Supplemental Appendix is “Supp. A __.” Unless otherwise noted, Complaint citations refer to the First Amended Complaint in *Roberts v. Smith & Wesson Brands, Inc.*, No. 22-LA-00000487 (A53-123).

ISSUES PRESENTED FOR REVIEW

As certified, the questions presented are:

Protection of Lawful Commerce in Arms Act (“PLCAA”), 15 U.S.C. §§ 7901-7903

1. Does the PLCAA bar Plaintiffs’ common law claims?
2. Can alleged violations of either the Illinois Consumer Fraud and Deceptive Business Practices Act (“CFA”), 815 ILCS 505/2 or the Illinois Deceptive Trade Practices Act (“DTPA”), 815 ILCS 510/2 serve as a predicate statute that could deprive Smith & Wesson of PLCAA immunity?

Firearms Industry Responsibility Act (“FIRA”)

1. Does FIRA, 815 ILCS 505/2DDDD, qualify as a predicate statute for exemption under the PLCAA, 15 U.S.C. § 7903(5)(A)(iii)?
2. Is the FIRA preempted by the PLCAA?
3. If not preempted, is the application of FIRA to Smith & Wesson’s sales and marketing mediums consistent with the U.S. Constitution, or does it infringe upon the First and Second Amendments and the Dormant Commerce Clause?
4. If the FIRA is “declarative of existing law” but applies to “actions commenced or pending on or after August 14, 2023,” can a violation of the FIRA’s provisions be “knowingly” committed before the FIRA was enacted?

A2757.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under Rule 308 over the six questions that the circuit court certified on June 5, 2025. A2756-57. Smith & Wesson timely filed an application for leave to appeal on July 7, 2025. A2777. This Court initially denied the application, A2867, but granted it following a supervisory order from the Illinois Supreme Court, A2922-23.

This Court lacks jurisdiction over any uncertified issues. *Combs v. Schmidt*, 2015 IL App (2d) 131053, ¶ 6. Smith & Wesson has not argued that any exception applies to this jurisdictional rule. Accordingly, this Court should not reach the uncertified issues that Smith & Wesson raises.

STATEMENT OF FACTS

First introduced in 2006, Smith & Wesson's flagship Military & Police ("M&P") 15 assault rifle has been the perpetrator's weapon of choice in multiple mass shootings: Aurora, San Bernardino, Parkland, and Poway. A55 ¶ 6. The Highland Park Independence Day Parade shooting is the latest chapter in the gruesome history of Smith & Wesson's M&P brand. *Id.* This is no accident, but the result of a dangerous marketing strategy that ignored the foreseeable destruction caused by the misuse of assault weapons in favor of maximizing profits. A57-58 ¶ 13. As Plaintiffs allege, Smith & Wesson grew the market for its M&P 15 assault rifles by targeting "young men with hero complexes and delusions of militaristic grandeur" and deploying "tactics and themes it knew would be disproportionately attractive to dangerous people like the shooter." A30. Smith & Wesson encouraged these young, civilian consumers to arm themselves with assault rifles, while touting in its marketing the rifles' capacity to carry out military-style assaults, and emboldening them to be like the warriors they fantasized themselves to be. A55-56 ¶¶ 6-9, A56 ¶¶ 13-14.

Smith & Wesson's marketing strategy worked far too well: following in the footsteps of other mass shooters, Robert Crimo, III ("the Shooter")—a self-styled "Master Gunnery Sergeant"—chose Smith & Wesson's M&P 15 to achieve maximum destruction and terrorize his hometown. A57 ¶ 10, A84 ¶ 103, A92 ¶ 140. Plaintiffs, who had come together to celebrate America's birthday, are the ones who suffered the consequences of Smith & Wesson's recklessness. A59-60 ¶ 9. Many of them have lost mothers, fathers, sisters, and brothers, many have permanent and life-changing injuries, and all of them have lost their sense of safety. *Id.*

A. Smith & Wesson marketed the Military & Police assault rifle as ideal for inflicting military-grade lethality.

Smith & Wesson has long emphasized military-grade lethality when marketing its assault rifles to civilians, even though the military does not use these weapons. A56 ¶¶ 8-9, A70-72 ¶¶ 63-68. Smith & Wesson’s choice of brand name—Military & Police—deliberately associated the company’s firearms with the military from the beginning. A56 ¶¶ 8-9, A65-66 ¶¶ 47-49, A70-73 ¶¶ 63-71. The company also markets its weapons to take advantage of the thrill that violent imagery and associations with combat create. A56 ¶ 8. For example, Smith & Wesson “showcases the [weapon’s] combat-like uses” and depicts the rifle in the hands of people wearing military fatigues and law enforcement uniforms. A56 ¶ 8, A70-72 ¶¶ 64-67. In 2022, a committee of the U.S. House of Representatives found that “Smith & Wesson has [] claimed military and law enforcement endorsements for its product in advertisements” and that the “advertisements emphasize the AR-15-style rifle’s military roots and seek to appeal to consumers’ masculinity.” A69 ¶ 61. This association is false: Smith & Wesson’s assault rifles are not sold to or used by the U.S. military. A56 ¶ 9, A74 ¶¶ 74-75. Smith & Wesson pursued this marketing strategy because it believes that implying that the M&P assault rifles are approved, endorsed, and used by U.S. service members will boost sales—a dynamic it calls the “halo effect.” A56 ¶ 9, A72-73 ¶¶ 67-69.

B. Smith & Wesson deliberately targeted a demographic more susceptible to violent marketing.

In September 2012, Smith & Wesson’s CEO announced a plan to expand the market for M&P assault rifles by targeting “a younger demographic” whose members were “very interested in firearms” because they “grew up playing videogames.” A1276 ¶ 189

(Uvaldo Complaint), A77-78 ¶ 83. This announcement came just two months after the M&P 15 was used for a military-style assault in a crowded movie theater in Aurora, Colorado. A66 ¶ 51. If Aurora was not enough of a warning, another member of Smith & Wesson’s targeted “younger demographic” gunned down 20 children and six educators with another company’s assault rifle at Sandy Hook Elementary School shortly afterward. *Id.* Even then, a decade before the Highland Park shooting, the press connected these shootings with Smith & Wesson’s marketing: “Smith & Wesson certainly can’t market ‘modern sporting rifles’ designed to appeal to young video gamers.” A1276 ¶ 192 (Uvaldo Complaint). But Smith & Wesson disagreed and pressed forward with marketing campaigns focused on this demographic, even though studies show that adolescents and young men are particularly receptive to marketing that depicts impulsive, thrill-seeking behavior. A56 ¶ 8, A75-77 ¶¶ 77-81, A79 ¶¶ 86-87, A82 ¶¶ 96-97.

In 2014, Smith & Wesson’s CEO reported to investors that the company was making progress in courting “a younger age demographic.” A1277 ¶ 200 (Uvaldo Complaint). He boasted that “the backbone” of the company’s success was “to know the consumer and the market way better than the competition,” though he added that he was “forbidden to talk about” the specific demographics that Smith & Wesson was “targeting very aggressively.” *Id.*

In 2015, Smith & Wesson launched a marketing campaign that mimicked the appearance of *Call of Duty*, a popular first-person shooter videogame where players often aim at human targets. A75-76 ¶¶ 77-79. This campaign included messaging that consumers should use their M&P 15s to “[e]xperience real-life first person shooting” and “experience more adrenaline.” A76 ¶ 79. The company also soon began using social media influencers

who posted videos demonstrating assaultive, military-style uses of the M&P 15. A56 ¶ 8, A79 ¶¶ 85-86, A1279-80 ¶¶ 205-10 (Uvaldo Complaint). Smith & Wesson featured its videos on online platforms preferred by young people, without using age gates to prevent minors from accessing its content. A79 ¶ 85.

Smith & Wesson promoted this marketing campaign for the next several years and continued to profit when mass shooters used their assault rifles. A75-80 ¶¶ 77-92. For example, in 2015, Smith & Wesson’s marketing strategy gave it the “leading share” of the assault rifle market. A67 ¶ 53. That year, two attackers killed fourteen people at a Christmas party in San Bernardino, California with an arsenal that included a Smith & Wesson M&P assault rifle. A67 ¶ 54. After the shooting, Smith & Wesson’s CEO stated that the company was “obviously doing everything we can to capitalize on the strong market.” A67 ¶ 55.

In 2018, after a 19-year-old used a Smith & Wesson M&P rifle to kill seventeen people at Marjory Stoneman Douglas High School in Parkland, Florida, Smith & Wesson’s shareholders asked it to investigate the possibility of mitigating the harms associated with its products. A67-68 ¶¶ 56-58. The company refused, writing: “[t]he Company’s reputation as a strong defender of the Second Amendment is not worth risking for a vague goal of improving the company’s reputation among non-customers or special interest groups[.]” A68 ¶ 58. The next year, it re-emphasized that its strategy for the M&P brand was to “focus on reaching the ‘Hardcore’ and ‘Young Gun’ segments of the market.” A77 ¶ 82.

C. The Shooter was exposed to, and influenced by, Smith & Wesson’s marketing.

The Shooter matched Smith & Wesson’s target customer: an unstable and impressionable young man obsessed with violence. A84 ¶ 103. He was a teenager when

Smith & Wesson shifted its focus to the “younger demographic:” fourteen years old when Smith & Wesson boasted that it was making headway with the younger demographic, and fifteen when it launched its marketing campaign that mimicked the appearance of first-person shooter videogames. *See* A57 ¶ 11; *supra* pp. 6-7. An avid user of the social media platforms favored by Smith & Wesson, he documented this obsession online. A85-88 ¶¶ 108-16. This included frequently posting videos of himself playing *Call of Duty*, A85 ¶ 109, including one where he was firing an assault rifle from a rooftop into a crowd of civilians, A828 ¶ 113 (Turnipseed Complaint). His top weapon in *Call of Duty* was the M4A1—the M&P 15’s military sibling. A1284 ¶¶ 232-33 (Uvaldo Complaint).

The Shooter was also exposed to, and influenced by, Smith & Wesson’s marketing. A84 ¶ 103, A89 ¶¶ 125-26. In 2016, for example, when the Shooter was sixteen, Smith & Wesson published a video on its YouTube channel in which a social media influencer used an M&P 15-line rifle to fire two rounds into each of three human torso-shaped targets in roughly two seconds. A1279 ¶ 207 (Uvaldo Complaint). The influencer was wearing a shirt with “Smith & Wesson M&P Military & Police” emblazoned on the back. A89 ¶ 126. That video was republished on the website of firearms retailer Budsgunshop.com LLC (“Buds”)² and was visible on Buds’ website in early 2020 when the Shooter visited the website to purchase his first firearm—exposing him to Smith & Wesson’s marketing when he purchased the M&P 15. A89 ¶¶ 124-26. Shortly after purchasing his M&P assault rifle, the Shooter gave himself the rank of “Master Gunnery Sergeant” online. A87 ¶ 116.

² Buds is also a defendant and is the appellant in a related appeal, No. 2-25-0275.



*Screenshot from official Smith & Wesson M&P rifle video
hosted on Budsgunshop.com in 2020 (A89 ¶ 126)*

Thus, as the circuit court found, Plaintiffs alleged that “the shooter saw one or more of Smith & Wesson’s advertisements and was motivated or inspired by it.” A26-27. The court further found that Plaintiffs “extensively pled corroborating facts” that Smith & Wesson’s marketing motivated the Shooter to commit this atrocity. A27.

D. The Shooter used his M&P 15 to act out his militaristic fantasy.

On July 4, 2022, the Shooter climbed to the rooftop of a building in downtown Highland Park. A92 ¶¶ 137-38. Like the military marksman he fantasized himself to be, he used his M&P assault rifle to fire eighty-three shots into the crowd in mere seconds—killing seven people, injuring forty-eight others, and forever scarring an entire community. A54 ¶ 3, A92 ¶ 139. Although the Shooter owned numerous weapons, he used his M&P 15 to inflict the most damage on the maximum number of people, A92 ¶ 140—allowing him to “[e]xperience real-life first person shooting” and “burn through all the ammunition [he] wanted[ed],” just like Smith & Wesson promised, A76 ¶¶ 79-80.

E. Procedural History

Following the shooting, Plaintiffs sued Smith & Wesson and other defendants. All Plaintiffs brought statutory and negligence claims against Smith & Wesson based on violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (the “CFA”), the Firearms Industry Responsibility Act (“FIRA”), and the Illinois Uniform Deceptive Trade Practices Act (the “DTPA”). A20. After frivolously removing the cases to federal court and being ordered to pay attorneys’ fees,³ Smith & Wesson moved to dismiss the complaints. A20. The circuit court largely denied the motion, dismissing only Plaintiffs’ CFA deception claim for lack of standing and negligent entrustment claims. A51. Following the circuit court’s order, Plaintiffs have unfairness claims under the CFA and FIRA (Count I), deception claims under the DTPA (Count III), and negligence claims predicated on violations of all three statutes (Count IV). A42-56.⁴

Smith & Wesson then moved to certify fourteen questions for interlocutory appeal under Rule 308. A2693-95. The circuit court certified six of those questions because they had not been previously addressed by an Illinois appellate court. A2756-57. The circuit court declined to certify the remaining eight questions, which include several issues that Smith & Wesson nevertheless raises on appeal. A2753-57. This Court initially denied Smith & Wesson’s application for leave to appeal, but, following a supervisory order, granted the application.

³ *Roberts v. Smith & Wesson Brands, Inc.*, No. 1:22-cv-06169, slip op. at 2 (N.D. Ill. Mar. 21, 2025).

⁴ Plaintiffs also have derivative infliction of emotional distress claims against Smith & Wesson. A119-22 (Counts X, XI).

ARGUMENT

This Rule 308 appeal involves six certified questions concerning whether Plaintiffs' claims can proceed based on the relationship between applicable federal and state laws. At issue is the federal Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-7903, which permits actions against firearms manufacturers who engage in unlawful conduct when they knowingly violate a predicate statute. Plaintiffs rely on three Illinois consumer protection statutes as predicate statutes that form the bases of their claims: the Consumer Fraud Act, the Deceptive Trade Practices Act, and the Firearms Industry Responsibility Act. These statutes qualify as predicate statutes under PLCAA, and claims based on their violation are permitted, including common-law claims. A36-42. Indeed, if even one of the statutes qualifies as a PLCAA predicate, these cases may move forward. Finally, FIRA is constitutional. A42-51.

Smith & Wesson also devotes a significant portion of its brief to four uncertified questions even though this Court lacks jurisdiction to address them. In any event, the answers support Plaintiffs. This Court should thus resolve all questions presented in Plaintiffs' favor.

I. This Court's Review Under Rule 308 is Limited to the Certified Questions.

Rule 308 provides a limited exception to the rule that only final orders may be appealed. *Morrissey v. City of Chicago*, 334 Ill. App. 3d 251, 257 (2002). Because questions certified under Rule 308 present issues of law, this Court's review is *de novo*. *Combs*, 2015 IL App (2d) 131053, ¶¶ 6, 10. Where, as here, the certified questions stem from a motion-to-dismiss order, the Court accepts Plaintiffs' well-pleaded allegations as

true and draws all reasonable inferences in their favor. *Wisnasky v. CSX Transportation, Inc.*, 2020 IL App (5th) 170418, ¶ 22.

Under Rule 308, the Court is “limited to the questions certified,” and generally cannot “review the propriety of the order entered by the lower court.” *Combs*, 2015 IL App (2d) 131053, ¶ 6 (citation omitted). If answering a question will “depend[] upon the underlying facts of a case” or “will result in an answer that is advisory or provisional, the certified question should not be reached.” *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21. These limits are “jurisdictional,” *Combs*, 2015 IL App (2d) 131053, ¶ 6, and Smith & Wesson incorrectly disregards them by framing this as a wholesale appeal from a motion-to-dismiss order and asking this Court to reach uncertified issues. *See infra* Section IV.⁵

II. PLCAA Permits These Lawsuits to Proceed Because Plaintiffs Satisfy the Predicate Exception (PLCAA Certified Questions 1-2; FIRA Certified Questions 1, 2, and 4).

PLCAA’s plain text and the overwhelming weight of the caselaw show that PLCAA permits these lawsuits to proceed because Plaintiffs allege that Smith & Wesson knowingly violated laws applicable to the marketing of firearms. In arguing otherwise, Smith & Wesson is incorrect about PLCAA’s scope and how it applies here.

Five of the certified questions in this appeal relate to PLCAA: (i) whether PLCAA preempts Plaintiffs’ common law claims [PLCAA Question 1] (no); (ii) whether Illinois’s consumer protection statutes, the CFA, the DTPA, or FIRA, are predicate statutes

⁵ *Young v. Bryco Arms*, 213 Ill. 2d 433 (2004), does not say otherwise. There, the Illinois Supreme Court applied the standard for reviewing a motion-to-dismiss order because the certified question (whether the plaintiffs had stated a cause of action) was “similar in nature to a motion to dismiss,” but only answered the certified question. *Id.* at 440-41, 456.

“applicable to” the sale or marketing of firearms [PLCAA Question 2; FIRA Question 1] (yes); (iii) whether PLCAA preempts FIRA [FIRA Question 2] (no); and (iv) whether Smith & Wesson could have “knowingly” violated FIRA if FIRA amended the CFA after Smith & Wesson’s conduct but is “declarative of existing law” [FIRA Question 4] (yes).

A. PLCAA Permits Lawsuits Based on Knowing Violations of Laws Applicable to the Sale or Marketing of Firearms.

The Protection of *Lawful* Commerce in Arms Act protects firearms manufacturers from certain lawsuits only if the firearm manufacturer acted legally. PLCAA expressly permits claims like Plaintiffs’ that are premised on *unlawful* conduct. To serve PLCAA’s aim of protecting only lawful commerce in arms, PLCAA requires the dismissal of “qualified civil liability action” unless the lawsuit falls within one of PLCAA’s six exceptions. 15 U.S.C. §§ 7902(a), 7903(5)(A). At issue in this appeal is the predicate exception, which exempts “an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought[.]” *Id.* § 7903(5)(A)(iii). PLCAA’s predicate exception implements PLCAA’s purpose, which is to prohibit lawsuits against gun manufacturers for “harm *solely* caused by the criminal or unlawful misuse” of a firearm. *Id.* § 7901(b)(1) (emphasis added).

“This exception has come to be known as the ‘predicate exception,’ because a plaintiff not only must present a cognizable claim, he or she also must allege a knowing violation of a ‘predicate statute.’” *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1132 (9th Cir. 2009) (citations omitted). In some cases, the predicate statute provides the cause of action; in others, the cause of action is a common-law claim arising out of a statutory violation. *Compare Soto v. Bushmaster Firearms Int’l, LLC*, 202 A.3d 262, 325 (Conn. 2019)

(Connecticut Unfair Trade Practices Act served as both predicate statute and cause of action), *with Prescott v. Slide Fire Sols., LP*, 410 F. Supp. 3d 1123, 1129, 1137-38, 1139 n.9, 1140-43 (D. Nev. 2019) (pairing negligence cause of action with violation of Nevada Deceptive Trade Practices Act).

PLCAA's text is unambiguous, so this Court does not need to refer to its legislative history. However, should it do so, the legislative history shows that PLCAA was not meant to immunize unlawful behavior by the gun industry. *See Watson v. Legacy Healthcare Fin. Servs., LLC*, 2021 IL App (1st) 210279, ¶ 62 (explaining that, although the Court need not consider it where statutory text is clear, the legislative history "support[ed]" its interpretation of plain text). For example, supporters of PLCAA stated that it would "allow lawsuits to proceed against the bad actors" and would prohibit lawsuits only against gun manufacturers "who have not done anything wrong, even though[] their products may be used in a criminal nature." 151 Cong. Rec. H9005 (daily ed. Oct. 20, 2005) (Statement of Rep. Jim Sensenbrenner). That is, PLCAA "does not protect any member of the gun industry from lawsuits for harm resulting from any illegal actions they have committed." 151 Cong. Rec. S9089 (daily ed. July 27, 2005) (Statement of Sen. Larry Craig). In short, "many legislators either expressly stated or clearly implied that the only actions that would be barred by PLCAA would be ones in which a defendant bore absolutely no responsibility or blame for a plaintiff's injuries[.]" *Soto*, 202 A.3d at 319.⁶

⁶ Amicus National Association of Sporting Goods Wholesalers ("NASGW") is wrong that "Congress intended to preempt all actions that seek to hold firearm industry members liable for the criminal conduct of third parties beyond their control." NASGW Br. 23. Congress intended to prohibit lawsuits only where the relevant firearm industry member acted *lawfully*. Further, NASGW mischaracterizes PLCAA's legislative history by selectively quoting it out of context. For example, NASGW suggests that Senator Hatch viewed lawsuits based on "deceptive marketing" as preempted. *Id.* at 25. What Senator Hatch

B. The Predicate Exception Allows All of Plaintiffs' Common-Law Claims Under PLCAA (PLCAA Question 1).

The plain text of the predicate exception dispenses with Smith & Wesson's first question: "Does the PLCAA bar Plaintiffs' common law claims?" The predicate exception makes clear that the answer to this question is "no." PLCAA does not apply to "*an action in which* a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing" of firearms. 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). In other words, PLCAA's "predicate exception encompasses common law claims in addition to statutory claims, as long as there is a predicate statutory violation that proximately causes the harm." *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511, 527 (1st Cir. 2024), *rev'd on other grounds*, 605 U.S. 280 (2025); *id.* at 527 n.4 (collecting cases).

Here, Plaintiffs have grounded their common law claims in Smith & Wesson's knowing violation of multiple statutes, the CFA, the DTPA, and FIRA, each of which is a predicate statute, as explained more fully below. In such cases, "courts across the country have allowed common law claims to proceed[.]" *Stanisic v. Sturm, Ruger & Co., Inc.*, No. X10-UWY-CV-23-6072789 S, 2025 WL 3212692, at *23 (Conn. Super. Ct. Nov. 12, 2025); *see also Salter v. Meta Platforms, Inc.*, 240 N.Y.S.3d 610, 619 (App. Div. 2025) (permitting negligence claim to proceed where Plaintiffs alleged a knowing violation of a predicate statute); *Williams v. Beemiller, Inc.*, 952 N.Y.S.2d 333, 335-40 (App. Div. 2012) (same); *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422, 434-35 (Ind. Ct. App.

actually said is that lawsuits "citing deceptive marketing" as a "pretext," such as by alleging that "sellers give the false impression that gun ownership enhances personal safety," are preempted when filed against "law-abiding businesses." 151 Cong. Rec. S9076 (daily ed. July 27, 2005).

2007) (same); *Brady v. Walmart Inc.*, No. 8:21-cv-01412, 2022 WL 2987078, at *6-10, *17 (D. Md. July 28, 2022) (same); *Prescott*, 410 F. Supp. 3d at 1138-40 (same); *Corporan v. Wal-Mart Stores E., LP*, No. 2:16-cv-02305, 2016 WL 3881341, at *3-4 (D. Kan. July 18, 2016) (same); *Englund v. World Pawn Exch., LLC*, No. 16-cv-00598, 2017 WL 7518923, at *4 (Or. Cir. Ct. June 30, 2017) (same). This authority contradicts Smith & Wesson’s contention that negligence claims “are precisely those which the PLCAA preempts and to which no exception applies” and that “not a single court has ruled otherwise.” S&W Br. 25. Smith & Wesson fails to address any of the preceding caselaw, and instead asserts that no such caselaw exists.

The authority that Smith & Wesson does cite is either inapposite or does not say what Smith & Wesson claims. To start, *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 321 (Mo. 2016), held only that PLCAA preempts negligence claims “*that do not fall within a statutory exception*” (emphasis added)—it did not hold that PLCAA preempts negligence actions based on a violation of a predicate statute. Similarly, *In re Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 386 (Alaska 2013), noted in a heading, “PLCAA Bars Negligence Actions *Not Falling Under An Enumerated Exception*.” *Id.* (emphasis added). Further still, *Ileto*, 565 F.3d at 1138, and *Jefferies v. District of Columbia*, 916 F. Supp. 2d 42, 45 (D.D.C. 2013), said nothing about bringing common-law claims based on predicate statutes because there were no valid predicate statutes in those cases. Finally, *Adames v. Sheahan*, 233 Ill. 2d 276, 291 (2009), was not about the predicate exception at all and instead addressed PLCAA’s product defect exception.

Smith & Wesson also mischaracterizes the circuit court’s reasoning and Plaintiffs’ claims. S&W Br. 26. The circuit court did not “permit[] Plaintiffs’ common law claims to

proceed based on the mere artifice that Plaintiffs incorporated into each of their common law claims a sentence” stating that Smith & Wesson violated the CFA and DTPA. *Id.* Instead, the court reasoned that Plaintiffs allege knowing violations of consumer protection statutes, and analogous caselaw has “allowed negligence claims premised, at least in part, upon alleged knowing violations of state unfair trade practice statutes to proceed under the predicate statute exception.” A37. The circuit court further relied on PLCAA’s text, noting that Plaintiffs’ cases constitute an “action in which” a firearms manufacturer knowingly violated a predicate statute. *Id.* Rather than address this reasoning, Smith & Wesson asserts that referencing a statutory violation “does not change” a common-law claim into a statutory one and cites a collection of cases that have nothing to do with PLCAA. S&W Br. 26.⁷ But this point and the referenced cases are irrelevant: Plaintiffs have never argued that their common-law claims are anything other than that.

Under PLCAA’s plain text and the unanimous agreement of persuasive authority, PLCAA does not preempt Plaintiffs’ common-law claims founded on knowing violations of predicate statutes.

⁷ See, e.g., *Owens v. New York Cent. R. Co.*, 267 F. Supp. 252, 255 (E.D. Ill. 1967) (concluding that negligence case involving faulty trucking equipment was not removable to federal court simply because complaint referred to a federal standard for trucking equipment); *Price ex rel. Massey v. Hickory Point Bank & Tr.*, 362 Ill. App. 3d 1211, 1213, 1214, 1216 (4th Dist. 2006) (holding that where negligence claim rested on statutory violations plaintiffs need not prove knowledge); *Manderson-Davis v. MF Exch. 2 LLC*, No. 14-cv-10238, 2015 WL 4397836, at *2 (N.D. Ill. July 16, 2015) (dismissing a claim under the Americans with Disabilities Act and declining to exercise supplemental jurisdiction over state-law negligence claim, noting only that “negligence is a common law claim based on the laws of the state of Illinois”).

C. Illinois’s Consumer Protection Statutes Are Valid PLCAA Predicates Because They Are “Applicable To” the Sale or Marketing of Firearms (PLCAA Question 2, FIRA Question 1).

Two related certified questions ask whether the Consumer Fraud Act, the Deceptive Trade Practices Act, and the Firearms Industry Responsibility Act satisfy the predicate exception. A2757. The answer to each question is “yes” because the CFA, the DTPA, and FIRA are laws “applicable to the sale or marketing” of firearms. 15 U.S.C. § 7903(5)(A)(iii). If even one of these statutes satisfies the predicate exception, these cases can proceed.

The CFA prohibits companies from engaging in “unfair or deceptive acts or practices . . . in the conduct of any trade or commerce.” 815 ILCS 505/2. This is necessarily a “flexible” standard because the CFA “govern[s] business activities.” *Scott v. Ass’n for Childbirth at Home, Int’l*, 88 Ill. 2d 279, 290 (1981). The DTPA prohibits companies from engaging in conduct that “causes likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods;” or “represents that goods or services have sponsorship [or] approval” that they do not have or are of “a particular standard, quality, or grade” that they are not. 815 ILCS 510/2(A)(2), (5), (7).

In August 2023, the General Assembly passed FIRA, which amended the CFA. 815 ILCS 505/2DDDD. FIRA declared that gun companies cannot market firearms in a manner that “reasonably appears to support, recommend, or encourage individuals to engage in unlawful paramilitary or private militaria activity in Illinois,” or encourages civilians to use firearms “for a military-related purpose.” *Id.* 505/2DDDD(b)(2). It also prohibits gun companies from “[o]therwise engag[ing] in . . . unfair or deceptive acts or practices declared unlawful under Section 2 of [the CFA].” *Id.* 505/2DDDD(b)(4). Both provisions

“are declarative of existing law and shall not be construed as new enactments,” *id.* 505/2DDDD(c), as Smith & Wesson acknowledges, S&W Br. 27-28, 32.

In a seminal case that Smith & Wesson cites repeatedly but incompletely, the Second Circuit held that PLCAA’s predicate exception encompasses statutes (a) that “expressly regulate firearms,” (b) “that courts have applied to the sale and marketing of firearms,” or (c) that “do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms.” *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 404 (2d Cir. 2008). The Second Circuit recently upheld this framework when rejecting a gun industry challenge to New York State’s version of FIRA. *Nat’l Shooting Sports Found., Inc. v. James*, 144 F.4th 98, 111 (2d Cir. 2025), *cert. denied*, No. 25-1026, 2026 WL 1717981 (U.S. June 15, 2026). Each statute in this appeal satisfies one or more of these categories: (1) the CFA has been applied to the sale of firearms; (2) the CFA and DTPA do not expressly regulate firearms but do implicate the purchase and sale of firearms; and (3) FIRA expressly regulates firearms.

First, the CFA has been applied to the sale of firearms. For example, in *Pineschi v. Radant*, No. 2009-L-0000295 (Winnebago Cnty. Cir. Ct.), the plaintiff sued a gun store under the CFA for engaging in an unfair business practice when it charged excessive sales tax on interstate gun sales. Supp. A3. The court granted summary judgment for the plaintiff on that claim and awarded damages, and the appellate court affirmed. *Pineschi v. Radant*, No. 2-10-0707, 2011 WL 10453949, at *1 (Ill. App. Ct. May 17, 2011);⁸ *see also* Assurance of Voluntary Compliance, *In re Cook Bros., Inc.*, No. 2019-CONSL-00000673

⁸ Pursuant to Illinois Supreme Court Rule 23, Plaintiffs refer to this order not as precedent, but to inform this Court what occurred after the plaintiff won summary judgment.

(Jan. 7, 2020) (settlement of CFA claims brought by Illinois Attorney General related to illegal sale of replica firearms, which “pose a threat to public safety”) (A2062). As Smith & Wesson would have it, the CFA would be “applicable to” unlawful business activities in every context except for gun violence that it foreseeably causes. PLCAA’s text does not support such a reading.

Second, as numerous courts have held, consumer protection statutes like the CFA and DTPA satisfy the predicate exception because, although they “do not expressly regulate firearms,” they “clearly can be said to implicate the purchase and sale of firearms.”

City of New York, 524 F.3d at 404. As *Soto* reasoned:

Because Congress clearly intended that laws governing the marketing of firearms would qualify as predicate statutes, and because Congress is presumed to be aware that wrongful marketing of dangerous items such as firearms for unsafe or illegal purposes traditionally has been and continues to be regulated primarily by consumer protection and unfair trade practice laws . . . we conclude that the most reasonable reading of the statutory framework . . . is that laws such as [the Connecticut Unfair Trade Practices Act] qualify as predicate statutes, insofar as they apply to wrongful advertising claims.

202 A.3d at 308.

Indeed, at the time of PLCAA’s passage, “no federal statutes directly or specifically regulated the marketing or advertising of firearms,” meaning that Congress must have had other statutes in mind in allowing suits involving marketing. *Id.* at 304. It is no surprise then that numerous courts in addition to *Soto* have held that consumer protection statutes are PLCAA predicates. *See, e.g., Salter*, 240 N.Y.S.3d at 618 (holding that New York’s consumer protection statutes “involve the general marketing and sale of products in New York and, as a result, bring plaintiffs’ actions within the ambit of the predicate exception”); *Doyle v. Combined Sys., Inc.*, No. 3:22-cv-01536, 2023 WL 5945857, at *10 (N.D. Tex.

Sept. 11, 2023) (holding that Texas Deceptive Trade Practices Act satisfies the predicate exception because it “specifically regulate[s] the marketing and sale of goods”); *Goldstein v. Earnest*, No. 37-2020-00016638, 2021 WL 12321922, at *5 (Cal. Super. Ct. July 2, 2021) (holding that California Unfair Competition Law is a predicate statute); *Prescott*, 410 F. Supp. 3d at 1138-39 (holding that Nevada Deceptive Trade Practices Act satisfies predicate exception). Thus, the CFA and DTPA comfortably fit within the predicate exception as laws “applicable to the sale or marketing” of firearms. 15 U.S.C. § 7903(5)(A)(iii).

Neither *Ileto* nor *City of New York*, on which Smith & Wesson relies heavily, say otherwise, because neither involved consumer protection statutes or anything like them. *City of New York* addressed claims under New York’s criminal public nuisance statute against several members of the firearms industry for systemically contributing to illegal gun trafficking and crime. 524 F.3d at 391. Unlike the CFA or DTPA, New York’s public nuisance statute did not specifically regulate the purchase or sale of goods. Similarly, at issue in *Ileto* were California’s general statutes codifying negligence and nuisance claims, which also do not specifically regulate the sale or marketing of goods. 565 F.3d at 1132-33. Indeed, *Ileto* rejected the defendants’ “asserted narrow meaning” that the predicate exception only encompassed statutes “that pertained *exclusively* to the sale or marketing of firearms,” noting that PLCAA’s legislative history indicated that manufacturers “would be liable only for statutory violations concerning firearm regulations *or sales and marketing regulations*.” *Id.* at 1134, 1137 (emphasis added).

Therefore, contrary to Smith & Wesson’s assertion, *Soto* is not “the one outlying case,” S&W Br. 31, but is consistent with *Ileto* and *City of New York*, as well as the other

cases cited *supra* pp. 20-21; see *Stanisic*, 2025 WL 3212692, at *19 (noting that *Soto* and *City of New York* are consistent in holding that generally applicable statutes may satisfy the predicate exception). Indeed, *Prescott*, a district court decision from within the Ninth Circuit that had to follow *Ileto*, held that Nevada’s general consumer protection statute satisfied PLCAA. *Prescott*, 410 F. Supp. 3d at 1138-39 (“[U]nlike the general common law tort theories of negligence and nuisance at issue in *Ileto* . . . the [Nevada statute] specifically regulates the sale and marketing of goods[.]”). Thus, Smith & Wesson’s bare assertion that “courts have almost universally recognized that the PLCAA confers immunity” for “alleged violations of statutes of general application” such as consumer protection statutes like the CFA and DTPA is incorrect. S&W Br. 29.

Third, FIRA is a PLCAA predicate because it expressly regulates the firearms industry by reaffirming what was already true: the CFA applies to any “firearm industry member.” 815 ILCS 505/2DDDD(b)-(c). Courts have held that statutes expressly regulating firearms are “applicable to” the sale or marketing of firearms within the meaning of PLCAA’s predicate exception. See, e.g., *Nat’l Shooting Sports Found., Inc.*, 144 F.4th at 110 (New York’s firearms industry accountability law “expressly regulates firearms”); *Brady v. Walmart Inc.*, No. 8:21-cv-01412, 2024 WL 5075200, at *4 (D. Md. Dec. 11, 2024) (denying interlocutory review because there was no “substantial ground for difference of opinion” about whether a statute that “expressly regulates firearms” satisfied the predicate exception); *Stanisic*, 2025 WL 3212692, at *22 (holding that the Gun Control Act and the National Firearms Act are PLCAA predicates because they “expressly regulate commerce in firearms”); *Platkin v. FSS Armory Inc.*, No. MRS-C-000102-23, at 24 (N.J. Super. Ct. Ch. Div. Aug. 28, 2024) (A2081) (concluding that public nuisance law expressly

regulating gun industry satisfies predicate exception). Smith & Wesson has not—because it cannot—cited any cases to the contrary, and instead ignores the caselaw cited above.⁹

Smith & Wesson’s remaining arguments all lack merit. First, these cases are nothing like *Estados Unidos Mexicanos*, where the Supreme Court held that Mexico failed to allege that defendant gun manufacturers “aided and abetted unlawful sales routing guns to Mexican drug cartels” under federal law. 605 U.S. at 285. The Supreme Court’s decision was limited to Mexico’s federal aiding and abetting allegations, and it noted that federal *aiding and abetting* doctrine, not PLCAA, required “participat[ion] in a firearms violation as in something that” the defendant “wished to bring about.” *Id.* at 299 (cleaned up). Plaintiffs here do not have an aiding and abetting claim against Smith & Wesson. Furthermore, Smith & Wesson is wrong that the *Estados Unidos Mexicanos* claim “was premised on a marketing theory of liability,” S&W Br. 16 n.6, because the case no longer involved consumer protection statutes when it reached the Supreme Court. *Estados Unidos Mexicanos*, 91 F.4th at 518 n.3.

Moreover, Plaintiffs’ factual allegations are nothing like those in *Estados Unidos Mexicanos*. Mexico alleged a “broad category of misconduct” and did not identify “any specific criminal transactions that the defendants (allegedly) assisted,” instead making a “general accusation” that “all the manufacturers assist some number of unidentified rogue gun dealers in making a host of firearms sales in violation of various legal bars.” *Estados Unidos Mexicanos*, 605 U.S. at 294. The Court thus determined that Mexico’s complaint resembled the kinds of cases that “Congress had in mind” when it enacted PLCAA. *Id.* at

⁹ The single case that arguably supports its position, *Nat’l Shooting Sports Found. v. Platkin*, No. 3:22-cv-06646, 2023 WL 1380388, at *7 (D.N.J. Jan. 31, 2023), has since been vacated, 80 F.4th 215 (3d Cir. 2023).

298-99. Here, as in *Soto*, “by contrast, the private victims of one specific incident of gun violence seek compensation from the producer[] and distributors of a single firearm on the basis of alleged misconduct in the specific marketing of that firearm.” 202 A.3d at 319.

Further, Smith & Wesson and its amici are incorrect that the CFA, the DTPA, and FIRA are too “amorphous” to satisfy PLCAA’s predicate exception. S&W Br. 28; *see* NASGW Br. 15-16. PLCAA’s text does not contain any purported concreteness requirement, nor does it exclude Plaintiffs from relying on unfair trade practice laws or laws that incorporate concepts of reasonableness. Plaintiffs are not aware of any authority standing for such a proposition (and Smith & Wesson cited none). Instead, it is black-letter law that courts may not add language or requirements to a statute’s plain text. *See Adames*, 233 Ill. 2d at 310-11 (refusing to graft narrowing language onto PLCAA’s definition of “qualified civil liability action”); *Nat’l Shooting Sports Found.*, 144 F.4th at 110-11 (analyzing PLCAA “as written” and declining to insert a requirement that a predicate statute impose “concrete obligations”). Even if the predicate exception contained a “concreteness” requirement, the CFA and FIRA satisfy it for the reasons discussed *infra* at Section III.B.3.

Relatedly, Smith & Wesson is wrong in suggesting that predicate statutes must be “similar or related to [PLCAA’s] enumerated examples” concerning recordkeeping and straw purchases. S&W Br. 29, 30; *see* NASGW Br. 8-9; Montana Br. 12. PLCAA introduces the examples with the word “including,” 15 U.S.C. § 7903(5)(A)(iii), which is a word of expansion, not limitation, *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 162 (2012). Courts have thus “rejected the idea that the predicate exception’s enumerated examples are exhaustive.” *Nat’l Shooting Sports Found.*, 144 F.4th at 110;

accord Soto, 202 A.3d at 313-14. Further, PLCAA explicitly contemplates that statutes applicable to the “marketing” of firearms satisfy the predicate exception, and neither example in PLCAA is about marketing, underscoring that the predicate exception encompasses other commercial statutes. *See Soto*, 202 A.3d at 304. PLCAA’s legislative history also indicates that those examples were added to ensure that a specific set of lawsuits *could* proceed, and not “to define, clarify, or narrow” the predicate exception. *Id.* at 314-16.

Finally, Smith & Wesson’s assertion that PLCAA bars Plaintiffs’ statutory claims because the CFA, the DTPA, and FIRA draw from the common law is not based in PLCAA’s text, legislative history, or relevant caselaw. S&W Br. 27-28. Even if these statutes grew out of the common law, the Illinois consumer protection statutes would still qualify as PLCAA predicates because the laws directly regulate the sale and marketing of goods, including firearms.

In short, courts throughout the country have held that statutes regulating the sale and marketing of goods qualify as predicate statutes. This Court should likewise hold that the CFA, the DTPA, and FIRA are predicate statutes “applicable to” the sale or marketing of firearms under PLCAA.

D. PLCAA Does Not Preempt FIRA (FIRA Question 2).

The circuit court certified the question of whether PLCAA preempts FIRA. A2757. The answer to this broad, facial preemption question is “no.”

“[A] presumption exists in every preemption case that Congress did *not* intend to supplant state law.” *Bishop v. Burgard*, 198 Ill. 2d 495, 501 (2002). That assumption applies “particularly” when states have “exercised their police powers to protect the health

and safety of their citizens,” which are “primarily . . . matters of local concern.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475, 485 (1996) (cleaned up); *see Soto*, 202 A.3d at 313 (“The regulation of advertising that threatens the public health, safety, and morals has long been considered a core exercise of the states’ police powers.”). This approach is “consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety.” *Weiland v. Telectronics Pacing Sys., Inc.*, 188 Ill. 2d 415, 417 (1999) (citation omitted). In such circumstances, even if a federal statute “contains an express preemption provision,” the Court will not find a state law preempted “unless that was the clear and manifest purpose of Congress.” *Id.* (citation omitted). To the extent that Smith & Wesson argues conflict preemption, it must show that “applying the state law would do ‘major damage’ to clear and substantial federal interests.” *Washington v. Persona Identities, Inc.*, 2024 IL App (3d) 240210, ¶ 17 (citation omitted), *appeal denied*, 246 N.E.3d 1196 (Ill. 2024).¹⁰

PLCAA’s text contains no “clear indication” that Congress intended to “intrude” on Illinois’s power to protect public health and safety by regulating the firearms industry. *Bond v. United States*, 572 U.S. 844, 857 (2014) (cleaned up). To the contrary, PLCAA’s predicate exception expressly contemplates that states will enact statutory prohibitions applicable to the firearms industry, and that firearms companies who knowingly violate those prohibitions will not receive PLCAA’s protections. The predicate exception thus “evidences Congress’s intent to preserve at least some causes of action flowing from knowing violations of state and federal laws applicable to the sale or marketing of

¹⁰ Smith & Wesson has not clarified whether it is raising express, field, or conflict preemption. *See In re Marriage of Tronsrue*, 2025 IL 130596, ¶ 39.

firearms.” *Nat’l Shooting Sports Found.*, 144 F.4th at 110 (holding that PLCAA does not preempt New York’s firearms industry accountability law); *FSS Armory*, No. MRS-C-000102-23, at 24 (A2105-06) (same, for New Jersey’s firearms industry accountability law). State legislatures can therefore “creat[e] avenues to hold gun manufacturers liable for downstream harms caused by their products.” *Nat’l Shooting Sports Found.*, 144 F.4th at 109-10; see *Estate of Kim ex rel. Alexander*, 295 P.3d at 389 (“[T]he PLCAA allows Alaska’s legislature to create liability for harms proximately caused by knowing violations of statutes regulating firearm sales and marketing.”). Indeed, as PLCAA’s sponsors made clear, Congress sought to “protect” “state sovereignty” by ensuring that such “State power” is exercised through “the legislative process.” 151 Cong. Rec. S9099 (daily ed. July 27, 2005) (Statement of Sen. Craig). That is precisely what Illinois did here.

Smith & Wesson’s facial preemption challenge also cannot succeed because it fails to show that “no set of circumstances exists under which the [law] would be valid” or that “the law lacks a ‘plainly legitimate sweep.’” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (citation omitted); see *Nat’l Shooting Sports Found.*, 144 F.4th at 112 (rejecting a facial preemption challenge to New York’s version of FIRA). PLCAA bars certain *actions*, see 15 U.S.C. § 7902; it does not preempt statutes. Smith & Wesson has not even attempted to demonstrate that FIRA is invalid in all possible applications.

The contrary arguments by Smith & Wesson and its amici ignore PLCAA’s plain text and enumerated exceptions. They contend that PLCAA preempts any actions that “impose liability on firearms manufacturers for third-party misuse.” S&W Br. 23; see NASGW Br. 13. This is clearly wrong. As the Supreme Court explained just last year, the predicate exception “opens a path to making a gun manufacturer civilly liable for the way

a third party has used the weapon it made.” *Estados Unidos Mexicanos*, 605 U.S. at 286. Indeed, PLCAA’s purpose is to prohibit only certain actions for “harm *solely* caused by the criminal or unlawful misuse of [the industry members’] firearms.” 15 U.S.C. § 7901(b)(1) (emphasis added). “At no time and in no way does the [statute] indicate that firearm sellers should evade liability for the injuries that result if they promote the illegal use of their products.” *Soto*, 202 A.3d at 309.

For these reasons, this Court should conclude that PLCAA does not preempt FIRA.

E. Because FIRA Is Declarative of Existing Law, It Could Be Knowingly Violated Before Its Enactment (FIRA Question 4).

Under PLCAA, a manufacturer or seller must “knowingly” violate a predicate statute for the predicate exception to apply. 15 U.S.C. § 7903(5)(A)(iii). Another certified question thus asks: “If the FIRA is ‘declarative of existing law’ but applies to ‘actions commenced or pending on or after August 14, 2023,’ can a violation of the FIRA’s provisions be ‘knowingly’ committed before the FIRA was enacted?” A2757. Ample caselaw makes clear that the answer is “yes” because FIRA is declarative of existing law.

When the General Assembly enacted Sections (b)(2) and (b)(4) of FIRA, it confirmed that the CFA and the prohibitions inherent within it had always applied to firearms industry members. It specified that both sections “are declarative of existing law and shall not be construed as new enactments.” 815 ILCS 505/2DDD(c). Illinois courts have repeatedly held that statutes containing similar language “must be accepted as a legislative declaration of the meaning of the original [statute].” *Wells Fargo Bank, N.A. v. Maka*, 2017 IL App (1st) 153010, ¶ 20; *accord, e.g., Harris Bank St. Charles v. Weber*, 298 Ill. App. 3d 1072, 1080 (2d Dist. 1998) (same where amendment was “a clarification

of existing law” and not “a new enactment”); *Bloink v. Olson*, 265 Ill. App. 3d 711, 715-16 (2d Dist. 1994) (same where statute was “declaration of existing law”).

Put simply, Plaintiffs alleged that Smith & Wesson violated prohibitions that existed under the CFA during its whole course of conduct. A94-98 (Count I). Smith & Wesson even admits that FIRA “added nothing to the generalized provisions of the CFA but was merely ‘declarative of existing law.’” S&W Br. 28 (quoting 815 ILCS 505/2DDDD(c)). It is difficult to understand why Smith & Wesson could not have knowingly violated a statute that it admits was simply declarative of existing law.

Notably, Smith & Wesson does not address Section (b)(4), which expressly incorporates the CFA’s prohibitions on unfair and deceptive conduct, in claiming that it could not have knowingly violated FIRA. *See* S&W Br. 32-33; 815 ILCS 505/2DDDD(b)(4). It has thus forfeited any such argument regarding Plaintiffs’ Section (b)(4) claims. *Rainey v. Ret. Bd. of Policemen’s Annuity & Benefit Fund of City of Chi.*, 2024 IL App (1st) 231993, ¶ 49.

It also makes no difference that the CFA, rather than FIRA, imposed the relevant obligations at the time of Smith & Wesson’s actions. Unless a statute requires otherwise, the term “‘knowingly’ merely requires proof of knowledge of the facts that constitute the offense”—as opposed to knowledge of the specific statutory prohibition that is being violated. *Bryan v. United States*, 524 U.S. 184, 193 (1998); *accord United States v. Stein*, 712 F.3d 1038, 1040-41 (7th Cir. 2013) (collecting cases). Thus, if an entity knows the facts that bring its conduct within the scope of a statutory prohibition, then it is liable for violations of the statute; it need not separately understand that its conduct violates a statute, let alone know which statute. *Bryan*, 524 U.S. at 193. Because Smith & Wesson necessarily

knew the aspects of its marketing scheme that made it unfair or deceptive—*i.e.*, the “facts that constitute [an] offense”—Smith & Wesson can be found to have “knowingly” violated the CFA or FIRA without specific knowledge of the statutory text. *See id.*

III. FIRA is Constitutional (FIRA Certified Question 3).

The circuit court certified a question on whether “the application of FIRA to Smith & Wesson’s sales and marketing mediums” is consistent with the First and Second Amendments to the U.S. Constitution. A2757.¹¹ This Court should decline to address that question because it is a premature, as-applied constitutional challenge. If, however, this Court reaches the question, it should rule that FIRA is constitutional.

A. Smith & Wesson’s As-Applied Challenge Is Premature Because There Is No Factual Record.

Smith & Wesson’s as-applied challenge to FIRA cannot be resolved without a factual record. An as-applied constitutional challenge “protests against how an enactment was applied in the particular context in which [it] acted.” *Kopf v. Kelly*, 2024 IL 127464, ¶ 22 (citation omitted). Such a challenge depends “on the particular circumstances and facts of the individual [party].” *Id.* ¶ 23 (citation omitted). “Therefore, it is paramount that the record be sufficiently developed . . . for purposes of appellate review.” *Id.* (citation omitted). Indeed, a “court is not capable of making an ‘as-applied’ determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact.” *Id.* (citation omitted). The circuit court has not heard any evidence in these cases, nor has it

¹¹ The certified question also asked whether FIRA is constitutional under the Dormant Commerce Clause, A2757, but Smith & Wesson has forfeited this argument by failing to address it. *Rainey*, 2024 IL App (1st) 231993, ¶ 49; *see also Nat’l Shooting Sporting Found.*, 144 F.4th at 115 (rejecting Dormant Commerce Clause challenge to similar New York law).

made any findings of fact. Therefore, this Court lacks sufficient information to rule on Smith & Wesson's as-applied constitutional challenge and should decline to answer this fact-bound certified question. *See Wisnasky*, 2020 IL App (5th) 170418, ¶¶ 19, 36-37 (after Supreme Court directed appellate court to allow appeal under Rule 308, declining to answer part of certified question that included factual issues).

B. The Circuit Court Properly Determined That FIRA Is Constitutional.

If the Court reaches the question, it should hold that FIRA is constitutional. As a threshold matter, Smith & Wesson only challenges the constitutionality of Section (b)(2) of FIRA and entirely ignores Section (b)(4), S&W Br. 34-38, even though Plaintiffs also brought claims under Section (b)(4), A322 ¶¶ 154, 155. That is likely because Section (b)(4) simply reiterates that gun companies may not “engage in . . . unfair or deceptive acts or practices declared unlawful under Section 2 of [the CFA].” 815 ILCS 505/2DDDD(b)(4). The Illinois Supreme Court has already upheld that section of the CFA as consistent with the First Amendment and the Due Process Clause of the Fourteenth Amendment. *Scott*, 88 Ill. 2d at 287, 289-92. Accordingly, only the constitutionality of Section (b)(2) is before this Court, and Plaintiffs' claims based on Section (b)(4) can proceed irrespective of the outcome of this certified question.

Regarding Section (b)(2), Smith & Wesson cannot overcome the “strong presumption” in favor of the provision's constitutionality. *Kopf*, 2014 IL 127464, ¶ 31. Under that presumption, a law “must be upheld as constitutional ‘whenever reasonably possible,’” with “all doubts [resolved] in favor of [the law's] validity.” *Id.* (citation omitted). Smith & Wesson can prevail only if it “establish[es] clearly” that FIRA “violates the constitution.” *Id.* (citation omitted). To the extent it presses a facial challenge, it must

also establish that the law is “unconstitutional under any possible set of facts.” *Id.* at ¶ 22 (citation omitted). Smith & Wesson has not carried its heavy burden.

1. FIRA Section (b)(2) does not regulate protected speech.

Section (b)(2) regulates speech that is not protected by the First Amendment. As the circuit court explained, this provision concerns “commercial speech,” which is speech “solely related to the economic interests of the speaker and its audience” and enjoys only limited First Amendment protection. A43-44. First Amendment challenges to commercial speech are analyzed under *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 566 (1980), which asks first whether the speech concerns unlawful activity or is misleading. If so, it is unprotected by the First Amendment. *Id.*

The circuit court correctly determined that the speech regulated by Section (b)(2) falls outside the First Amendment’s scope because it concerns only commercial speech promoting illegal activity. A44. That section restricts speech encouraging individuals to “engage in unlawful paramilitary or private militia activity in Illinois” or civilians “to use a firearm-related product for a military-related purpose in Illinois.” 815 ILCS 505/2DDDD(b)(2). It further defines “unlawful paramilitary or private militia” as “a group of armed individuals, organized privately, in violation of the Military Code of Illinois and Section 2 of Article XII of the Illinois Constitution.” *Id.* 505/2DDDD(a). Because Section (b)(2) only restricts speech that encourages unlawful activity, it “affect[s] only speech that is by definition outside the ambit of first amendment protection.” *Scott*, 88 Ill. 2d at 287 (reaching same conclusion about CFA Section 2 because it “prohibits only such speech as amounts to a fraudulent or deceptive practice”); *see Soto*, 202 A.3d at 311 n.56 (concluding

that marketing that promotes the civilian use of firearm as “combat weapon” was commercial speech about illegal activity and did not implicate First Amendment).

Smith & Wesson argues that *Central Hudson* is inapplicable because of *Junior Sports Mags. Inc v. Bonta*, 80 F.4th 1109 (9th Cir. 2023). S&W Br. 36-37. But that decision addressed a law that “regulates speech whose content concerns lawful activities and is not misleading.” *Junior Sports*, 80 F.4th at 1117; see S&W Br. 36 (acknowledging that *Junior Sports* addressed restrictions on “lawful speech”). That decision thus does not suggest that Section (b)(2), which proscribes only commercial speech encouraging unlawful activities, violates the First Amendment.¹²

2. FIRA Section (b)(2) does not warrant heightened scrutiny based on the First or Second Amendments.

Perhaps recognizing that it cannot prevail under *Scott* and *Central Hudson*, Smith & Wesson asserts that heightened scrutiny applies to its First Amendment claim because Section (b)(2) constitutes viewpoint discrimination and implicates the Second Amendment. S&W Br. 34-38. Its arguments are misplaced.

First, FIRA applies to “firearms industry member[s],” which it defines without reference to any specific viewpoint. 815 ILCS 505/2DDDD(a). That FIRA addresses advertising on a specific subject—commercial sales of firearm-related products—does not mean that it discriminates based on a point of view. See *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 554 (2001) (applying *Central Hudson* to regulation of commercial speech concerning tobacco products and declining to apply strict scrutiny).

¹² As the circuit court determined, even if Section (b)(2) regulated protected speech, it satisfies the remaining *Central Hudson* factors because it is reasonably tailored to and directly advances Illinois’s interest in protecting the public from gun violence. A45-46.

Second, Smith & Wesson is wrong that Section (b)(2) infringes a constitutional right and thus requires heightened scrutiny. The Illinois Supreme Court rejected a similar argument in *Scott*, holding that a “stricter standard” did not apply where the plaintiff argued that the CFA’s prohibition on unfair and deceptive trade practices implicated constitutional privacy rights. 88 Ill. 2d at 286. The same result should follow here because Smith & Wesson fails to show that its unlawful marketing is covered by the “Second Amendment’s plain text,” the “central component” of which is “individual self-defense.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24, 29 (2022) (cleaned up). It suggests that it has a Second Amendment right to market its assault rifles however it chooses—even deceptively or unfairly—because individuals will not be able to acquire assault rifles without Smith & Wesson’s preferred type of marketing. S&W Br. 37-38. That position ignores that “conditions and qualifications on the commercial sale of arms” are “presumptively lawful,” *District of Columbia v. Heller*, 554 U.S. 570, 627 & n.26 (2008), and courts’ repeated holdings that the Second Amendment does not protect a business’s freestanding right to sell firearms, *see, e.g., Teixeira v. County of Alameda*, 873 F.3d 670, 682 (9th Cir. 2017) (en banc); *United States v. Barrera-Esteves*, No. 3:22-cr-50045-1, 2024 WL 3495156, at *2 (N.D. Ill. July 22, 2024). Moreover, the Seventh Circuit has held that the *possession* of assault weapons is not protected by the Second Amendment, *see Bevis v. City of Naperville*, 85 F.4th 1175, 1195, 1202 (7th Cir. 2023), so it follows that the *marketing* of assault rifles is not protected by the Second Amendment.

Smith & Wesson’s cited cases do not help it. Only two involve the Second Amendment. The first applied *Central Hudson* to marketing about the lawful purchase of a handgun from a licensed dealer. *Tracy Rifle & Pistol LLC v. Harris*, 339 F. Supp. 3d

1007, 1012 (E.D. Cal. 2018). The other, *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011), held that Chicago ordinances that both required firearm training and prohibited range training within City limits implicated the Second Amendment because keeping arms entails being able to train to use them. *Ezell* did not address whether the Amendment protects “[t]he right to market firearms and related products,” S&W Br. 38, and thus Smith & Wesson has not carried its textual burden.

3. FIRA Section (b)(2) is not unconstitutionally vague.

Smith & Wesson also incorrectly asserts that Section (b)(2) chills speech because it is impermissibly vague. S&W Br. 35-37. A law is unconstitutionally vague if it “fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits” or “authoriz[es] or even encourag[es] arbitrary and discriminatory enforcement.” *Wilson v. Cnty. of Cook*, 2012 IL 112026, ¶ 21. Even where the First Amendment is implicated, “perfect clarity and precise guidance” are not required. *Id.* ¶ 22 (citation omitted). Further, statutes, like FIRA, which regulate economic matters and impose only civil penalties are subject to a “less strict” vagueness test. *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498-99 (1982). Indeed, “effective regulation requires that the concept be flexible,” especially for “statutes governing business activities.” *Scott*, 88 Ill. 2d at 290.

Section (b)(2) articulates specific, illegal conduct that cannot be encouraged in marketing firearm-related products and includes definitions of that conduct. *See* 815 ILCS 505/2DDDD(a) (definitions), (b)(2) (restrictions). Thus, the circuit court concluded that “FIRA uses well-known standards with clarifying terms to provide the firearms industry with sufficient guidance, no different than countless other constitutional economic

regulations.” A47. Further, there is no concern that these terms chill protected speech, because Smith & Wesson has not shown that they have a “real and substantial” effect on “protected expression.” *Id.* (quoting *Ctr. For Individual Freedom v. Madigan*, 697 F.3d 464, 479 (7th Cir. 2012)).

Smith & Wesson’s counterarguments ignore Plaintiffs’ allegations, well-settled caselaw, and FIRA’s text. To begin, Smith & Wesson’s repeated assertion that Section (b)(2) is so vague that Plaintiffs cannot “identify a single advertisement” that violates it is untrue. *See, e.g.*, S&W Br. 36. The complaints make clear that Smith & Wesson’s use of the M&P branding and militaristic images in marketing targeted at civilians, when it knows that the military does not use its weapons, violates the CFA, the DTPA and FIRA. A56 ¶¶ 8-9, A65-66 ¶¶ 47-49, A70-73 ¶¶ 63-71, A74 ¶¶ 74-75, A103-04 ¶¶ 202-09. The complaints also detail a Smith & Wesson video with M&P branding promoting militaristic uses of the firearm that was on Buds’ website when the Shooter purchased the assault rifle that he used in the shooting. A89 ¶¶ 124-26. In any case, this factual matter is relevant only for an as-applied vagueness challenge, *see Jankovich v. Ill. State Police*, 2017 IL App (1st) 160706, ¶ 90, which Rule 308 does not allow, *Rozsavolgyi*, 2017 IL 121048, ¶ 21.

Additionally, Smith & Wesson complains that it cannot determine whether its conduct “reasonably appear[s]” to “encourage” such prohibited activity, S&W Br. 35, but courts regularly uphold as constitutional statutes based on reasonableness standards, including criminal ones, which are subject to a more stringent vagueness test. *See, e.g., Nat’l Shooting Sports Found.*, 144 F.4th at 118 (explaining that “reasonableness is a well-established legal standard that is employed in a wide range of statutes consistent with the requirements of the Due Process Clause”); *People v. Austin*, 2019 IL 123910, ¶ 117

(rejecting vagueness challenge to criminal statute imposing liability if a “reasonable person would know or understand that the image was to remain private”); *People v. Burpo*, 164 Ill. 2d 261, 266-67 (1995) (same, for criminal statute referring to “reasonable medical standards”).

Finally, Smith & Wesson’s wild speculation about the meaning of “military-related” purpose, S&W Br. 36-37, ignores that Section (b)(2) is plainly concerned with unlawful militia activity or other violence by civilians—not activities like cleaning up oil spills. “[C]ommon sense cannot and should not be suspended” when assessing vagueness. *City of Chicago v. Pooh Bah Enters., Inc.*, 224 Ill. 2d 390, 444 (2006).

IV. This Court Lacks Jurisdiction to Address the Uncertified Questions, Which the Circuit Court Resolved Correctly.

A. This Court’s Jurisdiction Under Rule 308 is Limited to Certified Questions.

Smith & Wesson asks this Court to review four issues that the circuit court did not certify because they are “not appropriate for Rule 308(a) review.” A2755. Those issues include (1) whether Plaintiffs adequately alleged proximate cause based on the Shooter’s exposure to Smith & Wesson’s marketing; (2) whether Plaintiffs alleged that Smith & Wesson’s marketing was a legal cause of their injuries; (3) whether Plaintiffs have standing to bring their unfairness claim under the CFA; and (4) whether Plaintiffs alleged a knowing violation of the CFA, the DTPA, and FIRA. S&W Br. 4, 13-22, 32-33. Rule 308 limits this Court’s jurisdiction to certified questions, however, and Smith & Wesson provides no basis for this Court to reach the uncertified issues.

The appellate court’s jurisdiction is limited to final judgments unless an exception applies. *D’Agnolo v. Cath. Cemetery Ass’n of Peoria*, 2026 IL App (4th) 250350, ¶ 21.

Rule 308 provides one narrow exception, under which the appellate court’s review is generally “limited to answering the specific question[s] certified.” *In re Est. of Luccio*, 2012 IL App (1st) 121153, ¶ 17. It does not “permit [the court] to review the propriety of the order entered by the lower court,” *id.*, or “expand the question under review to ask other, unasked questions,” *Larsen v. Provena Hosp.*, 2015 IL App (4th) 140255, ¶ 16 (citation omitted). This Court and its sister districts have thus repeatedly declined to address uncertified questions in Rule 308 appeals. *See, e.g., Doe v. Cath. Bishop of Chi.*, 2017 IL App (1st) 162388, ¶ 4 (“declin[ing] to address any issues that were raised in the briefs outside of the certified question”); *Hudkins v. Egan*, 364 Ill. App. 3d 587, 590, 592 (2d Dist. 2006) (limiting review “to the question certified” and “mak[ing] no determination” on “propriety of the trial court’s denial of [defendant’s] motion to dismiss”); *Mo. Pac. RR. Co. v. Int’l Ins. Co.*, 288 Ill. App. 3d 69, 84 (2d Dist. 1997) (declining to reach uncertified issues where trial court’s underlying order “addressed a variety of issues” but trial court only certified questions on some issues).

The Illinois Supreme Court’s supervisory order does not compel a different result. The Court’s order said nothing about expanding this Court’s jurisdiction to address uncertified questions. Additionally, in other cases where a Rule 308 appeal was permitted following a supervisory order, the appellate court has made clear that its review is limited to the certified question. *See, e.g., Boehle v. OSF Healthcare Sys.*, 2018 IL App (2d) 160975, ¶¶ 12, 14 (limiting review “to answering the questions certified”); *In re Marriage of Murugesh & Kasilingam*, 2013 IL App (3d) 110228, ¶¶ 13, 16 (Under Rule 308, “we are limited to answering the specified certified question” and “should not look beyond the question to consider the propriety of the court’s underlying order.”).

Smith & Wesson, however, treats this as a wholesale appeal from a motion-to-dismiss order, failing to acknowledge that its “choice of appeal device carries important consequences for the scope of [this Court’s] analysis.” *Lewis v. NL Indus., Inc.*, 2013 IL App (1st) 122080, ¶ 5. Smith & Wesson could have waited until the circuit court entered a final judgment to seek this Court’s review of any outstanding issues, but it chose to seek immediate, interlocutory review via Rule 308. The consequent jurisdictional limitation “renders irrelevant” Smith & Wesson’s arguments on uncertified questions. *Id.* ¶ 6.

There is a narrow exception that permits a reviewing court to “consider the appropriateness of the order giving rise to the appeal” if “the interests of judicial economy and the need to reach an equitable result so require.” *Combs*, 2015 IL App (2d) 131053, ¶ 8. But Smith & Wesson has not argued that the exception applies and therefore has forfeited any claim that it does. *See Rainey*, 2024 IL App (1st) 231993, ¶ 49. Further, that limited exception does not apply here because the uncertified questions on which Smith & Wesson seeks review include topics—proximate cause, standing, and knowledge—that are distinct from the certified questions about PLCAA and FIRA and require factual considerations. *See Spears v. Ass’n of Ill. Elec. Coop.*, 2013 IL App (4th) 120289, ¶ 45 (refusing to consider factual issue that was not part of certified question). Far from serving judicial economy and equity, reaching these questions would expend judicial resources, unnecessarily complicate this appeal, and further delay the victims of the Highland Park mass shooting from having their day in court on the merits. *Cf. Combs*, 2015 IL App (2d) 131053, ¶¶ 9-10 (declining to go beyond certified questions where doing so would not be “straightforward” and would require “consideration of the factual context”).

Plaintiffs brief the uncertified questions below, but the Court lacks jurisdiction to reach them and should not do so.

B. Plaintiffs Allege Specific Facts Showing That Smith & Wesson’s Marketing Conduct Was a Proximate Cause of the Shooting (Uncertified).

If this Court reaches the uncertified questions, the circuit court correctly found that Plaintiffs adequately pled proximate cause. “[I]t is axiomatic that proximate cause is ordinarily a question of fact to be decided by the jury.” *Jones v. Live Nation Ent., Inc.*, 2016 IL App (1st) 152923, ¶ 46 (citation omitted). Proximate cause has two requirements: “cause in fact and legal cause.” *Id.* As the circuit court held, Plaintiffs amply allege both requirements under Illinois pleading standards and precedent. A25-30. They allege specific facts showing that the Shooter was exposed to and influenced by Smith & Wesson’s unfair and deceptive marketing, and that it was reasonably foreseeable that Smith & Wesson’s conduct would influence the Shooter to use his M&P 15 in a mass shooting. *Id.* In arguing otherwise, Smith & Wesson minimizes Plaintiffs’ well-pleaded allegations and misstates Illinois law on intervening events.

1. Plaintiffs adequately alleged that Smith & Wesson’s marketing was a cause in fact of the mass shooting.

Cause in fact requires that the defendant’s conduct was “a substantial factor in bringing about the injury,” *Jones*, 2016 IL App (1st) 152923 ¶ 46 (citation omitted). “If reasonable minds could differ on whether the conduct was a substantial factor, the question is for the jury to decide.” *Id.* (citation omitted). The circuit court correctly determined that Plaintiffs’ allegations satisfy that standard at this threshold stage of litigation. A25-30.

Smith & Wesson asserts that Plaintiffs’ “complaints identify no time, no place, no medium . . . and no circumstances of any alleged exposure.” S&W Br. 13-14; *see id.* at 15-

17. This assertion is false, as is Smith & Wesson’s claim that the circuit court accepted Plaintiffs’ allegations of proximate cause “despite the absence of a single supporting allegation of fact.” *Id.* at 16. As described above, Plaintiffs allege that the Shooter purchased the M&P 15 on Buds’ website, which featured a Smith & Wesson video in which a social media influencer used an M&P 15 rifle to demonstrate how to fire two rounds each into three torso-shaped targets in rapid succession, with the words “Military & Police” emblazoned across his back. A89 ¶ 126, A1279 ¶ 207 (Uvaldo Complaint). In addition to the video, the Shooter was undoubtedly exposed to M&P marketing when he purchased the firearm, given that the M&P brand appears in the name of the gun and on the gun itself. A65 ¶ 47, A89 ¶ 126, A1278 ¶ 202 (Uvaldo Complaint); *see Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 14-15 (7th Cir. 1992) (concluding that a trade name was misleading); *Brady v. Bayer Corp.*, 237 Cal. Rptr. 3d 683, 694 (2018) (“Any number of cases have held that brand names by themselves can be misleading in the context of the product being marketed.”). This marketing unfairly and deceptively encouraged civilian consumers to act like the warriors that they fantasized themselves to be, even though the military does not use M&P rifles. A56 ¶¶ 8-9.

Further, the circuit court correctly concluded that Plaintiffs pled additional facts supporting the inference that the Shooter was exposed to and influenced by other Smith & Wesson marketing. A27. For example, the circuit court held that it could “infer that an avid player of first-person shooter games was likely exposed to ads targeting that demographic and was prone to being motivated by ads mimicking those games.” A26. As Plaintiffs allege, Smith & Wesson sought to attract young consumers through advertisements that mimicked first-person shooter video games, like *Call of Duty*, and by prioritizing social

media platforms frequented by that demographic. A75-77 ¶¶ 76-81, A79 ¶ 85, A85 ¶¶ 108-109. This marketing scheme was deployed over several years, including when the Shooter was a teenager. *See supra* Fact Sections B-C. The Shooter had an active presence on these platforms, and he frequently posted videos of himself playing *Call of Duty* online—including one in which he was firing an assault weapon from a rooftop into a crowd of civilians. A85 ¶¶ 108-09, A828 ¶ 113 (Turnipseed Complaint). Based on these and other allegations, “coupled with the inferences to be made therefrom,” Plaintiffs allege that the Shooter was exposed to and influenced by Smith & Wesson marketing. A26. They have thus pled that Smith & Wesson’s unfair and deceptive marketing was the cause in fact of their harms, satisfying proximate cause requirements for the predicate statutes and PLCAA.

Overlooking these detailed allegations, Smith & Wesson asserts that Illinois’s fact-pleading standard requires dismissal. S&W Br. 14-15. But that standard also governed in *Young*, where the Illinois Supreme Court determined that the simple fact that the defendant had manufactured the gun used in a shooting was sufficient to plead cause in fact against it. 213 Ill. 2d at 447. There is no dispute that the weapon used here was a Smith & Wesson assault rifle, A19, A55 ¶ 5, and Plaintiffs’ allegations go far beyond those in *Young*. Indeed, without discovery, “it is hard to imagine how [Plaintiffs] could be any more specific.” *Cooper v. Dr. Martin Luther King Jr. Boys & Girls Club of Chicago*, 2021 IL App (1st) 192618, ¶ 40.

Smith & Wesson’s reliance on the insufficiency of allegations in two other cases is misplaced. *McCarthy v. Sturm, Ruger & Co.*, 916 F. Supp. 366, 369 (S.D.N.Y. 1996), is inapposite because there (unlike here) the plaintiffs did “not allege that [the relevant] advertisements are false or misleading.” The trial court’s decision in *Estados Unidos*

Mexicanos (which Smith & Wesson miscites as the First Circuit decision, *see* S&W Br. 17) is also unhelpful because the complaint concerned only two of Smith & Wesson’s advertisements. 633 F. Supp. 3d 425, 453 (D. Mass. 2022), *rev’d on other grounds*, 91 F.4th 511 (1st Cir. 2024), *rev’d*, 605 U.S. 280 (2025). The trial court determined, with cursory reasoning, that these advertisements were not deceptive or unfair under Massachusetts law because they promoted lawful behavior. *Id.* at 453-54. Whether or not that conclusion was correct under Massachusetts law, Plaintiffs here provide numerous allegations about Smith & Wesson’s marketing campaigns, including that the campaigns promote unlawful, militaristic behavior by civilians, target vulnerable, young demographics, and imply a false association with the military. *See* A27-28. That constitutes unfair and deceptive conduct under Illinois law. *See* 815 ILCS 505/2 (CFA, defining “unfair or deceptive acts” as including “false pretense, false promise, misrepresentation”); 815 ILCS 510/2(a)(5) (DTPA, prohibiting businesses from representing that a product has a sponsorship, approval or characteristics that it does not have). Finally, the Supreme Court’s later decision in *Estados Unidos Mexicanos* is inapposite because the litigation did not include any consumer protection claims by the time it reached that Court. 91 F.4th 511, 518 n.3.

2. The Highland Park shooting was foreseeable to Smith & Wesson, and Smith & Wesson’s arguments about intervening events misstate Illinois law.

As the Supreme Court has explained, “the question of legal cause is entirely one of foreseeability,” in which the court asks “whether the injury is of a type that a reasonable person would see as a likely result of his conduct.” *Young*, 213 Ill. 2d at 446-47, 453. This rule governs when an injury may have multiple causes. If a defendant asserts that an

intervening event destroys proximate cause, the key question is “whether the first wrongdoer reasonably might have anticipated the intervening efficient cause as a natural and probable result of the first party’s [conduct].” *Kramer v. Szczepaniak*, 2018 IL App (1st) 171411, ¶ 37 (citation omitted). This remains the inquiry even when an illegal act is the intervening force. *Id.* at ¶ 38; *accord Young*, 213 Ill. 2d at 453 (where injury results from “cumulative effect of numerous criminal acts by many third parties,” the question remains “entirely one of foreseeability”). At the pleading stage, a court does not dismiss a complaint for lack of legal cause unless the risk of injury was “so clearly unforeseeable” that the plaintiffs “would never be entitled to recover” based on their allegations, which are taken as true with all reasonable inferences drawn in their favor. *Kramer*, 2018 IL App (1st) 171411, ¶¶ 39, 47.

Here, as the circuit court concluded, Plaintiffs alleged specific facts showing that it was reasonably foreseeable to Smith & Wesson that its marketing would lead a young man obsessed with violence to commit yet another mass shooting with an M&P 15. A30. Within months of when an M&P 15 was used in the 2012 Aurora shooting, Smith & Wesson’s CEO announced the company’s plan to target a younger demographic. A1276 ¶ 189 (Uvaldo Complaint). Smith & Wesson was publicly criticized for this strategy. *Id.* ¶ 192. Then, as the company nevertheless doubled down on this strategy by mimicking the aesthetic of first-person shooter videogames and speaking to young people directly via social media, its M&P 15 assault rifles turned up at the scenes of mass shootings nationwide. *See supra* pp. 6-7. All the while, Smith & Wesson continued to advertise the M&P 15 as ideal for military-grade lethality, falsely associating it with the military. *See*

supra Facts Section A. These allegations show that it was reasonably foreseeable to Smith & Wesson that the Shooter would purchase an M&P 15 to commit a mass shooting.

In arguing otherwise, Smith & Wesson asserts that Plaintiffs have alleged too many “intervening acts.” S&W Br. 18-19. But there is no magic number of intervening acts that defeats legal cause. Instead, a proximate cause “need not be the only cause, not the last or nearest cause.” Illinois Pattern Jury Instructions, Civil No. 15.01 (2023); *see Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, ¶ 21 (“[a]n injury may have more than one proximate cause” (citation omitted)). Smith & Wesson fails to address the relevant question, which is whether the mass shooting was reasonably foreseeable based on the company’s conduct. *Kramer*, 2018 IL App (1st) 171411, ¶ 37.

Young and *City of Chicago* do not say otherwise, as the circuit court recognized. A29-30. Those cases addressed broad, primarily public-nuisance-based efforts to hold large swaths of the firearms industry accountable for gun violence in Chicago. *See Young*, 213 Ill. 2d at 436, 439-40; *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 355-56, 359-60, 379 (2004). The plaintiffs in those cases alleged that the gun violence resulted from the defendants’ *lawful* manufacturing and sales activities. *Young*, 213 Ill. 2d at 440; *City of Chicago*, 213 Ill. 2d at 362-63. The Illinois Supreme Court concluded that the defendants’ conduct “merely create[d] a condition that ma[de] the eventual harm possible” because it was “unreasonable to expect defendants to foresee that the *aggregate* effect of the *lawful* manufacture and sale of firearms” would be a public nuisance in Chicago. *Young*, 213 Ill. 2d at 455 (emphasis added); *City of Chicago*, 213 Ill. 2d at 413 (emphasizing lawful nature of defendants’ conduct). By contrast, Plaintiffs here challenge *unlawful* conduct (unfair and deceptive marketing), their claims involve a single

transaction leading to a single shooting, the Shooter's M&P 15 did not change hands after it reached him (the intended retail customer), and the Shooter was precisely the type of consumer that Smith & Wesson made the centerpiece of a yearslong marketing scheme.

Beyond involving different facts and claims than the instant cases, there was no relevant legislative guidance in *Young* and *City of Chicago* because those cases did not involve Illinois consumer protection statutes. In both cases, the Supreme Court explained that proximate cause involves a “question . . . of public policy” and emphasized the lack of relevant guidance from the legislature. *Young*, 213 Ill. 2d at 446, 455; *see City of Chicago*, 213 Ill. 2d at 384, 395. The *Young* Court's “ultimate” conclusion finding no legal cause was a “public policy determination” because the Court “ha[d] no indication from the legislature that it would be inclined to impose public nuisance liability” for the defendants' lawful business activities. 213 Ill. 2d at 455; *see City of Chicago*, 213 Ill. 2d at 384 (noting same “lack of indication from the legislature” and expressing “reluctan[ce] to interfere in the lawmaking process”). But here, the General Assembly made its intentions clear through the DTPA, CFA, and FIRA, specifically that gun companies should be held accountable when their “unfair and deceptive marketing . . . lead[s] to gun violence.” A30 (referencing FIRA). The legislature's message is unmistakable: When firearms manufacturers engage in wrongful sales and marketing practices, tragedies like the Highland Park shooting are the predictable result. The gun industry cannot “avoid[] responsibility for normalizing and even glorifying a culture of gun violence with devastating consequences for communities throughout this state.” 103rd Gen. Assemb., 43rd Leg. Day 109 (Ill. 2023) (Statement of Rep. Gong-Gershowitz).

C. Plaintiffs Have Standing to Bring Their CFA Unfairness Claim And Have Pled Proximate Causation (Uncertified).

Section 10a of the CFA provides that “[a]ny person who suffers actual damages as a result of a violation of this Act committed by any other person may bring an action against such person.” 815 ILCS 505/10a(a) (emphasis added). Under this private cause of action, Plaintiffs challenge Smith & Wesson’s unfair marketing in violation of Sections 2 (unlawful practices generally) and 2DDDD (FIRA) of the CFA. A94-95. Smith & Wesson contends that Plaintiffs cannot bring these claims—either for a lack of standing or causation—because they were not the intended audience of its unfair marketing. S&W Br. 20-22. That argument misunderstands precedent, cannot be squared with statutory text, purpose, and history, and would produce the unjust result that those most directly harmed by Smith & Wesson’s unlawful marketing could not challenge it under the CFA.

To start, Smith & Wesson conflates deception and unfairness claims under the CFA. It cites caselaw holding that to plead *deceptive* conduct under the CFA, the plaintiff must show that the defendant intended it to rely on that conduct. S&W Br. 20-21.¹³ But the Illinois Supreme Court has held that claims for deceptive and unfair conduct are separate and have different elements. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417-18 (2002). The elements of an unfairness claim require only that the defendant’s business practices meet one of these elements: (1) offend public policy; (2) are immoral, unethical, oppressive, or unscrupulous; or (3) cause substantial injury to consumers. *Id.*

¹³ For example, in *Tri-Plex Technical Services, Ltd. v. Jon-Don, LLC*, the Illinois Supreme Court held that a business plaintiff bringing a *deception* claim under the CFA could not rely on the “consumer nexus” test to plead proximate cause. 2024 IL 129183, ¶ 29. It did not address proximate cause requirements for unfairness claims under the CFA, and thus does not govern here.

Sheffler v. Commonwealth Edison Co., 2011 IL 110166, did not say otherwise. There, the Court reiterated the different elements for deception and unfairness claims. *Id.* at ¶ 62. It then held that the plaintiff could not bring a deception *or* unfairness claim because the defendant's conduct did not offend public policy and the defendant had explicitly disclosed to the plaintiff that her status in the life support registry "did not give her priority in restoration services." *Id.* at ¶¶ 63-64, 67. Thus, *Sheffler* did not say that all CFA unfairness claims require a showing that the defendant intended the plaintiff to rely on the challenged conduct—only that the plaintiff had not pled a claim where the defendant disclosed the very information that the plaintiff claimed was misleadingly withheld.

It makes sense that an unfairness claim does not require a showing of reliance. The "gravamen" of an unfairness claim "is that an advertisement models or encourages illegal or unsafe behavior. In such instances, the immediate victims are just as likely to be third parties who are not customers . . . [including] direct victims of that conduct." *Soto*, 202 A.3d at 291 (holding that victims of Sandy Hook massacre could bring unfairness claim against firearm industry members under similar Connecticut consumer protection law). Here, Plaintiffs allege that Smith & Wesson unfairly marketed the M&P assault rifle to promote unlawful, militaristic use by civilians. As in *Soto*, "[t]he most directly foreseeable harm associated with such advertising is that innocent third parties could be shot as a result. The [plaintiffs] are the ones who got shot." *Id.*; *see Robinson*, 201 Ill. 2d at 418 (treating Connecticut Supreme Court jurisprudence on unfairness claims as persuasive).

But even if an unfairness claim required an allegation that a defendant intended reliance by the plaintiff, Plaintiffs' claims should proceed. Plaintiffs allege that Smith & Wesson's marketing targeted and reached a consumer (the Shooter), that consumer was

influenced by the marketing, and this influence was a significant factor in him shooting the Plaintiffs. *See* A57 ¶ 10, A79 ¶ 85, A85 ¶ 108, A89 ¶¶ 125-26, A92 ¶ 140. The Illinois Supreme Court has recognized potential CFA liability where the defendant’s business practices influence a consumer, and that consumer’s reliance on the marketing harms others—as Smith & Wesson’s own citations reveal. *See* S&W Br. 20-21 & n.8. For example, *Shannon v. Boise Cascade Corp.*, 208 Ill. 2d 517, 526 (2004), noted that if a builder relied on deceptive marketing in installing defective home siding, the resident of the building could bring a CFA deception claim. Similarly, *De Bouse v. Bayer*, 235 Ill. 2d 544, 555, 559-60 (2009), held that the CFA recognizes liability under the theory of “indirect deception,” but determined that the patient in that case had only alleged “general deception” of the medical community rather than that her specific doctor was deceived.

Accordingly, the circuit court’s holding that Plaintiffs may bring their CFA unfairness claims—especially given the different elements of unfairness and deception claims—is consistent with precedent. A34. By contrast, Smith & Wesson’s position overlooks the plain text of Section 10a(a), which broadly permits a claim by “[a]ny person who suffers actual damages *as a result* of a violation of this Act.” 815 ILCS 505/10a(a) (emphasis added). Further, the Act instructs that it “shall be liberally construed to effect the purposes thereof.” 815 ILCS 505/11a. Accordingly, the “clear mandate to Illinois courts [is] to utilize [the Act] to the greatest extent possible to eliminate all forms of deceptive or unfair business practices.” *Mathis v. Yildiz*, 2023 IL App (1st) 221703, ¶ 24 (cleaned up). Smith & Wesson’s reading ignores this instruction. If accepted, it would mean that only those who rely on its unfair marketing in purchasing its firearms and using them to commit gun violence (i.e., the Shooter) could sue under the CFA, including FIRA—leaving the

victims of their illegal acts with no recourse under those laws. That would subvert the purpose of the CFA, which FIRA stated can and should be used “to hold gun manufacturers accountable and ensure that families devastated by gun violence have a path to justice in Illinois civil courts.” 103rd Gen. Assemb., 43rd Leg. Day 102 (Ill. 2023) (Statement of Rep. Gong-Gershowitz).¹⁴

D. Plaintiffs Adequately Plead a Knowing Violation of Predicate Statutes (Uncertified).

The Court can easily dispense with Smith & Wesson’s argument that Plaintiffs failed to plead a knowing violation of the CFA, the DTPA, and FIRA. In addition to being uncertified, the question is fact-bound and therefore inappropriate for a Rule 308 appeal, *see Anderson v. Beach*, 386 Ill. App. 3d 246, 253 (1st Dist. 2008) (whether defendant acted “knowingly” is a “factual inquir[y]”), and Smith & Wesson gets the applicable law wrong.

To start, Smith & Wesson implies that PLCAA requires Plaintiffs to plead that Smith & Wesson knew that its conduct violated a specific statute. *See* S&W Br. 32-33. As discussed above, *supra* pp. 29-30, Smith & Wesson does not need to know that its conduct violated a specific statute; it needs to know the facts that constitute the violation. *See People v. Gupta*, 2024 IL App (3d) 220349-U, ¶ 56 (“Knowledge generally refers to an awareness of the existence of the facts which make an individual’s conduct unlawful.” (citation omitted)). Plaintiffs amply satisfy this standard by alleging, among other things, that Smith & Wesson: (1) intentionally models its marketing after first-person shooter games and uses online platforms to target young civilian consumers; and (2) falsely associates its M&P

¹⁴ In any event, even if Plaintiffs lacked standing to pursue claims under the CFA, they can still rely on a violation of the CFA as a foundation for negligence claims that are allowed under the predicate exception for the reasons stated above.

rifles with the military. *See supra* at Fact Sections A-B. They also alleged that Smith & Wesson pursued this strategy despite mounting evidence of the M&P 15 being used in mass shootings, and despite public criticism connecting these tragedies to Smith & Wesson’s marketing techniques. A80-81 ¶ 90-92, A1276 ¶ 192 (Uvaldo Complaint). For this reason, *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1224 (D. Colo. 2015), is distinguishable. At issue there was whether the defendants knew of red flags about the specific shooter before selling him ammunition. *Id.* In contrast, Plaintiffs’ cases are premised on Smith & Wesson’s knowledge of its own advertising and its impact on people like the Shooter.

Further, Smith & Wesson cites no support for its claim that the relevant statutes’ “very text makes a knowing violation impossible.” S&W Br. 32. That is presumably because no support exists, as reasonableness is a “well-established legal standard that is employed in a wide range of statutes.” *Nat’l Shooting Sports Found.*, 144 F.4th at 118. Indeed, many criminal statutes incorporate concepts of reasonableness in their elements. *See, e.g., Austin*, 2019 IL 123910, ¶ 117 (upholding criminal statute imposing liability if a “reasonable person would know or understand that the image was to remain private”); *Burpo*, 164 Ill. 2d at 266-67 (same for criminal statute referring to “reasonable medical standards”); 720 ILCS 5/12-7.3(a) (a person commits stalking when he “knowingly engages in a course of conduct directed at a specific person” that he “knows or should know . . . would cause a reasonable person” to experience enumerated types of fear or emotional distress); 18 U.S.C. § 1038(a) (criminalizing conveying a false bomb threat or similar hoax “under circumstances where such information may reasonably be believed”).

Smith & Wesson's feigned confusion about the CFA, the DTPA, and FIRA's meaning has no merit.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court resolve all questions in their favor, although it should not reach the uncertified questions.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Ill. Sup. Ct. R. 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 14,941 words.

/s/ Priyanka Gupta Sen
Priyanka Gupta Sen



2-25-0274

E-FILED
Transaction ID: 2-25-0274
File Date: 6/18/2026 1:38 PM

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CERTIFICATE OF FILING AND SERVICE

I hereby certify under penalties provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) that, on June 18, 2026, I caused copies of the foregoing **Brief of Plaintiffs-Appellees** to be served electronically via Odyssey eFileIL upon counsel of record for Smith & Wesson Defendants-Appellants and their amici, as listed below.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

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