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DION GREEN, as Personal
Representative of the
ESTATE OF DERRICK
FUDGE, deceased;
DION GREEN, individually,
and as surviving child of
DERRICK FUDGE, deceased;
LASANDRA JAMES, as
Guardian of HANNAH
OGLESBY, surviving minor
child of LOIS OGLESBY,
deceased;

CASE NO. A-21-838762-C

DEPT. NO. 29

**ORDER REGARDING
DEFENDANT'S
MOTION TO DISMISS**

(Filed Mar. 23, 2022)

LASANDRA JAMES, as
Guardian of REIGN LEE,
surviving minor child of
LOIS OGLESBY, deceased;

DANITA TURNER, as
Personal Representative of
the ESTATE OF LOGAN M.
TURNER, deceased;

DANITA TURNER, as
surviving parent of LOGAN
TURNER, deceased;

MICHAEL TURNER, as
surviving parent of LOGAN
TURNER, deceased;

NADINE WARREN, as
Personal Representative of
the ESTATE OF BEATRICE
NICOLE WARREN-CURTIS,
deceased

NADINE WARREN, as
surviving parent of
BEATRICE NICOLE
WARREN-CURTIS, deceased;

RONALD PHILIP CUMER,
as Personal Representative of
the ESTATE OF NICHOLAS
P. CUMER, deceased;

RONALD PHILIP CUMER,
as surviving parent of
NICHOLAS CUMER,
deceased; and

VICKY CUMER, as surviving
parent of NICHOLAS CUMER,
deceased;

Plaintiffs,

v.

KYUNG CHANG INDUSTRY
USA, INC. d/b/a KCI USA, a
Nevada corporation;
KYUNGCHANG INDUSTRY
CO., LTD., a foreign limited
liability company; DOES I
through X, inclusive; and
ROE BUSINESS ENTITIES
XI through XX, inclusive,

Defendants.

**ORDER REGARDING DEFENDANT'S
MOTION TO DISMISS**

Defendant's Motion to Dismiss, having come for hearing before this Court on an Order Shortening Time on January 18, 2022, with Counsel for all parties present, the Court, having reviewed the pleadings on file herein and after considering oral argument by the parties hereby finds:

IT IS HEREBY ORDERED THAT Defendant's Motion to Dismiss Plaintiffs' Negligent Entrustment claim is GRANTED.

IT IS FURTHER ORDERED THAT Defendant's Motion to Dismiss the remainder of Plaintiffs' claims is DENIED.

The Court finds that the 100 round gun magazine that is the subject of this case is not a “component part” within the PLCAA because it is not required for the subject gun to operate and fire projectiles, the subject firearm is capable of firing without any magazine inserted, and the 100-round magazine was not included with the firearm by the manufacturer.

Defendants specifically stated in their moving papers that the magazine is a component part of the firearm, as the subject firearm neither would, nor could operate without the magazine. *See* page 9 of Defendant’s Brief. During oral argument, however, Defendant’s Counsel admitted that the subject firearm can operate without a magazine. The Court notes that although certain firearms exist that are incapable of firing without a magazine, the subject firearm here is not such a firearm. The Court also notes that the fact that the subject 100 round magazine was not included with the firearm by the manufacturer weighs in favor of it being an accessory and not a component.

Thus, this case is distinguishable from cases where courts have decided that specific parts that are required for the gun to operate or function, such as a stock on a long rifle, are in fact “component parts” within PLCAA. *See Prescott v. Slide Fire Solutions, LP*, 341 F.Supp.3d 1175 (2018).

Accordingly, it is the determination of this Court that the 100-round magazine is not a component part

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of the subject firearm and, as such, is not subject to the
protections of the PLCAA.

IIT IS SO ORDERED.

Dated this 23rd day of March, 2022

/s/ David M Jones
DISTRICT COURT JUDGE

DATED: 7C8 305 50B5 F655
David M Jones
District Court Judge

Submitted by:

Dated this 17th day of March, 2022.

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett
Sean K. Claggett, Esq.
Nevada Bar No. 8407

[Certificate Of Service Omitted]

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IN THE SUPREME COURT
OF THE STATE OF NEVADA

KYUNG CHANG INDUSTRY
USA, INC., D/B/A KCI USA, A
NEVADA CORPORATION,
Petitioner,

vs.

THE EIGHTH JUDICIAL
DISTRICT COURT OF THE
STATE OF NEVADA. IN AND
FOR THE COUNTY OF CLARK;
AND THE HONORABLE DAVID
M. JONES, DISTRICT JUDGE,
Respondents,

and

DION GREEN, AS PERSONAL
REPRESENTATIVE OF THE
ESTATE OF DERRICK FUDGE,
DECEASED; DION GREEN,
INDIVIDUALLY, AND AS
SURVIVING CHILD OF
DERRICK FUDGE, DECEASED;
LASANDRA JAMES, AS
GUARDIAN OF HANNAH
OGLESBY, SURVIVING MINOR
CHILD OF LOTS OGLESBY,
DECEASED; LASANDRA
JAMES, AS GUARDIAN OF
REIGN LEE, SURVIVING
MINOR CHILD OF LOIS
OGLESBY, DECEASED;
DANITA TURNER, AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF LOGAN

No. 84844

M. TURNER, DECEASED;
DANITA TURNER, AS
SURVIVING PARENT OF
LOGAN TURNER, DECEASED;
MICHAEL TURNER, AS
SURVIVING PARENT OF
LOGAN TURNER, DECEASED;
NADINE WARREN, AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF BEATRICE
NICOLE WARREN-CURTIS,
DECEASED; AND NADINE
WARREN, AS SURVIVING
PARENT OF BEATRICE
NICOLE WARREN-CURTIS,
DECEASED,
Real Parties in Interest.

*ORDER DENYING
PETITION FOR WRIT OF MANDAMUS*

(Filed Mar. 14, 2023)

This original petition for a writ of mandamus challenges a district court order denying a motion to dismiss.

“A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion.” *1110 Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (footnotes omitted). The consideration of a writ petition is within this court’s sole discretion. *State, Dep’t of Tax’n v. Eighth*

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Judicial Dist. Court, 136 Nev. 366, 368, 466 P.3d 1281, 1283 (2020). This court's general policy is to decline to consider writ petitions challenging district court orders denying motions to dismiss. *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558. Petitioners bear the burden of demonstrating that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). When disputed issues of fact are critical in demonstrating the propriety of extraordinary relief, those factual issues should be resolved in the first instance in the district court. *See Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981).

Having considered the parties' briefing and the record, we conclude that petitioner has not demonstrated that our extraordinary intervention is warranted at this stage in the proceedings. *See Pan*, 120 Nev. at 228. 88 P.3d at 844. Accordingly, we deny the petition. *See Dep't of Tax'n*, 136 Nev. at 368, 466 P.3d at 1283.

It is so ORDERED.

/s/ Herndon _____, J.
Herndon

/s/ Lee _____, J.
Lee

/s/ Parraguirre _____, J.
Parraguirre

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cc: Hon. David M. Jones, District Judge
Marquis Aurbach Chtd.
Cooper & Elliott/Columbus OH
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Jones/TX
Brady/Wash DC
Eighth District Court Clerk

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Protection of Lawful Commerce in Arms Act,
15 USC 7901, et seq.

Public Law 109-92
109th Congress

An Act

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting **from** the misuse of their products by others.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protection of Lawful Commerce in Arms Act”.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers

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of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

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(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade

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associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY.

ACTIONS IN FEDERAL OR STATE COURT.

(a) **IN GENERAL.**—A qualified civil liability action may not be brought in any Federal or State court.

(b) **DISMISSAL OF PENDING ACTIONS.**—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

In this Act:

(1) **ENGAGED IN THE BUSINESS.**—The term “engaged in the business” has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) **MANUFACTURER.**—The term “manufacturer” means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) **PERSON.**—The term “person” means any individual, corporation, company, association, firm,

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partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) **QUALIFIED PRODUCT.**—The term “qualified product” means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) **QUALIFIED CIVIL LIABILITY ACTION.**—

(A) **IN GENERAL.**—The term “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

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(iii) 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, including—

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

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

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(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26, United States Code.

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

(C) **RULE OF CONSTRUCTION.**—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this

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Act shall be construed to create a public or private cause of action or remedy.

(D) **MINOR CHILD EXCEPTION.**—Nothing in this Act shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

(6) **SELLER.**—The term “seller” means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) **STATE.**—The term “State” includes each of the several States of the United States, the

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District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term “trade association” means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE.—The term “unlawful misuse” means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

* * *
