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14 Polymer80, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF ORANGE**

17 FRANCISCO GUDINO CARDENAS, an
individual; and
18 TROY MCFADYEN, in his Individual Capacity,
and as Heir at Law and Successor in Interest to
19 MICHELLE MCFADYEN, Deceased, ET AL.

20 Plaintiffs,

21 vs.

22 GHOST GUNNER INC., d/b/a
GHOSTGUNNER.NET; DEFENSE
23 DISTRIBUTED d/b/a GHOSTGUNNER.NET;
24 CODY WILSON d/b/a GHOSTGUNNER.NET;
BLACKHAWK MANUFACTURING GROUP
25 INC., d/b/a 80PERCENTARMS.COM; RYAN
BEEZLEY and BOB BEEZLEY d/b/a
26 RBTACTICALTOOLING.COM; GHOST
AMERICA LLC, d/b/a GHOSTGUNS.COM;
27 GHOST GUNS LLC, d/b/a GRID DEFENSE and
GHOSTRIFLES.COM; JUDGGERNAUT
28 TACTICAL INC. d/b/a JTACTICAL.COM; MFY

Case No. JCCP 5167

**[Coordinated Cases CIVDS 1935422, date
filed 11/14/2019, and 30-2019-01111797-
CU-PO-CJC, date filed 11/14/2019]**

*[Assigned for all purposes to Honorable
William Cluster, Department CX 104]*

Filing Date: March 22, 2021
Trial Date: Not Yet Set

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEMURRER OF
DEFENDANT POLYMER80,
INC. ON PLCAA GROUNDS**

Reservation ID: 73662206 (provided by
Clerk)

Date: May 6, 2022

Time: 9:00 am

Dept: CX104

Honorable William Cluster

1 TECHNICAL SOLUTIONS LLC, d/b/a
2 5DTACTICAL.COM; TACTICAL GEAR
3 HEADS LLC, d/b/a 80-LOWER.COM; AR-
4 15LOWERRECEIVERS.COM and
5 80LOWERJIG.COM; JAMES TROMBLEE, JR.,
6 d/b/a USPATRIOTARMORY.COM; INDUSTRY
7 ARMAMENT INC., d/b/a
8 AMERICANWEAPONSCOMPONENTS.COM;
9 THUNDER GUNS LLC, d/b/a
10 THUNDERTACTICAL.COM; POLYMER80,
11 INC.; and DOES 2 through 100, inclusive,

Defendants.

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1 Defendant Polymer80, Inc. (“Polymer80” or “Company”) respectfully submits this
2 Memorandum of Points and Authorities in support of its motion (“Motion”), pursuant to Code of Civil
3 Procedure Sections 430.10(a), (e), and (f), for an Order: (i) sustaining its Demurrer to plaintiffs’ First,
4 Third, Fourth, Fifth, and Sixth Causes Of Action on the grounds that they are barred by the Protection
5 Of Lawful Commerce In Arms Act (“PLCAA”), 15 U.S.C. § 7901 *et seq.*, and (ii) dismissing those
6 Causes Of Action as against Polymer80 with prejudice.¹ For all of the reasons set forth below and in the
7 remainder of the record herein, this Motion is meritorious, and the Court should entirely grant it.

8 **PRELIMINARY STATEMENT**

9 Both pending Complaints propound the same six claims against Polymer80, and this Motion
10 seeks dismissal of five of them pursuant to the PLCAA.² As demonstrated below, that federal statute
11 supersedes and invalidates each and all of those five claims, since it requires dismissal of all “qualified
12 civil liability actions.” Each and all of the extant negligence, negligent entrustment, public nuisance, and
13 two Business and Professions Code Section 17200 (one for unfair and unlawful business practices and
14 the other for unfair marketing tactics) claims constitute such actions. Resultingly, they are fatally
15 defective under the PLCAA for the following reasons:

- 16 • **The Complaints’ First and Fourth Causes Of Action for negligence and**
17 **public nuisance, respectively, as the Ninth Circuit has pronounced, are**
18 **“classic” examples of “qualified civil liability actions,” so long as no**
19 **specified statutory exceptions apply. None does here.**
- 20 • **The PLCAA bars the Third Cause Of Action for negligent entrustment,**
21 **because those claims, under California law, must -- and do not -- meet**
22 **a significant and specific pleading standard in order to be responsibly**
23 **characterized as enumerated exceptions under the PLCAA. The best**
24 **evidence of plaintiffs’ failure in this regard is the indisputable fact that**
25 **the Complaints say absolutely nothing in particular about the**
26 **Company, other than purporting to name it as a defendant. Absent the**
27 **prophylaxis of those alleged exceptions, the existing negligent**
28

24 ¹ Polymer80 hereby expressly incorporates by reference all arguments, facts, and definitions set forth in defendants’ joint
25 global Demurrer (“Joint Demurrer”). Polymer80 expects defendant U.S. Patriot Armory to file a short and separate joinder
26 in this motion. In addition, counsel to U.S. Patriot Armory has asked us to advise the Court that the same arguments made
27 on behalf of Polymer80 in this paper apply to U.S. Patriot Armory.

28 ² Plaintiffs’ Second Cause Of Action sounds in “negligence *per se*.” As the accompanying Joint Demurrer elucidates,
negligence *per se* is *not*, in and of itself, a recognized cause of action under California law and must be dismissed for that
fundamental reason. Plainly, the PLCAA cannot and does not revivify a claim that otherwise does not exist and cannot stand
alone given State law. And so, there is no need for this Motion to extend to or address plaintiffs’ negligence *per se* cause.

1 **entrustment claim in both Complaints inevitably fails in the wake of**
2 **the PLCAA.**

- 3 • **The two California Business and Professions Code claims, as embodied**
4 **in the Fifth and Sixth Causes Of Action in the Complaints, are likewise**
5 **groundless, insofar as that State statute does not specifically and**
6 **expressly apply to the sale, marketing, and/or advertising of the gun-**
7 **related parts, components, and “kits” (here, wrongfully) attributed to**
8 **Polymer80 in this matter. Thus, the PLCAA preempts and prohibits**
9 **these two claims as well.**

10 In sum, the five Causes Of Action attacked upon this Motion all trumpet their legal propriety
11 and endeavor to survive on the grounds that Polymer80, prior to the fling of the Complaints, purportedly
12 knowingly violated either a California or United States law applicable to the sale or marketing of a
13 designated/specified product. As illuminated below, the Complaints do not and cannot sufficiently aver
14 that the Company has run afoul of *any* State or federal provision in a fashion proximately causing the
15 harm alleged in those two pleadings. For instance, the Polymer80 products supposedly at issue in this
16 case are demonstrably not “firearms” as a matter of law, mandating the conclusion that the Company
17 could not have and did not contravene any California Penal Code sections, as plaintiffs erroneously
18 contend. Moreover, plaintiffs’ apparent argument that Polymer80 has violated the federal Gun Control
19 Act of 1968 (“GCA”), nullifying the force and effects of the PLCAA, is baseless, insofar as the Company
20 products purportedly of moment herein, once again, are simply not “firearms” pursuant to federal law.
21 Absent the convenient and non-existent legal life rafts of the California Penal Code and GCA, the
22 PLCAA bars plaintiffs’ suspect claims.

23 Therefore, this Court should not hesitate to dismiss, with prejudice, all five of the claims
24 challenged upon this Motion owing to the expansive and unavoidable impact of the PLCAA upon each
25 of them.

26 ///

27 ///

28 ///

1 **RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. The Complaints Make Scant And Inadequate Allegations That Defendants,**
3 **Including Polymer80, Have Allegedly Violated Certain “Predicate” Statutes.**

4 For the sake of brevity and judicial economy and as the Court has expressly requested,
5 Polymer80 incorporates by reference all of the relevant factual recitations from defendants’ Joint
6 Demurrer to avoid wasteful repetition. At bottom, as that Demurrer explains, the Complaints aver that
7 defendants, including Polymer80, bear responsibility for the shooting rampage of one Kevin Neal
8 (“Neal”), because they purportedly manufactured, distributed, and/or sold “kits and firearms parts that
9 are easily assembled by the purchaser into fully functioning weapons, including AR-15 style assault
10 weapons . . . to California residents leading up to November 2017.” *McFadyen* Compl. ¶¶ 2, 11;
11 *Cardenas* Compl. ¶¶ 2, 11.³ Both Complaints allege the same six claims in connection with said
12 “shooting spree”: (i) negligence, (ii) negligence *per se*, (iii) negligent entrustment, (iv) public nuisance,
13 (v) violation of Business and Professions Code Section 17200 (unfair and unlawful sales practices), and
14 (vi) contravention of Business and Professions Code Section 17200 (unfair marketing tactics).

15 As further explicated below, to obviate the preemptive effect of the PLCAA, plaintiffs must --
16 but do not -- adequately allege an enumerated exception, such as a violation of a “predicate” statute. The
17 Complaints expressly refer to purported violations of three provisions of the California Penal Code,
18 namely, Sections 30510(a)(5), 30510(f), and 30605(a), as follows:

19 AR-15 style rifles are, and were, prohibited assault weapons under
20 California law. See Cal. Pen. Code § 30510(a)(5) (assault weapons include
21 semiautomatic rifles within the “Colt AR-15 series”); § 30510(f) (“As used
22 in this section, ‘series’ includes all other models that are only variations,
with minor differences, of those models listed in subdivision (a), regardless
of the manufacturer.”); § 30605(a) (criminalizing possession of an assault
weapon).

23 *Cardenas* Compl. ¶ 63; *McFadyen* Compl. ¶ 79.

24
25
26 ³ *Accord, e.g., Cardenas* Compl. ¶ 43 (alleging defendants “manufactured and/or sold unserialized, unfinished firearms parts
27 (such as frames and receivers) or firearms assembly kits that can be used to produce ‘ghost guns,’ including AR-15 style
‘ghost gun rifles’”); *McFadyen* Compl. ¶ 59 (same); *Cardenas* Compl. ¶ 45 (alleging defendants “manufactured and/or sold
28 ‘ghost gun’ parts that require very limited additional milling before they can be easily combined with other largely
unregulated gun parts – which are often included in DEFENDANTS’ assembly kits – to form a fully functioning ‘ghost
gun’”); *McFadyen* Compl. ¶ 61 (same).

1 Plaintiffs do not allege, however, that any defendant shipped Neal such “prohibited assault
2 weapons.” Plaintiffs elsewhere advance an aiding-and-abetting theory relating to these Penal Code
3 Sections, maintaining that defendants are “responsible as knowing accomplices, for their consumers’
4 direct violations of, at minimum, California’s ban on the possession of assault weapons.” *Cardenas*
5 Compl. ¶ 115; *McFadyen* Compl. ¶ 134. Finally, as pertains to California law, plaintiffs assert that
6 defendants “also violated California statutes prohibiting unfair, immoral and reckless business practices
7 and the creation and maintenance of public nuisances.” *Cardenas* Compl. ¶ 117; *McFadyen* Compl. ¶
8 136.

9 In regard to purported federal predicate statutes, the Complaints contain scarcely any detail
10 whatsoever. The only instance of plaintiffs expressly referencing such a specific federal provision is
11 their declaration that “Federal law requires all FFLs—even those outside of a purchaser’s state—to
12 comply with the laws of a purchaser’s state when selling long guns like AR-15 style rifles. See 18 U.S.C.
13 § 922(b)(3).” *Cardenas* Compl. ¶ 64; *McFadyen* Compl. ¶ 80. Plaintiffs also tender the insufficient and
14 equivocating statement that “All of the DEFENDANTS may also be responsible, either directly or as
15 an accomplice, for violation one or more additional state or federal firearms laws, including, but not
16 limited to, various provisions of the Gun Control Act of 1968 or the National Firearms Act..” *Cardenas*
17 Compl. ¶ 116 (emphasis supplied); *McFadyen* Compl. ¶ 135 (emphasis supplied). Otherwise, plaintiffs
18 simply refer occasionally to alleged violations of unlisted, unenumerated, and unspecified “federal
19 laws.” *Cardenas* Compl. ¶¶ 69-70, 160; *McFadyen* Compl. ¶¶ 85-86, 185.

20 **B. Polymer80, An FFL-Sanctioned Purveyor Of Gun-Related Products,**
21 **Components, Parts, And Accessories, Is Situated In Dayton, Nevada.**

22 Polymer80 is a Dayton, Nevada-based entity that designs, develops, and manufactures
23 innovative gun-related products, components, and aftermarket accessories. The Complaints nowhere
24 contain *a single allegation* specific to the Company, as plaintiffs merely amended their pleadings to add
25 Polymer80 as “Doe 1.” Nevertheless, plaintiffs cannot in good faith dispute that Polymer80, at all times
26
27
28

1 relevant, has held a Federal Firearms License listing the Company’s premises address as 134 Lakes
2 Boulevard, Dayton, Nevada. *See* Request For Judicial Notice (“RJN”), Exs. A-B.⁴

3 **ARGUMENT**

4 Courts must “treat the demurrer as admitting all material facts properly pleaded, but not
5 contentions, deductions or conclusions of fact or law.” *Serrano v. Priest*, 5 Cal.3d 584, 592 (1971). As
6 such, “bare and general conclusions of law [are] wholly insufficient in a pleading when challenged by a
7 demurrer.” *Moran v. Bonyne*, 157 Cal. 295, 299 (1910) (“*Moran*”). Indeed, “simply parroting the
8 language” of the relevant statute “in the complaint is insufficient to state a cause of action.” *Hawkins v.*
9 *TACA Int’l Airlines, S.A.*, 223 Cal. App. 4th 466 (2014). And, “[t]o withstand a demurrer, it is not enough
10 that [plaintiffs] could assert a viable theory. A demurrer tests the legal sufficiency of factual allegations
11 in the complaint.” *JPMorgan Chase Bank, N.A. v. Ward*, 33 Cal. App. 5th 678, 689 (2019) (emphasis in
12 original) (internal quotation marks omitted) (“*JPMorgan*”).

13 **I. The PLCAA Applies To And Bars Five Of**
14 **The Six Causes Of Action Against Polymer80.**

15 The PLCAA requires dismissal of any “qualified civil liability action,” which is defined as
16 follows:

17 [A] civil action or proceeding or an administrative proceeding brought by
18 any person against a manufacturer or seller of a qualified product, or a trade
19 association, for damages, punitive damages, injunctive or declaratory relief,
20 abatement, restitution, fines, or penalties, or other relief, resulting from the
21 criminal or unlawful misuse of a qualified product by the person or a third
22 party, but shall not include [specified enumerated exceptions.]

22 *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1131 (9th Cir. 2009) (citation omitted), quoting 15 U.S.C.
23 § 7903(5)(A).

24 The PLCAA unquestionably applies to Polymer80 and this action. Polymer80 is a “manufacturer
25 or seller of a qualified product” -- “a component of a firearm.” *See* 15 U.S.C. § 7903(2), (4). *See also*
26 *Jefferies v. District of Columbia*, 916 F. Supp. 2d 42, 45 n.3 (D.D.C. 2013) (“The PLCAA also prohibits

27 ⁴ The Court is permitted to take judicial notice on a Demurrer of official government documents of unquestionable
28 authenticity and accuracy, such as Polymer80’s FFL. *See, e.g., Julian Volunteer Fire Co. Ass’n v. Julian-Cuyamaca Fire*
Prot. Dist., 62 Cal. App. 5th 583, 599 (2021).

1 suits against the manufacturers of firearm components and ammunition.”). The “kits and firearms parts”
2 eventually machined and used by Neal were certainly “component part[s]” of a gun pursuant to the
3 PLCAA, since after sufficient machining and “upon installation” with other component parts, they
4 “become[] an integral part of a rifle.” *Prescott v. Slide Fire Solutions, LP*, 341 F. Supp. 3d 1175, 1187-
5 89 (D. Nev. 2018) (holding a bump stock is a component part of a firearm covered by the PLCAA as
6 opposed to a mere accessory). *See Cardenas* Compl. ¶¶ 2, 11, 43, 45; *McFadyen* Compl. ¶¶ 2, 11, 59,
7 61 (alleging defendants “manufactured and/or sold ‘ghost gun’ parts that require very limited additional
8 milling before they can be easily combined with other largely unregulated gun parts . . . to form a fully
9 functioning ‘ghost gun’”). Furthermore, Neal’s despicable actions obviously constitute “criminal or
10 unlawful misuse of a qualified product by the person or a third party.” 15 U.S.C. § 7903(5)(A). In
11 addition, plaintiffs cannot in good faith dispute that Polymer80 is an FFL with its premises address in
12 Dayton, Nevada, and that, accordingly, any firearm components sent by the Company to California
13 would necessarily be shipped in “interstate . . . commerce.” 15 U.S.C. § 7903(2). *See* RJN Exs. A-B.
14 *See also Cardenas* Compl. ¶ 2, 11, 91; *McFadyen* Compl. § 2, 11, 103 (“[T]here is a substantial
15 probability that one or more of the DEFENDANTS shipped one or more ‘ghost gun’ parts/kits used to
16 assemble the AR-15 style rifles use in the attack to NEAL’s California residence.”).

17 Similarly, plaintiffs cannot reasonably dispute that the PLCAA preempts their First and Fourth
18 Causes Of Action for negligence and public nuisance, respectively. Tellingly, the Ninth Circuit has
19 clearly held that the PLCAA applies to “qualified civil liability actions,” such as “classic negligence and
20 nuisance” suits, “if none of the specified exceptions applies.” *Ileto*, 565 F.3d at 1132, 1135-38. That
21 should be the beginning and end of the analysis, especially considering the patent correctness of the *Ileto*
22 Court’s holding.

23 The PLCAA also bars plaintiffs’ negligent entrustment claims, as pleaded in this action.
24 Although characterizing “negligent entrustment” as an enumerated exception, the PLCAA also
25 expressly defines what that term means for its purposes, as follows:
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27
28

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

6 15 U.S.C. § 7903(5)(A)(ii), (B). In brief, for all the many reasons set forth in defendants’ Joint Demurrer,
7 plaintiffs do not adequately allege these various elements against *any* defendants, and they especially do
8 not do so against Polymer80, considering that their Complaints do not whisper a word about the
9 Company specifically. *See also, e.g., Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1226 (D.
10 Colo. 2015) (rejecting theory that online sales of firearms could constitute negligent entrustment under
11 PLCAA).

12 Finally, the PLCAA preempts plaintiffs’ two Business and Professions Code claims. Polymer80
13 is not aware of any reported Ninth Circuit or California State Court decision after *Ileto* addressing
14 whether or not that Code is a “statute applicable to the sale or marketing of [a qualified] product.” 15
15 U.S.C. § 7903(5)(A)(iii). The Company contends that Business and Professions Code is not such a
16 statute, and that, therefore, the Fifth and Sixth Causes of Action must fail owing to the PLCAA. *See City*
17 *of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 390 (2d Cir. 2008) (“*City of New York*”) (holding
18 that Congressional statements “support the view that the predicate exception was meant to apply only
19 to statutes that actually regulate the firearms industry, in light of the statements’ consistency amongst
20 each other and with the general language of the statute itself. . . . In sum, we hold that the [predicate]
21 exception . . . does encompass statutes (a) that expressly regulate firearms, or (b) that courts have
22 applied to the sale and marketing of firearms; and does encompass statutes that do not expressly regulate
23 firearms but that clearly can be said to implicate the purchase and sale of firearms.”); *In re Firearm*
24 *Cases*, 126 Cal. App. 4th 959, 977-86 (2005) (rejecting application of UCL to legal sales of firearms).
25 *See also Soto v. Bushmaster Firearms Int’l, LLC*, 331 Conn. 53, 70 n.14 (2019) (finding that “plaintiffs’
26 primary theory—that the legal sale of the AR-15 assault rifle to the civilian market constitutes an unfair
27 trade practice . . . if timely presented . . . would be barred by PLCAA immunity” but also holding that
28 “PLCAA does not bar the plaintiffs from proceeding on the single, limited theory that the defendants
violated [Connecticut’s unfair practices statute] by marketing the [particular weapon] to civilians for

1 criminal purposes, and that those wrongful marketing tactics caused or contributed to the Sandy Hook
2 massacre.”).

3 **II. Plaintiffs Cannot Invoke The PLCAA’s Predicate Exception, Because They**
4 **Have Not Adequately Alleged That Polymer80 Has Violated Any Predicate**
5 **Statute That Proximately Caused The Harm Alleged In Both Complaints.**

6 To avoid the PLCAA’s preemption of many of their causes, the Complaints half-heartedly
7 attempt to rely upon the “predicate exception,” which states that the PLCAA does not preempt the
8 following:

9 [A]n action in which a manufacturer or seller of a qualified
10 product *knowingly violated a State or Federal statute applicable to the*
11 *sale or marketing of the product*, and the violation was a proximate
12 cause of the harm for which relief is sought, including—

13 (I) any case in which the manufacturer or seller knowingly made any
14 false entry in, or failed to make appropriate entry in, any record required
15 to be kept under Federal or State law with respect to the qualified
16 product, or aided, abetted, or conspired with any person in making any
17 false or fictitious oral or written statement with respect to any fact
18 material to the lawfulness of the sale or other disposition of a qualified
19 product; or

20 (II) any case in which the manufacturer or seller aided, abetted, or
21 conspired with any other person to sell or otherwise dispose of a
22 qualified product, knowing, or having reasonable cause to believe, that
23 the actual buyer of the qualified product was prohibited from possessing
24 or receiving a firearm or ammunition under subsection (g) or (n) of
25 section 922 of Title 18[.]

26 *Ileto*, 565 F.3d at 1132 (emphasis and alteration in original), quoting 15 U.S.C. § 7903(5)(A)(iii).

27 Federal Courts adjudicating Rule 12(b)(6) motions to dismiss -- the analogue to a California
28 Demurrer⁵ -- hold that pursuant to the predicate exception, “a plaintiff not only must present a cognizable
claim, he or she also must allege a knowing violation of a ‘predicate statute.’” *Id.*, quoting *City of New*

⁵ Polymer80 is only aware of one California State Court appellate decision addressing the PLCAA. *See Chavez v. Glock, Inc.*, 207 Cal. App. 4th 1283, (2012). In *Chavez*, the Court held, on a motion for summary judgment, that “there are triable issues of fact whether [plaintiff’s] lawsuit falls within the exception to the [PLCAA] for product defect actions” in a case that the plaintiff brought “for strict product liability and related torts, alleging the Glock 21 is defective because it has a light trigger pull without an appropriate safety mechanism to prevent accidental discharge and the holster fails to sufficiently protect the trigger or properly secure the gun” after plaintiff’s “three-year-old-son” “shot him in the back with his service weapon.” *Id.* at 1290, 1316-1318. Plainly, the instant action does not sound in products liability -- which involves a different exception to the PLCAA -- and the facts in *Chavez* are wholly inapposite here.

1 *York*, 524 F.3d at 390. Additionally, a plaintiff “must plausibly allege that . . . the violation proximately
2 caused [p]laintiffs’ alleged harm.” *Prescott v. Slide Fire Solutions, LP*, 410 F. Supp. 3d 1123, 1139-40
3 (D. Nev. 2019). Accordingly, federal Courts will grant a Rule 12(b)(6) motion, where plaintiffs fail to
4 adequately and plausibly allege that a knowing violation of a predicate statute proximately caused their
5 harm. *See, e.g., Prescott*, 341 F. Supp. 3d at 1190-92 (granting dismissal, since “[p]laintiffs have not
6 pointed to a statutory violation that would permit the Court to find that an exception to the PLCAA
7 applies”); *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1224 (D. Colo. 2015) (granting
8 defendants’ motion to dismiss, where “[p]laintiffs have not pleaded facts that support their allegation
9 that the [predicate] federal statute was ‘knowingly’ violated”). This Court, then, should grant the instant
10 Motion and sustain Polymer80’s Demurrer, insofar as plaintiffs do not adequately plead that the
11 Company contravened either California or federal law in a manner proximately causing them the harm
12 portrayed in the Complaints.

13 **A. Plaintiffs Do Not Adequately Allege That Polymer80 Has Violated California**
14 **Law And Thereby Proximately Caused The Harm Alleged In The Complaints.**

15 Bedrock principles of statutory interpretation indubitably demonstrate that Polymer80 did not
16 run afoul of any of the California Penal Code Sections -- 30510(a)(5), 30510(f), and 30605(a) -- cited
17 in the Complaints. Those provisions all apply to fully formed firearms, such as AR-15s, and not to the
18 “unfinished firearms parts (such as frames and receivers) or firearms assembly kits” at issue in this case.
19 *Cardenas* Compl. ¶ 43; *McFadyen* Compl. ¶ 59. But, this State’s Penal Code does not cover kits or
20 components or frames and receivers, whether finished or “unfinished,” in Sections 30510(a)(5),
21 30510(f), and 30605(a). In truth, Cal. Penal Code § 16520 is entitled “Firearm Defined” and provides
22 that that term “includes the frame or receiver of the weapon . . . [a]s used in the following provisions,”
23 none of which are set forth in the Complaints. Cal. Penal Code § 16520(b). Furthermore, that same
24 Section states that “[a]s used in Sections 29010 to 29150, inclusive, ‘firearm’ includes the unfinished
25 frame or receiver of a weapon that can be readily converted to the functional condition of a finished
26 frame or receiver.” Cal. Penal Code § 16520(g). Elsewhere, the California Penal Code defines a “firearm
27 precursor part” to “mean[] a component of a firearm that is necessary to build or assemble a firearm,”
28 which expressly encompasses “[a]n unfinished receiver” and “[a]n unfinished handgun frame.” Cal.

1 Penal Code §§ 16532(a)(1)-(2). However, this Section of the Penal Code is clear: “[a] firearm precursor
2 part is not a firearm or the frame or receiver thereof.” § 16532(a).

3 Consequently, because the products at issue are “firearms” elsewhere but not in the Sections set
4 forth in the Complaints, they could not possibly be covered thereunder. The Supreme Court of California
5 explains that “a fundamental principle of statutory construction” is “that legislation should be construed
6 so as to harmonize its various elements without doing violence to its language or spirit” and therefore
7 courts should “adopt a statutory construction that will best give effect to *all* the provisions,” as
8 “[s]tatutory interpretations which produce internal harmony and accord significance to each word and
9 phrase are preferred.” *Jessup Farms v. Baldwin*, 33 Cal.3d 639, 652-53 (1983) (emphasis in original)
10 (citations and internal quotation marks omitted). Moreover, as applicable here, “the maxim *expressio*
11 *unius est exclusio alterius*” provides that “[t]he expression of some things in a statute necessarily means
12 the exclusion of other things not expressed.” *Dean v. Superior Court*, 62 Cal. App. 4th 638, 641-42
13 (1990).

14 Lest there be any doubt that this straightforward statutory construction is inexorably correct, the
15 California Legislature recently all but admitted that the products at issue here have been legal under
16 California Law. On January 10, 2022, Assembly Member Gipson introduced a bill entitled “An act
17 relating to firearms.” See AB-1621 Firearms: unserialized firearms, *available at*
18 https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1621. The proposed
19 legislation states, *inter alia*, as follows:

20 [A] ghost gun is manufactured from components that can be assembled at
21 the home of the purchaser. *There is generally no requirement to pass a*
22 *background check to obtain the components of a ghost gun.* These parts are
23 sold online as kits that include an ‘80 percent receiver,’ meaning that the
24 frame or receiver is 80-percent complete, and the buyers must complete the
25 final 20 percent themselves. . . . *Under current rules, the Bureau of Alcohol,*
Tobacco, Firearms and Explosives does not treat these unfinished receivers
as traditional firearms.

25 *Id.* (emphasis supplied). Considering the undeniable legality of the products at issue, Polymer80 could
26 not have possibly violated the California Penal Code and thereby proximately caused plaintiffs harm.

27 Plaintiffs’ aiding and abetting hypothesis fares no better. Their minimalistic and conclusory
28 allegations that defendants such as the Company somehow “are . . . responsible as knowing

1 accomplices, for their consumers’ direct violations of, at a minimum, California’s ban on the possession
2 of assault weapons” do not at all illuminate *how* the Company supposedly substantially assisted or aided
3 and abetted any violations of California law. Such “bare and general conclusions of law [are] wholly
4 insufficient in a pleading when challenged by a demurrer.” *Moran*, 157 Cal. at 299. And, even if they
5 were not impermissibly conclusory, allegations that Polymer80 shipped *legal* firearms components
6 could not constitute a predicate exception by definition, or else a mere aiding and abetting argument
7 would vitiate the entire purpose and structure of the PLCAA. Furthermore, as set forth in defendants’
8 global Demurrer, plaintiffs do not adequately allege the Company’s intent in purportedly assisting Neal.
9 As explained there, aiding and abetting liability for specific intent crimes requires that the aider and
10 abettor share the perpetrator’s specific intent. *People v. Acero*, 161 Cal. App. 3d 217, 224 (1984). “[A]n
11 aider and abettor will ‘share’ the perpetrator’s specific intent when he or she knows the full extent of
12 the perpetrator’s criminal purpose and gives aid or encouragement with the intent or purpose of
13 facilitating the perpetrator’s commission of the crime.” *People v. Beeman*, 35 Cal.3d 547, 560 (1984).
14 Plainly, there are no such allegations against Polymer80 in the existing Complaints.

15 Plaintiffs’ efforts to rely upon supposed Business and Professions Code violations as a predicate
16 exception fall short for all of the reasons that they cannot adequately allege such violations, as explained
17 in the Joint Demurrer. More to the point here, plaintiffs cannot adequately establish that any purported
18 such Code violation proximately caused *them* harm, since they lack standing to sue under that Code.
19 Plaintiffs were not consumers of Polymer80’s products, so even if they could adequately allege that the
20 Company violated said Code (and they cannot), it would carry no legal significance. *See Kwikset Corp.*
21 *v. Superior Court*, 51 Cal.4th 310, 319-26 (2011).

22 Finally, plaintiffs’ reference to California’s statutory nuisance laws does not constitute a
23 predicate exception as a matter of law for the reasons set forth in the Ninth Circuit’s *Ileto* opinion. *See*
24 *Ileto*, 565 F.3d at 1138 (“The purpose of the PLCAA leads us to conclude that Congress intended to
25 preempt general tort law claims such as Plaintiffs’, even though California has codified those claims in
26 its civil code.”).

27 At bottom and dispositively upon this Motion, the Complaints do not adequately plead a knowing
28 violation of relevant California laws as a predicate exception.

1 **B. Plaintiffs Do Not Adequately Allege That Polymer80 Has Contravened Federal**
2 **Law And Resultingly Proximately Caused The Harm Alleged In The Complaints.**

3 As an initial matter, any contention based on federal law as a predicate exception is and must be
4 inherently and fatally defective, as the Complaints proffer virtually no detail regarding purported
5 violations of federal law. *See supra* Statement of Facts Section A. “To withstand a demurrer, it is not
6 enough that [plaintiffs] could assert a viable theory. A demurrer tests the legal sufficiency of factual
7 allegations *in the complaint.*” *JPMorgan*, 33 Cal. App. 5th at 689 (emphasis in original) (internal
8 quotation marks omitted). Quite simply, there *are no* factual allegations *in the complaint.* This palpable
9 shortcoming, alone, dooms any attempt by plaintiffs to invoke federal law to avoid PLCAA preemption.

10 Yet, even to the extent that plaintiffs try to assert that Polymer80 violated the GCA and
11 proximately caused them harm, such (unmade and absent) argument necessarily founders, given that
12 Polymer80’s products -- “unfinished firearms parts (such as frames and receivers) or firearms
13 assembly kits” -- are not “firearms” under federal law. Unlike the PLCAA, which explicitly does cover
14 “a *component* of a firearm,” the GCA’s definition of a “firearm” is much more limited owing to the
15 patent fact that Congress did not want it to apply to components and unenumerated parts. The precursor
16 statute to the GCA -- the Federal Firearms Act of 1938 -- defined “firearm” to “mean[] any weapon,
17 by whatever name known, which is designed to expel a projectile or projectiles by the action of an
18 explosive and a firearm muffler or firearm silencer, *or any part or parts of such weapon.*” Pub. L. No.
19 75–785, 52 Stat. 1250 (1938) (repealed 1968) (emphasis supplied). With its passage of the GCA,
20 Congress resolved to remove “part or parts” from the definition of a “firearm,” as follows:

21 During debate on the GCA and related bills introduced to address
22 firearms trafficking, Congress recognized that regulation of all
23 firearm parts was impractical. Senator Dodd explained that “[t]he
24 present definition of this term includes ‘any part or parts’ of a
25 firearm. It has been impractical to treat each small part of a firearm
as if it were a weapon. The revised definition substitutes the words
‘frame or receiver’ for the words ‘any part or parts.’” *See* 111 Cong.
Rec. 5527 (March 22, 1965).

26 ATF, Notice of Proposed Rulemaking, Definition of “Frame or Receiver” and Identification of Firearms,
27 ATF 2021R-05, 86 Fed. Reg. 27,720, at 27,720 (May 21, 2021).

1 Thus, as it stands now, the GCA’s definition of a “firearm” applies to one of only four things:
2 “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to
3 expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any
4 firearm muffler or firearm silencer; or (D) any destructive device.” 18 U.S.C. § 921(a)(3). This definition
5 does *not* include “unfinished . . . frames and receivers,” nor does it include any “kits” containing
6 undefined “parts.” And so, the GCA does not -- and cannot be said to -- cover these items. *See United*
7 *States v. Vonn*, 535 U.S. 55, 65 (2002) (“expressing one item of [an] associated group or series excludes
8 another left unmentioned.”); *Dean*, 62 Cal. App. 4th at 641-42 (explicating the “maxim *expressio unius*
9 *est exclusio alterius*”). As a consequence, the Court should reject any claim that the products allegedly
10 made from defendants’ kits and at issue here constituted “firearms” under federal law. In other words,
11 Polymer80 could not possibly have violated any GCA provisions involving such “firearms.”

12 Beyond all of that, it is of no moment that plaintiffs assert that defendants’ “unfinished firearms
13 parts (such as frames and receivers) or firearms assembly kits . . . can be used to produce ‘ghost guns,’
14 including AR-15 style ‘ghost gun rifles’” or that defendants “manufactured and/or sold ‘ghost gun’ parts
15 that require very limited additional milling before they can be easily combined with other largely
16 unregulated gun parts -- which are often included in DEFENDANTS’ assembly kits -- to form a fully
17 functioning ‘ghost gun.’” *Cardenas* Compl. ¶¶ 43, 45; *McFadyen* Compl. ¶¶ 59, 61. Congress expressly
18 and purposely left such components and “parts” *out* of the GCA’s definition of “firearm.” And, the
19 Supreme Court of California has long held that “Courts cannot supply omissions in the statute.” *Swift v.*
20 *Swift*, 40 Cal. 456, 458 (1871) (discussing “*casus omissus* in the statute”). *See Am. for Clean Energy v.*
21 *Envtl. Prot. Agency*, 864 F.3d 691, 713 (D.C. Cir. 2017) (Kavanaugh, J.) (“Congress’s decision to drop
22 the ‘distribution capacity’ language counsels against EPA’s reading in this case, which in effect would
23 add that kind of language back into the waiver provision . . .”).

24 The highest Court in Texas recently confronted a similar situation in *In re Academy, Ltd.*, 625
25 S.W.3d 19 (Tex. 2021). There, plaintiffs argued that a magazine constituted a “firearm” under the GCA,
26 insofar as it was “inseparably packaged with a rifle.” Plaintiff further claimed that “a ‘firearm’ includes
27 unlisted component parts like magazines ‘when they are packaged and sold together with the weapon
28 itself.’” *Id.* at 28. The Supreme Court of Texas rejected these arguments, noting that “both firearms and

1 magazines (along with other component parts) are ‘qualified products’ subject to the PLCAA’s general
2 prohibition against qualified civil liability actions, but only ‘firearms’ are subject to the Gun Control
3 Act’s restrictions on sales to out-of-state residents.” *Id.* at 29 (citations omitted). As such, the Court
4 found that plaintiffs were incorrect in “their assertion that the term ‘firearm’ includes those component
5 parts that . . . are bundled and packaged inseparably for purposes of the sale of a trigger-and-hammer
6 skeleton,” since “[a]s used in the Gun Control Act, ‘firearm’ is a term of art that includes some
7 component parts but not others,” and “[u]nder the applicable statutory definition, which makes no
8 mention of packaging, a magazine simply is not a firearm.” *Id.* (citations and internal quotation marks
9 omitted). The GCA similarly makes no mention of “kits” or “unfinished . . . frames and receivers,” and,
10 as a result, the kits at issue here were not and are not a “firearm” thereunder.

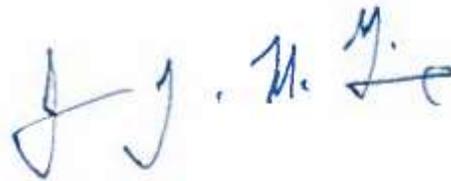
11 In the end, plaintiffs have not alleged, and could never possibly adequately allege, that
12 Polymer80 violated federal law such as the GCA and correspondingly proximately caused them harm.

13 **CONCLUSION**

14 For all of the foregoing reasons and those arising from the remainder of the record of the Actions,
15 the Court should: (i) grant the instant Motion pursuant to California Code of Civil Procedure Sections
16 430.10(a), (e), and (f); (ii) dismiss the First, Third, Fourth, Fifth, and Sixth Causes Of Action against
17 Polymer80 with prejudice; (iii) award the Company its attorneys’ fees and costs; and (iv) grant such
18 other and further relief to Polymer80 as may be deemed just and proper.

19 Dated: January 24, 2022

GREENSPOON MARDER LLP

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22 By: _____
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