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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Estados Unidos Mexicanos,

10 Plaintiff,

11 v.

12 Diamondback Shooting Sports
13 Incorporated, et al.,

14 Defendants.

No. CV-22-00472-TUC-RM

ORDER

15 Plaintiff Estados Unidos Mexicanos (“Plaintiff” or “Mexico”), a sovereign nation,
16 sues five Arizona firearm dealers—Diamondback Shooting Sports, Inc.
17 (“Diamondback”); SnG Tactical LLC (“SnG Tactical”); Loan Prairie LLC d/b/a/ the Hub
18 (“the Hub”); Ammo A-Z, LLC (“Ammo A-Z”); and Sprague’s Sports, Inc. (“Sprague’s
19 Sports”) (collectively, “Defendants”)—alleging negligence, public nuisance, negligent
20 entrustment, negligence per se, gross negligence, unjust enrichment, violation of
21 Arizona’s Consumer Fraud Act (“CFA”), A.R.S. § 44-1522, and violations of the
22 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(c).
23 (Doc. 1.) Pending before the Court is Defendants’ Joint Motion to Dismiss, filed
24 pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (Doc.
25 18.) Plaintiff filed a Response (Doc. 26), Defendants filed a Reply (Doc. 29), and
26 Plaintiff, with leave of Court (Doc. 36), filed a Surreply (Doc. 37). Thereafter, Plaintiff
27 filed a Notice of Supplemental Authority (Doc. 44), to which Defendants, with leave of
28 Court (Doc. 47), responded (Doc. 48). The Court held oral argument on February 22,

1 2024, and took the matter under advisement. (Doc. 47.)

2 **I. Plaintiff's Complaint**

3 Plaintiff alleges that Defendants knowingly and “systematically participate in
4 trafficking military-style weapons and ammunition to drug cartels in Mexico” through
5 “reckless and unlawful business practices” including straw sales, bulk sales, and repeat
6 sales. (Doc. 1 at 4 ¶ 1; *see also id.* at 12 ¶ 23.)¹ Plaintiff brings this action on behalf of
7 itself and in *parens patriae* on behalf of its citizens. (*Id.* at 6, 9 ¶¶ 6, 14.) Plaintiff seeks
8 damages, punitive damages, injunctive and equitable relief, and the appointment of a
9 monitor to oversee and direct Defendants’ sales practices. (*Id.* at 137.)

10 In support of its claims, Plaintiff makes the following factual allegations. Despite
11 having strict controls on the lawful possession of guns and only one gun store in the
12 entire country, Mexico’s homicide rate is 4.5 times the world average. (*Id.* at 7–8, 58–59
13 ¶¶ 10, 147–153.) The economic impact of violence in Mexico was estimated to be \$238
14 billion in 2019. (*Id.* at 110 ¶ 253.) As a result of cartel violence, Plaintiff has suffered
15 death and injury to members of its military, National Guard, and police; increased
16 spending on services aimed at preventing and mitigating the effects of Mexico’s gun-
17 violence epidemic; and losses from diminished property values, decreased business
18 investment and economic activity, and decreased efficiency and size of the working
19 population. (*Id.* at 6, 108–111 ¶¶ 6, 247–248, 250–251, 253–256.) Plaintiff alleges its
20 citizens have suffered gun-related homicides, a significant decrease in life expectancy,
21 and a deterioration in quality of life. (*Id.* at 6, 109–112 ¶¶ 6, 249, 252, 254–255, 257–
22 258.)

23 Cartel violence in Mexico is “fueled primarily by assault weapons supplied by
24 unscrupulous border-state dealers like the Defendants” (*id.* at 7 ¶ 10), who for years have
25 been among the worst gun-trafficking offenders in the United States (*id.* at 4–5 ¶ 2).
26 “Were it not for Defendants’ wrongful conduct, there would be far fewer guns in Mexico,
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28 ¹ All record citations herein refer to the page numbers generated by the Court’s electronic filing system. Citations to allegations of Plaintiff’s Complaint also refer to the relevant paragraph number(s).

1 and far fewer guns in the hands of the cartels.” (*Id.* at 104 ¶ 237.)

2 Defendants know the “red flags”—including straw sales, bulk purchases, and
3 repeat purchases—that indicate guns purchased from them are destined for drug cartels in
4 Mexico, and they know the cartels favor military-style assault weapons. (*Id.* at 12, 18,
5 22, 50, 66 ¶¶ 24, 39, 53, 122, 176.) Despite this knowledge, Defendants—motivated by
6 extra profits—continue supplying the cartels with military-style weapons, including AR-
7 15 assault rifles and .50 caliber sniper rifles that can shoot down helicopters and penetrate
8 bullet-proof glass. (*Id.* at 5–6, 18, 20–22, 49–51 ¶¶ 5, 39, 45–46, 48, 50–53, 121, 123–
9 124.) Given the reliable supply, gun traffickers and straw purchasers go out of their way
10 to purchase firearms from Defendants. (*Id.* at 14–17 ¶¶ 32–37.) “[T]he unlawful flow of
11 arms into Mexico” is Defendants’ “economic lifeblood.” (*Id.* at 49 ¶ 121.)

12 Plaintiff provides illustrative examples of unlawful firearm and ammunition sales
13 made by Defendants, including sales made by Diamondback from October 1, 2018 to
14 March 1, 2022; by SnG Tactical from January 21, 2018 through April 18, 2022; by the
15 Hub from October 17, 2019 through December 1, 2021; by Ammo A-Z from January 16,
16 2018 through August 28, 2019; and by Sprague’s Sports from November 23, 2018
17 through March 25, 2020. (*Id.* at 22–48 ¶¶ 54–117.) Among the examples are a
18 December 27, 2018 sale of ammunition by Sprague’s Sports to Jose Rodrigo Felix-
19 Quiroz, who had no U.S. identification and was not lawfully able to purchase ammunition
20 (*id.* at 30 ¶ 58); the cash sale by SnG Tactical to Michael Anthony Sweigert of six AK-47
21 rifles, including five of the same model, over the course of approximately one week in
22 September 2018 (*id.* at 33 ¶¶ 68–71); a January 23, 2019 sale by Diamondback of
23 ammunition to two convicted felons who were on probation (*id.* at 35 ¶ 76); the sale by
24 SnG Tactical to Isaias Delgado of over \$80,000 in firearms, including 11 firearms over a
25 two-week period in March 2019, many paid for in cash (*id.* at 35–36 ¶ 77); and the March
26 25, 2020 sale by Sprague’s Sports of several hundred rounds of .50 caliber ammunition to
27 two men, one of whom was a teenager and both of whom may not have been American
28 citizens or residents (*id.* at 45 ¶ 108).

1 Each year, authorities trace a substantial number of guns to Defendants from crime
2 scenes in Mexico. (*Id.* at 48–49 ¶ 119.) Over the last five years, each of the Defendants
3 has been among the ten dealers with the most crime guns recovered in Mexico and traced
4 back to a dealership in Arizona. (*Id.* at 17 ¶ 37.) The number of guns traced from gun
5 dealers in Arizona to Mexico is a small fraction of the number of guns trafficked from
6 those dealers into Mexico, as the vast majority of trafficked guns are never recovered.
7 (*Id.* at 14, 48–49 ¶¶ 29, 119.) Based on estimates of the number of guns trafficked to the
8 number traced from the United States to Mexico, Plaintiff estimates Defendants each
9 participate in trafficking between 55 to 822 guns to Mexico annually. (*Id.* at 49 ¶ 120.)

10 Defendants’ conduct violates laws of Mexico, the United States, and Arizona
11 regulating the sale, importation, exportation, and marketing of firearms. (*Id.* at 8, 19, 53–
12 65, 67–103 ¶¶ 11–12, 41, 132–169, 174, 179–234.) Defendants violate U.S. laws
13 prohibiting aiding and abetting, conspiring with, or concealing another’s unlicensed
14 firearm dealing or exportation; falsely certifying ATF Form 4473 and selling firearms
15 while knowing or having reason to know the buyer has inaccurately completed the form;
16 making straw purchases; and trafficking firearms. (*Id.* at 19, 53–57, 59–61, 69, 71–79 ¶¶
17 41, 132–146, 154–161, 183, 191, 197–198, 201–202 (citing 18 U.S.C. §§ 2–4,
18 922(a)(1)(A), 922(m), 923(a), 924(a)(3), 924(k)(2), 932(b), 933(a)(1), 933(a)(3); 50
19 U.S.C. § 4819).) The federal firearm statutes that Defendants violate “are designed to
20 prevent crime by keeping guns out of the hands of certain persons who have a heightened
21 risk of misusing guns or are otherwise not entitled to possess them. (*Id.* at 53 ¶ 134
22 (citing 18 U.S.C. § 921 *et seq.*.)

23 **II. Legal Standard**

24 Dismissal of a complaint, or any claim within it, for failure to state a claim under
25 Federal Rule of Civil Procedure 12(b)(6) may be based on either a “‘lack of a cognizable
26 legal theory’ or ‘the absence of sufficient facts alleged under a cognizable legal theory.’”
27 *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121–22 (9th Cir. 2008)
28 (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)). “To

1 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
2 as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
3 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
4 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that
5 allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” *Id.* In deciding a Rule 12(b)(6) motion to dismiss, the Court must
7 draw all reasonable inferences in favor of the plaintiff. *Navarro v. Block*, 250 F.3d 729,
8 732 (9th Cir. 2001).

9 A “facial” attack on subject-matter jurisdiction under Federal Rule of Civil
10 Procedure 12(b)(1) accepts the truth of the plaintiff’s allegations but asserts that they “are
11 insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*,
12 373 F.3d 1035, 1039 (9th Cir. 2004). The court treats a facial attack on jurisdiction under
13 Rule 12(b)(1) as it would a motion under Rule 12(b)(6), taking the plaintiff’s allegations
14 as true, drawing all reasonable inference in the plaintiff’s favor, and determining whether
15 the allegations are legally sufficient to invoke the court’s jurisdiction. *Leite v. Crane Co.*,
16 749 F.3d 1117, 1121 (9th Cir. 2014).

17 **III. Discussion**

18 In their Joint Motion to Dismiss, Defendants argue that Plaintiff lacks Article III
19 standing, that the Protection of Lawful Commerce in Arms Act (“PLCAA”) bars this
20 lawsuit, and that the Complaint fails to state claims on which relief can be granted. (Doc.
21 19.)

22 **A. Article III Standing**

23 This Court may exercise jurisdiction only in the context of actual “[c]ases” and
24 “[c]ontroversies.” U.S. Const. Art. III, § 2, Cl. 1. “For a legal dispute to qualify as a
25 genuine case or controversy, at least one plaintiff must have standing to sue.” *Dep’t of*
26 *Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019). To establish Article III standing,
27 the plaintiff bears the burden of showing: (1) an “injury in fact” that is (2) “fairly
28 traceable to the challenged action of the defendant” and (3) “likely” to “be redressed by a

1 favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)
2 (internal quotation and alteration marks omitted).

3 Defendants do not challenge whether Plaintiff has suffered an injury for purposes
4 of Article III standing, but the parties dispute whether that injury is fairly traceable to
5 Defendants’ conduct and redressable by a favorable decision in this matter. (Doc. 19 at
6 12–16; Doc. 26 at 17–20; Doc. 29 at 6–7.)

7 **1. Fairly Traceable Injury**

8 Defendants argue that Plaintiff’s alleged harms are not fairly traceable to
9 Defendants’ conduct because they are caused by the independent actions of third parties
10 who criminally misuse firearms in Mexico after obtaining them through an attenuated
11 chain of events involving numerous other third parties. (Doc. 19 at 13–14.) Plaintiff
12 argues that the harms are fairly traceable to Defendants’ conduct because cartel violence
13 in Mexico is a predictable result of Defendants’ actions. (Doc. 26 at 17–19.)

14 “[I]ndirectness of injury” is “not necessarily fatal to standing,” but it makes
15 standing “substantially more difficult” to establish. *Simon v. Eastern Ky. Welfare Rights*
16 *Org.*, 426 U.S. 26, 44–45 (1976). When a plaintiff’s alleged injury depends on
17 independent and unlawful actions of third parties, the plaintiff must show that the “third
18 parties will likely react in predictable ways.” *Dep’t of Commerce*, 139 S. Ct. at 2566.
19 Speculative inferences and attenuated chains of conjecture are insufficient. *Simon*, 426
20 U.S. at 45; *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1152 (9th
21 Cir. 2000).

22 Drawing all reasonable inferences in favor of Plaintiff, the Complaint plausibly
23 alleges that, as a result of red flags including straw sales, bulk sales, cash sales, and
24 repeat sales of military-style weapons favored by Mexican cartels, Defendants knew or
25 should have known that firearms they sold would ultimately be provided to and used by
26 cartel members for unlawful purposes in Mexico, resulting in violence and economic
27 harm. The Court finds that the Complaint adequately alleges that the harms suffered by
28 Plaintiff and its citizens are fairly traceable to Defendants’ conduct. *See Estados Unidos*

1 *Mexicanos v. Smith & Wesson Brands, Inc.*, No. CV 21-11269-FDS, 2022 WL 4597526,
2 at *8–9 (D. Mass. Sept. 30, 2022), *rev'd on other grounds*, 91 F.4th 511 (1st Cir. 2024).²

3 **2. Redressability**

4 Defendants also argue that Plaintiff's alleged injuries cannot be redressed to any
5 measurable degree by a favorable decision in this matter. (Doc. 19 at 15–16.)
6 Defendants contend that, even if Plaintiff put them out of business, there would be no
7 appreciable reduction in the number of firearms going to Mexico from the United States.
8 (*Id.* at 15.) Defendants further argue that no potential financial remuneration obtained
9 from them could in any way redress the \$238 billion that Plaintiff claims in damage
10 resulting from cartel violence. (*Id.* at 15–16.) Plaintiff argues that redressability is
11 established because a favorable decision in this matter would reduce the risk of harm to
12 some extent. (Doc. 26 at 19–20.)

13 “[R]edressability analyzes the connection between the alleged injury and
14 requested judicial relief.” *Tucson v. City of Seattle*, 91 F.4th 1318, 1325 (9th Cir. 2024)
15 (internal quotation marks omitted). A plaintiff's burden in demonstrating redressability is
16 “relatively modest.” *Id.* (internal quotation marks omitted). The plaintiff must show only
17 that it is “likely, as opposed to merely speculative, that the injury will be redressed by a
18 favorable decision.” *Lujan*, 504 U.S. at 561 (internal quotation marks omitted).
19 Redressability is present if the plaintiff shows that a risk of substantial harm “would be
20 reduced to some extent” if the plaintiff obtained the relief requested. *Massachusetts v.*
21 *EPA*, 549 U.S. 497, 526 (2007). The plaintiff “need not show that a favorable decision
22 will relieve [its] every injury.” *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982)
23 (emphasis in original).

24 Here, the Complaint alleges that cartel violence, fueled by firearm trafficking, has
25 injured Plaintiff in the form of increased government spending on law enforcement,

26 ² Defendants rely on *Camden County Board of Chosen Freeholders v. Beretta U.S.A.*
27 *Corp.*, 123 F. Supp. 2d 245 (D.N.J. 2000) and *Ganim v. Smith & Wesson*, 780 A.2d 98,
28 100 (Conn. 2001) (Doc. 19 at 14), but those cases applied inapt standards. The Court in
Camden County Board of Chosen Freeholders applied the proximate cause framework
applicable to antitrust cases. *See* 123 F. Supp. 2d at 258-64. *Ganim* applied Connecticut
law and a Second Circuit case analyzing RICO standing. *See* 780 A.2d at 119-30.

1 criminal justice and other social services aimed at alleviating the gun violence epidemic;
2 reduced property values and economic output; and the injury to and death of government
3 officials. (Doc. 1 at 6, 108–111 ¶¶ 6, 247–248, 250–251, 253–256.) Plaintiff alleges that
4 Defendants each participate in trafficking 55 to 822 firearms into Mexico annually.
5 (Doc. 1 at 49 ¶ 120.) Although a favorable decision in this matter would not relieve all of
6 Plaintiff’s alleged injuries, it would reduce the alleged harm to some extent.
7 Accordingly, the Court finds that Plaintiff has met its “relatively modest” burden of
8 demonstrating redressability. *Tucson*, 91 F.4th at 1325. Plaintiff has standing for
9 purposes of Article III.

10 **B. *Parens Patriae* Standing**

11 Defendants argue for the first time in their Reply that Plaintiff lacks standing to
12 assert claims on behalf of its citizens in *parens patriae* because the doctrine does not
13 extend to foreign nations. (Doc. 29 at 24–25.) Although normally the Court would not
14 consider arguments raised for the first time in a reply brief, the Court will do so here,
15 because Plaintiff was afforded the opportunity to file a Surreply addressing the
16 arguments. (Doc. 37 at 10–12.)

17 *Parens patriae* “standing allows a sovereign to bring suit on behalf of its citizens
18 when the sovereign alleges injury to a sufficiently substantial segment of its population,
19 articulates an interest apart from the interests of particular private parties, and expresses a
20 quasi-sovereign interest.” *Table Bluff Rsv. (Wiyot Tribe) v. Philip Morris, Inc.*, 256 F.3d
21 879, 885 (9th Cir. 2001) (internal quotation and alteration marks omitted). Quasi-
22 sovereign interests include a sovereign’s “interest in the health and well-being—both
23 physical and economic—of its residents in general,” as well as a sovereign state or
24 territory’s “interest in not being discriminatorily denied its rightful status within the
25 federal system.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607 (1982).

26 The doctrine of *parens patriae* standing “developed as to States of the United
27 States.” *Estados Unidos Mexicanos v. DeCoster*, 229 F.3d 332, 335 (1st Cir. 2000). The
28 First Circuit has held that *parens patriae* “standing should not be recognized in a foreign

1 nation unless there is a clear indication of intent to grant such standing expressed by the
2 Supreme Court or by the two coordinate branches of government.” *Id.* at 336; *accord*
3 *Serv. Emps. Int’l Union Health & Welfare Fund v. Philip Morris Inc.*, 249 F.3d 1068,
4 1073 (D.C. Cir. 2001). The Ninth Circuit has not addressed the issue.

5 In *Alfred L. Snapp & Son*, the Supreme Court recognized *parens patriae* standing
6 in Puerto Rico based on its quasi-sovereign interest in protecting its residents from
7 discrimination. 458 U.S. at 608–09. The Supreme Court found in the alternative that
8 Puerto Rico also had *parens patriae* standing to pursue its residents’ interests in the full
9 benefits of applicable federal employment laws. *Id.* at 609–10. The Court made clear
10 this was an alternative holding and that Puerto Rico’s quasi-sovereign interest “in
11 securing observance of the terms under which it participates in the federal system,” was
12 “[d]istinct from” its interest in “the general well-being of its residents.” *Id.* at 607–08.
13 Because *Alfred L. Snapp & Son* makes clear that a quasi-sovereign interest in
14 participation in our federal system is distinct from a quasi-sovereign interest in the well-
15 being of a sovereign’s citizens, and only one quasi-sovereign interest is necessary for
16 recognition of *parens patriae* standing, the Court declines to adopt the First Circuit’s
17 holding that “interests in our system of federalism . . . are a critical element of *parens*
18 *patriae* standing.” *DeCoster*, 229 F.3d at 339. The Court notes that the Ninth Circuit has
19 recognized the possibility of *parens patriae* standing in Native American tribes, without
20 any discussion of federalism concerns. *See Table Bluff Reservation (Wiyot Tribe)*, 256
21 F.3d at 885.

22 Here, the Complaint adequately pleads the requirements of *parens patriae*
23 standing by alleging that firearm violence affects a substantial segment of the population
24 of Mexico, by asserting an interest of Plaintiff’s separate from those of private parties,
25 and by identifying a quasi-sovereign interest in the safety and well-being of Plaintiff’s
26 citizens.

27

28

C. Protection of Lawful Commerce in Arms Act

Defendants argue that Plaintiff's claims are barred at the outset by the PLCAA. (Doc. 19 at 16–29.) The PLCAA prohibits “qualified civil actions” from being brought in any federal or state court. 15 U.S.C. § 7902(a). A “qualified civil action” is an action “brought by any person against a manufacturer or seller of a qualified product” for harm “resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.” 15 U.S.C. § 7903(5)(A). The term “person” includes “any governmental entity.” 15 U.S.C. § 7903(3). The term “seller” includes federally licensed firearm dealers. 15 U.S.C. § 7903(6)(B). The term “qualified product” includes firearms and ammunition. 15 U.S.C. § 7903(4). The PLCAA provides a threshold immunity from suit. *See Ileto v. Glock, Inc.*, 565 F.3d 1126, 1142 (9th Cir. 2009).

Plaintiff, a governmental entity, qualifies as a “person” within the meaning of the PLCAA. *See* 15 U.S.C. § 7903(3); *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511, 525 (1st Cir. 2024) (“any governmental entity” includes foreign governments). Defendants are alleged to be federally licensed firearm dealers (Doc. 1 at 52 ¶ 130) and are thus “sellers” as defined by the PLCAA. *See* 15 U.S.C. § 7903(6)(B). This action alleges harm resulting from the criminal or unlawful misuse of firearms by third parties. *See id.* § 7903(5)(A). Accordingly, this action is a qualified civil liability action within the meaning of the PLCAA.

Plaintiff argues, however, that the PLCAA is inapplicable because it does not apply extraterritorially. (Doc. 26 at 30–36.) Plaintiff further argues that, even if the PLCAA applies, Plaintiff's claims fall within the predicate and negligent entrustment exceptions. (*Id.* at 20–30.)³

1. Extraterritoriality

Plaintiff argues that applying the PLCAA here constitutes an impermissible extraterritorial application because the alleged gun misuse and injury occurred in Mexico

³ Although Plaintiff's Complaint asserts a claim for negligence per se, Plaintiff does not argue in its Response that the PLCAA's negligence per se exception applies. (*See* Doc. 26 at 20–30.)

1 rather than the United States, and the focus of 15 U.S.C. § 7903(5)(A) is “indisputably
2 gun misuse and the resulting injury.” (Doc. 26 at 35.) Defendants argue that this case
3 involves a permissible domestic application of the PLCAA because Plaintiff is seeking to
4 hold Defendants liable in a United States court for conduct that occurred exclusively in
5 Arizona, and the PLCAA’s focus is “protecting U.S. companies from liability in U.S.
6 courts based on their sales and manufacturing of firearms in the United States.” (Doc. 29
7 at 12; *see also id.* at 12–15.)

8 “Absent clearly expressed congressional intent to the contrary, federal laws will be
9 construed to have only domestic application.” *RJR Nabisco, Inc. v. European Cmty.*,
10 579 U.S. 325, 335 (2016). This presumption against extraterritoriality applies unless
11 “Congress has affirmatively and unmistakably instructed that the statute” applies
12 extraterritorially. *Id.* If a statute does not apply extraterritorially, then a court must
13 determine whether the case at issue involves a domestic or extraterritorial application by
14 analyzing whether “the conduct relevant to the statute’s focus occurred in the United
15 States” or abroad. *Id.* at 337.

16 The PLCAA states that one of its purposes is to prevent lawsuits from imposing
17 “unreasonable burdens on interstate and foreign commerce.” 15 U.S.C. § 7901(b)(4).
18 However, such a general reference to foreign commerce is insufficient to overcome the
19 presumption against extraterritoriality. *See Morrison v. Nat’l Australia Bank Ltd.*, 561
20 U.S. 247, 262–63 (2010). The Court finds—and Defendants do not dispute (*see* Doc. 29
21 at 12–15)—that the PLCAA applies only domestically.

22 Having so found, the Court must determine whether applying the PLCAA in this
23 action constitutes a permissible domestic application by analyzing whether the alleged
24 conduct and circumstances relevant to the PLCAA’s focus occurred in the United States
25 or abroad.⁴ “The focus of a statute is the object of its solicitude, which can include the

26
27 ⁴ Plaintiff contends that the Court need consider only the first step of the *RJR Nabisco*
28 test because the PLCAA “affirmatively indicates that it does not apply to gun misuse and
injury abroad.” (Doc. 26 at 35.) However, the Court must proceed to the second step
anytime a statute is found not to apply extraterritorially. *See RJR Nabisco*, 579 U.S. at
337.

1 conduct it seeks to regulate, as well as the parties and interests it seeks to protect or
2 vindicate.” *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 413–14 (2018)
3 (internal quotation and alteration marks omitted). If a defendant’s alleged conduct
4 relevant to a statute’s focus occurred in the United States, “then the case involves a
5 permissible domestic application even if other conduct occurred abroad.” *RJR Nabisco*,
6 579 U.S. at 337.

7 The primary object of congressional concern in enacting the PLCAA was to
8 protect U.S. firearm dealers and manufacturers from incurring liability for “harm caused
9 by those who criminally or unlawfully misuse firearm products or ammunition products
10 that function as designed and intended.” 15 U.S.C. § 7901(a)(5); *see also id.* §
11 7901(b)(1). The statute’s “focus is regulating the types of claims that can be asserted
12 against firearm manufacturers and sellers to protect the interests of the United States
13 firearms industry and the rights of gun owners.” *Estados Unidos Mexicanos*, 91 F.4th at
14 520 (internal quotation and alteration marks omitted). Defendants’ alleged conduct
15 relevant to the PLCAA’s focus—the sale of firearms—occurred exclusively within the
16 United States. Accordingly, “the presumption against extraterritoriality does not bar
17 application of the PLCAA to this case.” *Id.* at 521.

18 **2. Predicate Exception**

19 The immunity from suit provided by the PLCAA is subject to several exceptions,
20 including, in relevant part, the predicate exception and actions for negligent entrustment
21 or negligence per se. *See* 15 U.S.C. § 7903(5)(A). The predicate exception includes any
22 actions “in which a manufacturer or seller of a qualified product knowingly violated a
23 State or Federal statute applicable to the sale or marketing of the product, and the
24 violation was a proximate cause of the harm for which relief is sought.” *Id.* §
25 7903(5)(A)(iii). The PLCAA provides specific examples of qualifying statutory
26 violations, including:

27 (I) any case in which the manufacturer or seller knowingly made any false entry
28 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

1 statement with respect to any fact material to the lawfulness of the sale or other
2 disposition of a qualified product; or
3 (II) any case in which the manufacturer or seller aided, abetted, or conspired with
4 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.

5 *Id.* A statute must be firearm-specific to fall within the predicate exception. *See Ileto*,
6 565 F.3d at 1136–37.

7 “[T]he predicate exception encompasses common law claims in addition to
8 statutory claims, as long as there is a predicate statutory violation that proximately causes
9 the harm.” *Estados Unidos Mexicanos*, 91 F.4th at 527. To satisfy the PLCAA’s
10 proximate cause requirement, a plaintiff must show “some direct relation between the
11 injury asserted and the injurious conduct alleged.” *Id.* at 534 (internal quotation marks
12 omitted); *see also Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 201 (2017) (harm
13 alleged must have “sufficiently close connection” to statutory violation).⁵

14 Plaintiff argues that the PLCAA’s predicate exception allows all its tort claims to
15 proceed because the Complaint alleges that Defendants violated numerous statutes
16 applicable to the marketing and sale of firearms and the violations caused harm to
17 Plaintiff. (Doc. 26 at 21–28.) Defendants contend that the Complaint does not contain
18 sufficient factual allegations to plausibly allege violations of any firearm-specific statutes
19 and that Plaintiff cannot show any such violations proximately caused its alleged injuries.
20 (Doc. 19 at 26–29; Doc. 29 at 16–19.)

21 Defendants’ arguments disregard the well-pleaded factual allegations of the
22 Complaint. The Complaint alleges that Defendants knowingly violated—or aided,
23 abetted, and/or conspired in the violation of—firearm-specific laws of the United States,
24 including unlicensed firearm dealing and exportation, straw sales, firearm trafficking, and
25 false entries on ATF Form 4473. (*See* Doc. 1 at 19, 53–57, 59–61, 69, 71–79 ¶¶ 41, 132–

26 _____
27 ⁵ Plaintiff argues that the law of Mexico controls the proximate-cause analysis for
28 purposes of the predicate exception. (Doc. 26 at 35.) The Court disagrees and finds that
traditional understandings of proximate cause derived from federal case law are
applicable in analyzing the predicate exception of the PLCAA. *See Estados Unidos
Mexicanos*, 91 F.4th at 534 n.8.

1 146, 154–161, 183, 191, 197–198, 201–202 (citing 18 U.S.C. §§ 2–4, 922(a)(1)(A),
2 922(m), 923(a), 924(a)(3), 924(k)(2), 932(b), 933(a)(1), 933(a)(3); 50 U.S.C. § 4819).⁶
3 The Complaint provides illustrative examples of unlawful firearm sales. (*Id.* at 22–48 ¶¶
4 54-117.) Although none of the illustrative examples occurred after the June 25, 2022
5 effective date of the federal prohibition on straw sales and firearm trafficking, the
6 Complaint specifies that the examples are merely illustrative and not exhaustive, and that
7 each Defendant has continued its policy of making straw sales from and after June 25,
8 2022. (*Id.* at 48, 78 ¶¶ 117, 197.)

9 Furthermore, the Complaint contains factual allegations that correlate with the
10 specific examples provided by 15 U.S.C. § 7903(5)(A)(iii)(I)–(II). The Complaint
11 alleges that Defendants falsely certified and aided and abetted purchasers making false
12 statements in ATF Form 4473. *See* 15 U.S.C. § 7903(5)(a)(iii)(I). The Complaint also
13 alleges that Defendants aided, abetted, or conspired with straw purchasers and firearm
14 traffickers to sell firearms while knowing or having reasonable cause to believe that the
15 actual buyer was a prohibited possessor. *See id.* § 7903(5)(a)(iii)(II). In addition, the
16 Complaint provides several illustrative examples of direct sales to prohibited possessors.
17 (*See* Doc. 1 at 30, 35, 45 ¶¶ 58, 76, 108.)

18 The Complaint also plausibly alleges a direct relationship between Defendants’
19 conduct and Plaintiff’s injuries. Specifically, the Complaint alleges that Defendants
20 know military-style assault weapons are preferred by violent cartels in Mexico and
21 routinely trafficked into Mexico but that, despite this knowledge, Defendants profit by
22 continuing to engage in straw sales, multiple sales, and repeat sales to buyers who are in
23 essence agents of the cartels, with such conduct foreseeably resulting in harm from gun
24 violence in Mexico. (*See id.* at 4, 22, 48–49, 51, 62 ¶¶ 1, 53, 117, 121, 125, 167.)

25 Accordingly, the Complaint adequately alleges that Defendants’ knowing
26 violation of firearm-specific statutes proximately caused Plaintiff’s injuries for purposes

27 _____
28 ⁶ The Complaint also alleges violations of firearm-specific laws of Mexico, but the
PLCAA’s predicate exception is limited to United States federal or state statutory
violations. *See* 15 U.S.C. § 7903(5)(A).

1 of the predicate exception to the PLCAA. *See Estados Unidos Mexicanos*, 91 F.4th at
2 529–38. Plaintiff’s claims may proceed pursuant to the predicate exception, and the
3 Court need not analyze the PCLAA’s other exceptions, such as the negligence per se and
4 negligent entrustment exceptions.

5 **D. Consumer Fraud Act**

6 Plaintiff alleges a violation of Arizona’s CFA in Count Seven of the Complaint.
7 (Doc. 1 at 121–123 ¶¶ 303–09.) Defendants argue that Plaintiff’s CFA claim fails
8 because Plaintiff is an improper party to bring a claim under the CFA, there is no
9 allegation that Plaintiff relied on any alleged misrepresentations, the advertisements at
10 issue do not make false or misleading statements, and permitting Plaintiff’s CFA claim to
11 proceed would violate Defendants’ First Amendment rights. (Doc. 19 at 32–34.)
12 Plaintiff argues that the CFA requires only a misrepresentation made in connection with
13 the sale of merchandise, and that the statute does not require any direct misrepresentation
14 made by the defendant to the plaintiff. (Doc. 26 at 44.) Plaintiff further argues that the
15 CFA does not prohibit claims by governmental entities, and that Defendants’
16 advertisement of firearms into the civilian market using military imagery and language is
17 actionable under the CFA. (*Id.* at 44–45.) Finally, Plaintiff argues that Defendants have
18 no First Amendment right to falsely advertise their products. (*Id.* at 45.)

19 The CFA provides:

20 The act, use or employment by any person of any deception, deceptive or
21 unfair act or practice, fraud, false pretense, false promise,
22 misrepresentation, or concealment, suppression or omission of any material
23 fact with intent that others rely on such concealment, suppression or
24 omission, in connection with the sale or advertisement of any merchandise
25 whether or not any person has in fact been misled, deceived or damaged
26 thereby, is declared to be an unlawful practice.

24 A.R.S. § 44-1522(A).

25 The purpose of the CFA “is to provide injured consumers with a remedy to
26 counteract the disproportionate bargaining power often present in consumer
27 transactions.” *Waste Mfg. & Leasing Corp. v. Hambicki*, 900 P.2d 1220, 1224 (Ariz.
28 App. 1995). To that end, the CFA implicitly creates a private right of action in favor of

1 consumers. *Sellinger v. Freeway Mobile Home Sales, Inc.*, 521 P.2d 1119, 1122 (Ariz.
2 1974).

3 To succeed on a CFA claim, “a plaintiff must show a false promise or
4 misrepresentation made in connection with the sale or advertisement of merchandise and
5 consequent and proximate injury resulting from the promise.” *Kuehn v. Stanley*, 91 P.3d
6 346, 351 (Ariz. App. 2004). “An injury occurs when a consumer relies, even
7 unreasonably” on the “false or misrepresented information.” *Id.* “[A] direct merchant-
8 consumer transaction” is not required. *Watts v. Medicis Pharm. Corp.*, 365 P.3d 944, 953
9 (Ariz. 2016). However, a misrepresentation made to the plaintiff, and reliance upon that
10 misrepresentation, is necessary. *State Farm Fire & Cas. Co. v. Amazon.com Inc.*, No.
11 CV-17-01994-PHX-JAT, 2018 WL 1536390, at *5 (D. Ariz. Mar. 29, 2018)
12 (misrepresentation to plaintiff required); *Maricopa Cnty. v. Office Depot, Inc.*, No. 2:14-
13 cv-1372-HRH, 2014 WL 6611562, at *7 (D. Ariz. Nov. 21, 2014) (same); *Ventures Edge*
14 *Legal PLLC v. GoDaddy.com LLC*, No. CV-15-02291-PHX-GMS, 2018 WL 619723, at
15 *3 (D. Ariz. Jan. 30, 2018) (plaintiff must show reliance on misleading advertisement to
16 its detriment).

17 Here, Plaintiff’s Complaint identifies advertisements for products that may be
18 lawfully sold under federal and state law. Truthful advertisements for lawful products are
19 protected by the First Amendment. *See Thompson v. Western States Med. Ctr.*, 535 U.S.
20 357, 377 (2002); *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 571 (2001); *In re R.M.J.*,
21 455 U.S. 191, 203 (1982). Though deceptive advertisements are not protected, *In re*
22 *R.M.J.*, 455 U.S. at 203, the Complaint fails to identify any misrepresentations in the
23 advertisements at issue. The Complaint alleges that Defendants advertise firearms as
24 military-style weapons, but it also alleges that the firearms are, in fact, military-style
25 weapons. (*See, e.g.*, Doc. 1 at 21–22, 83 ¶¶ 49-53, 217.)

26 Plaintiff relies on *Soto v. Bushmaster Firearms International, LLC*, 202 A.3d 262
27 (Conn. 2019), to support its position that a wrongful advertising claim is permitted when
28 advertisements promote the use of civilian assault rifles for offensive, military-style

1 attack missions. (Doc. 26 at 45.) In *Soto*, the Connecticut Supreme Court held that a
2 claim premised on a theory that advertisements unethically promoted illegal conduct is
3 actionable under the Connecticut Unfair Trade Practices Act (“CUTPA”). 202 A.3d at
4 291. Plaintiff has not cited any authority showing that a similar claim is actionable under
5 Arizona’s CFA. (See Doc. 26 at 43–45.) But even assuming that Arizona’s CFA
6 prohibits the use of military imagery to advertise civilian assault rifles, the Complaint
7 nevertheless fails to state a claim under the CFA. Unlike the statute at issue in *Soto*,
8 Arizona’s CFA requires reliance. *Compare Ventures Edge Legal PLLC*, at *3 (reliance
9 required under Arizona’s CFA), with *Hinchliffe v. Am. Motors Corp.*, 440 A.2d 810, 815–
10 16 (Conn. 1981) (reliance not a required element under CUTPA). Plaintiff does not
11 allege that it or its citizens relied on any of Defendants’ allegedly misleading
12 advertisements to their detriment. Accordingly, the Court will grant Defendants’ Motion
13 to Dismiss with respect Plaintiff’s CFA claim.⁷

14 **E. RICO**

15 In Counts Nine through Thirteen of the Complaint, Plaintiff alleges RICO
16 violations. (Doc. 1 at 124–137 ¶¶ 314–343.) Defendants argue that Plaintiff lacks
17 standing to assert RICO claims; Plaintiff cannot establish proximate causation for the
18 alleged predicate offenses; the Complaint fails to allege a pattern of racketeering activity
19 or a RICO enterprise; RICO does not allow recovery for foreign injuries; and equitable
20 relief is unavailable in private civil RICO actions. (Doc. 19 at 34–48.)

21 In relevant part, RICO prohibits “any person employed by or associated with any
22 enterprise engaged in” interstate or foreign commerce from conducting or participating
23 “directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of
24 racketeering activity.” 18 U.S.C. § 1962(c). RICO’s civil remedies provision, 18 U.S.C.
25 § 1964, has several parts. Section 1964(a) provides that district courts “have jurisdiction

26 ⁷ Defendants also argue (1) that the judicially created private cause of action under the
27 CFA should not extend to foreign governments, (2) that Mexico is not a “person” who
28 may sue under the private cause of action recognized in *Sellinger*, and (3) that only the
Arizona Attorney General may enforce the CFA on behalf of the citizenry. (Doc. 19 at
33; Doc. 29 at 24.) Because the CFA claim fails on other grounds, the Court does not
reach these issues.

1 to prevent and restrain violations” of § 1962 “by issuing appropriate orders, including . . .
2 ordering any person to divest himself of any interest, direct or indirect, in any enterprise”
3 and “imposing reasonable restrictions on the future activities or investments of any
4 person.” Section 1964(b) permits the Attorney General to institute proceedings. Section
5 1964(c) provides that “[a]ny person injured in his business or property by reason” of a
6 violation of 18 U.S.C. § 1962 “may sue therefor in any appropriate United States district
7 court and shall recover threefold the damages he sustains and the cost of the suit,
8 including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c).

9 In a private civil action, a plaintiff has RICO standing only if the plaintiff satisfies
10 § 1964(c)’s injury requirement. *Canyon Cnty. v. Syngenta Seeds, Inc.*, 519 F.3d 969, 975
11 (9th Cir. 2008). To meet this requirement, the plaintiff must allege “harm to a specific
12 business or property interest.” *Id.* (internal quotation marks omitted). “[A] governmental
13 entity cannot rely on expenditures alone to establish civil RICO standing.” *Id.* at 976.
14 Furthermore, because § 1964(c) does not apply extraterritorially, a private RICO plaintiff
15 “must allege and prove a *domestic* injury to its business or property.” *RJR Nabisco*, 579
16 U.S. at 346 (emphasis in original).

17 Section 1964(c) “does not expressly limit private plaintiffs” to monetary relief, nor
18 does Section 1964(a) “expressly limit the availability of the illustrative equitable
19 remedies to the government.” *Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1082–
20 83 (9th Cir. 1986). However, the Ninth Circuit has held, based on the language and
21 legislative history of § 1964, that private RICO plaintiffs are limited to recovering
22 damages, costs, and fees, and cannot obtain equitable relief. *Religious Tech. Ctr.*, 796
23 F.2d at 1083–89. Furthermore, the Supreme Court has indicated that only the Attorney
24 General may bring suit under § 1964(a), that private civil causes of action may be
25 brought only under § 1964(c), and that, if equitable relief can be sought in a private civil
26 cause of action, any claim for such relief “based on foreign injuries” would necessarily be
27 foreclosed by § 1964(c)’s requirement of a domestic injury to business or property. *RJR*
28 *Nabisco*, 579 U.S. at 331, 354 n.13.

1 Plaintiff does not argue in response to Defendants’ Motion to Dismiss that it can
2 satisfy § 1964(c)’s requirement of showing a domestic injury to business or property.
3 (See Doc. 26 at 49–60.) Instead, Plaintiff argues that it is seeking equitable relief under §
4 1964(a) rather than damages under § 1964(c), and that there is no requirement under §
5 1964(a) to show injury to business or property. (Doc. 26 at 49.) But Plaintiff cites no
6 controlling authority showing that a private plaintiff—as opposed to the Attorney
7 General—can bring suit under § 1964(a), and Plaintiff’s assertion is contradicted by the
8 Supreme Court’s guidance in *RJR Nabisco*.⁸ See 579 U.S. at 331 (civil proceedings may
9 be brought by the Attorney General under § 1964(a), and § 1964(c) separately creates a
10 cause of action for private parties); see also *Hengle v. Treppa*, 19 F.4th 324, 353–54
11 (same).

12 Plaintiff also argues that *Religious Technology Center* held only that a private
13 RICO plaintiff cannot obtain injunctive relief, leaving open the question whether a
14 private RICO plaintiff can obtain non-injunctive equitable relief. (Doc. 26 at 58.) But
15 the holding of *Religious Technology Center* is not so limited: it applies to all equitable
16 relief. See 796 F.2d at 1088 (finding that RICO’s “legislative history and statutory
17 language suggest overwhelmingly that no private equitable action should be implied
18 under civil RICO.”). Furthermore, even if equitable relief were available in a private
19 civil RICO action, Section 1964(c)’s requirement of a domestic injury to business or
20 property would apply to claims seeking such relief, *RJR Nabisco*, 579 U.S. at 354 n.13,
21 and Plaintiff has not alleged—and does not argue that it can allege—any domestic injury
22 to business or property for purposes of RICO standing. Accordingly, the Court finds that
23 Plaintiff’s RICO claims must be dismissed.⁹

24

25

26
27 ⁸ *United States v. Philip Morris USA Inc.*, 566 F.3d 1095 (D.C. Cir. 2009), relied upon by
28 Plaintiff (Doc. 26 at 57), provides no support for this proposition, as the United States
brought the RICO claims in that matter.

⁹ Because dismissal is required on these grounds, the Court does not address Defendants’
remaining arguments challenging the viability of Plaintiff’s RICO claims.

1 **F. Tort Claims**

2 In Counts One through Six of the Complaint, Plaintiff asserts tort claims for
3 negligence, public nuisance, negligent entrustment, negligence per se, gross negligence,
4 and unjust enrichment. (Doc. 1 at 112–121 ¶¶ 261–302.) The parties dispute whether the
5 substantive laws of Arizona or Mexico apply to these claims. (Doc. 26 at 36–38; Doc. 29
6 at 7–10; Doc. 37 at 2–6.) The parties further dispute whether Plaintiff has adequately
7 alleged proximate causation for purposes of these claims. (Doc. 19 at 29–31; Doc. 26 at
8 38–43.) Finally, the parties dispute whether Plaintiff has alleged sufficient facts to satisfy
9 the elements of each of these claims. (Doc. 19 at 19–23, 48–52; Doc. 26 at 28–30, 45–
10 48, 60–61; Doc. 29 at 10–12, 20–21.)

11 **1. Choice of Law**

12 The parties agree that Arizona’s conflict-of-law principles determine which
13 substantive laws apply to Plaintiff’s tort claims, but they dispute whether those principles
14 favor the application of the laws of Mexico or Arizona. (*See* Doc. 26 at 36–38; Doc. 29
15 at 7–10.) Plaintiff argues that the substantive laws of Mexico apply because Plaintiff’s
16 injuries occurred in Mexico, Defendants engaged in transnational conduct by
17 participating in trafficking firearms to Mexico; Defendants foresaw that the firearms they
18 sold would cause injury in Mexico; and Plaintiff and its citizens are domiciled in Mexico.
19 (Doc. 26 at 36–38; Doc. 37 at 2–5.) Defendants argue that the substantive laws of
20 Arizona apply because Plaintiff’s claims are based on Defendants’ sale of firearms within
21 Arizona in accordance with federal and state law. (Doc. 29 at 8–9.) Defendants contend
22 that diminished weight should be given to the “place of injury” factor because
23 intervening third-party acts separate Defendants’ conduct from Plaintiff’s alleged injuries
24 in Mexico. (*Id.* at 9–10.) Defendants further argue that principles of international comity
25 require the application of Arizona law because subjecting firearm sales within the United
26 States to Mexican tort law would violate the Second Amendment. (*Id.* at 10.) Plaintiff
27 contends in reply that neither international comity nor public policy supports the
28 application of Arizona law because there is no Second Amendment right to, nor public

1 policy protecting, the trafficking of firearms into Mexico. (Doc. 37 at 5–6.)

2 A federal court sitting in diversity applies the choice-of-law rules of the forum
3 state. *Abogados v. AT&T, Inc.*, 223 F.3d 932, 934 (9th Cir. 2000). Under Arizona’s
4 choice-of-law rules, courts apply the substantive law of the state “having the most
5 significant relationship to both the occurrence and the parties,” considering the “place
6 where the injury occurred,” the “place where the conduct causing the injury occurred,”
7 the domicile of the parties, and the place where the parties’ relationship, if any, is
8 centered. *Bates v. Superior Ct., Maricopa Cnty.*, 749 P.2d 1367, 1370 (Ariz. 1988)
9 (citing Restatement (2d) of Conflict of Laws § 145 (1971)). These contacts must be
10 evaluated “according to their relative importance with respect to the particular issue.”
11 *Id.* (quoting Restatement § 145(2)). The place of injury usually “plays an important role”
12 in the selection of the applicable law governing tort claims, but its importance may be
13 diminished in situations in which “it bears little relation to the occurrence and the parties
14 with respect to the particular issue,” such as when “the defendant had little, or no, reason
15 to foresee that his act would result in injury in the particular state.” Restatement § 145,
16 cmt. e.

17 Other factors relevant to determining the choice of applicable law include the
18 needs of the interstate and international systems; the relevant policies of the forum state
19 and other interested states; the protection of justified expectations; the policies underlying
20 the applicable field of law; certainty, predictability, and uniformity of result; and ease of
21 determining and applying the law. *See* Restatement § 6(2). “The ‘justifiable
22 expectations’ factor applies where parties consciously mold their conduct to conform to
23 the law of a particular forum.” *Garcia v. Gen. Motors Corp.*, 990 P.2d 1069, 1077 (Ariz.
24 App. 1999).

25 Here, Plaintiff and its citizens are domiciled in Mexico, but all Defendants are
26 domiciled in Arizona. Defendants’ alleged conduct—the sale of firearms—occurred
27 exclusively in Arizona. To the extent Plaintiff and Defendants have any relationship, it
28 appears to be centered in Arizona, where Defendants’ allegedly unlawful firearm sales

1 occurred. Defendants mold their relevant conduct to conform to the laws of Arizona and
2 of the United States, rather than the laws of Mexico. Accordingly, Defendants have a
3 justifiable expectation in the application of Arizona law to the tort claims at issue.
4 Plaintiff’s injuries occurred in Mexico but, although the Court finds the injuries
5 foreseeable, the weight afforded to the place-of-injury factor is nevertheless diminished at
6 least to some degree because the injuries resulted from intervening acts by third parties.
7 *See Fanning v. Dianon Sys., Inc.*, No. 05-cv-01899-LTB-CBS, 2006 WL 2385210, at *3
8 (D. Colo. Aug. 16, 2006) (diminished weight to place of injury). Furthermore, applying
9 the tort law of Mexico to the claims at issue in this case could raise complex concerns
10 involving international relations and the intersection between the Second Amendment
11 and foreign laws.

12 Given all the factors, the Court finds that Arizona overall has the most significant
13 relationship to the occurrence and the parties. Accordingly, the Court will apply Arizona
14 law to Plaintiff’s tort claims and will disregard arguments made in support of the claims
15 that are premised on the tort law of Mexico.

16 **2. Proximate Causation**

17 A proximate cause of an injury is one “which, in a natural and continuous
18 sequence, unbroken by any efficient intervening cause, produces an injury, and without
19 which the injury would not have occurred.” *Stearney v. United States*, 392 F. Supp. 3d
20 1037, 1053 (D. Ariz. 2019) (internal quotation marks omitted). The question of
21 proximate causation often hinges on foreseeability of the harm. *Id.* An intervening
22 cause—e.g., “an independent cause that occurs between a defendant’s negligent conduct
23 and the final harm and is necessary in bringing about that harm”—will be considered a
24 superseding cause that “relieves the original negligent actor from liability” only if it “was
25 unforeseeable by a reasonable person in the position of the original actor and when,
26 looking backward, after the event, the intervening act appears extraordinary.” *Torres v.*
27 *Jai Dining Servs. (Phoenix) Inc.*, 497 P.3d 481, 484 (Ariz. 2021) (internal quotation
28 marks and emphasis omitted). The issue of proximate causation is ordinarily a question

1 for the finder of fact. *Robertson v. Sixpence Inns of Am., Inc.*, 789 P.2d 1040, 1047 (Ariz.
2 1990).

3 Defendants argue that Plaintiff cannot establish proximate causation as a matter of
4 law because the alleged injuries are too remote from Defendants' alleged unlawful
5 conduct, intervening criminal acts break the chain of causation, and Plaintiff's claims of
6 injury are derivative. (Doc. 19 at 29–31.) Plaintiff argues that the Complaint adequately
7 pleads proximate causation because it alleges that Plaintiff's injuries were a foreseeable
8 result of Defendants' alleged sales of firearms to straw purchasers and gun traffickers.
9 (Doc. 26 at 38–42.) Plaintiff notes that Defendants' argument concerning derivative
10 injury has no applicability to Plaintiff's claims asserted on behalf of its citizens in *parens*
11 *patriae*. (*Id.* at 42.) Plaintiff further argues that it has suffered direct injuries in the form
12 of increased governmental spending, death and injury to members of its police and
13 military forces, and destruction of government property. (*Id.* at 42–43.)

14 The Complaint plausibly alleges that the criminal acts of cartels in Mexico are a
15 foreseeable consequence of Defendants' alleged misconduct of selling firearms to straw
16 purchasers and firearm traffickers. Accordingly, the Court finds that the Complaint
17 adequately pleads proximate causation. Furthermore, Plaintiff's alleged injuries are not
18 wholly derivative of harm to third parties. As an initial matter, Plaintiff asserts claims on
19 behalf of its citizens in *parens patriae*, but even disregarding the claims asserted in
20 *parens patriae*, Plaintiff alleges injuries that it has suffered directly, including increased
21 costs of law enforcement and other expenditures. (*See* Doc. 1 at 108–09 ¶¶ 247–248.)
22 These alleged injuries are not “wholly derivative of harm to a third party.” *Laborers*
23 *Local 17 Health & Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 236 (2d Cir. 1999);
24 *see also Estados Unidos Mexicanos*, 91 F.4th at 536–37.

25 **3. Duty of Care—Negligence, Gross Negligence, and Negligence Per Se**

26 “To establish a defendant’s liability for a negligence claim, a plaintiff must prove:
27 (1) a duty requiring the defendant to conform to a certain standard of care; (2) breach of
28 that standard; (3) a causal connection between the breach and the resulting injury; and (4)

1 actual damages.” *CVS Pharmacy, Inc. v. Bostwick ex rel. Cnty. of Pima*, 494 P.3d 572,
2 578 (Ariz. 2021) (quoting *Quiroz v. ALCOA Inc.*, 416 P.3d 824, 827–28 (Ariz. 2018)). A
3 gross negligence claim requires an additional showing of “gross, willful, or wanton
4 conduct.” *Noriega v. Town of Miami*, 407 P.3d 92, 98 (Ariz. App. 2017) (internal
5 quotation and alteration marks omitted). The existence of a duty of care “is a matter of
6 law for the court to decide,” while the issues of breach and causation “are factual issues
7 usually decided by the jury.” *Gipson v. Kasey*, 150 P.3d 228, 230 (Ariz. 2007).

8 “Duty is defined as an obligation, recognized by law, which requires the defendant
9 to conform to a particular standard of conduct in order to protect others against
10 unreasonable risks of harm.” *Gipson*, 150 P.3d at 230 (internal quotation marks omitted).
11 Under Arizona law, “foreseeability is not a factor to be considered by courts when
12 making determinations of duty.” *Id.* at 231. A duty of care is established either by
13 “common law special relationships or relationships created by public policy.” *CVS*
14 *Pharmacy*, 494 P.3d at 578. “[T]he primary sources for identifying public policy are
15 state and federal statutes,” but in “the absence of such legislative guidance, duty may be
16 based on . . . case law or Restatement sections consistent with Arizona law.” *Quiroz*, 416
17 P.3d at 827. Criminal statutes establish a tort duty if they are “designed to protect the
18 class of persons, in which the plaintiff is included, against the risk of the type of harm
19 which has in fact occurred as a result of its violation.” *Gipson*, 150 P.3d at 233 (internal
20 quotation marks omitted); *see also Alaface v. Nat’l Inv. Co.*, 892 P.2d 1375, 1385 (Ariz.
21 App. 1994) (a statute may establish the applicable standard of care if its purpose is: (1)
22 “to protect a class of persons which includes the one whose interest is invaded,” (2) “to
23 protect the particular interest which is invaded,” (3) “to protect that interest against the
24 kind of harm which has resulted,” and (4) “to protect that interest against the particular
25 hazard from which the harm results”).

26 “Under Arizona law, negligence per se is not a cause of action separate from
27 common law negligence,” but, instead, “is a doctrine under which a party can establish
28 the duty and breach elements of a negligence claim based on a violation of a statute that

1 supplies the relevant duty of care.” *Manion v. Ameri-Can Freight Sys., Inc.*, No. CV-17-
2 03262-PHX-DWL, 2019 WL 8325752, at *3 (D. Ariz. Oct. 11, 2019) (internal quotation
3 and alteration marks omitted); *see Brannigan v. Raybuck*, 667 P.2d 213 (Ariz. 1983)
4 (violating a statute “intended as a safety regulation” constitutes negligence and
5 negligence per se).

6 Defendants argue that they did not owe a duty of care to Plaintiff because “they
7 are alleged to have done nothing more than sell legal firearms into the stream of U.S.
8 domestic commerce.” (Doc. 19 at 51.) Defendants further argue that Plaintiff’s status as
9 a foreign sovereign, rather than a victim of gun violence in the United States, highlights
10 the lack of duty. (*Id.*) Defendants aver that there is no duty to control the conduct of a
11 third party absent a special relationship between the defendant and the third person or
12 plaintiff. (*Id.* at 50.) Finally, Defendants assert that policy considerations—including the
13 Second Amendment’s protection of the right to keep and bear arms and Arizona law
14 prohibiting political subdivisions from commencing civil actions against firearm sellers
15 for damages arising from the unlawful misuse of firearms by third parties—counsel
16 against finding a duty of care. (*Id.* at 51–52.) With respect to Plaintiff’s negligence per
17 se theory of liability, Defendants argue that the Complaint fails to allege facts plausibly
18 showing that Defendants violated any particular statute and that Plaintiff, as a foreign
19 nation, does not fall within the class of persons that any of the federal firearm statutes
20 cited in the Complaint were designed to protect. (Doc. 19 at 19–20.)

21 Plaintiff argues that the public policy reflected in statutes prohibiting unlawful
22 firearm exports, straw sales, and firearm trafficking supports recognizing a duty on
23 firearm dealers not to engage in or abet that conduct, and the Complaint plausibly alleges
24 violations of such statutes. (Doc. 26 at 22, 60–61.) Plaintiff further argues that
25 Defendants cannot negate their duty of care by invoking the Second Amendment because
26 Defendants have no Second Amendment right to supply firearms to drug cartels. (*Id.* at
27 61.)

28 As an initial matter, the Court rejects Defendants’ assertion that no duty exists

1 absent a special relationship between Defendants and Plaintiff or the cartel members who
2 use firearms for violent purposes in Mexico. While special relationships may give rise to
3 a duty of care, they are not required when public policy supports the existence of a legal
4 obligation. *Gipson*, 150 P.3d at 232–33. To support their position that a special
5 relationship is required, Defendants rely on *Bloxham v. Glock Inc.* (Doc. 19 at 50), a case
6 in which the Arizona Court of Appeals found that, due to a lack of a special relationship,
7 a firearm manufacturer and the operators of a gun show owed no duty to prevent a third
8 party who purchased a firearm at the gun show from harming others. *See* 53 P.3d 196,
9 199–02 (Ariz. App. 2002). In *Bloxham*, however, there was no allegation that the
10 defendants had violated any laws, and the court therefore distinguished *Crown v.*
11 *Raymond*, 764 P.2d 1146 (Ariz. App. 1988), in which the Arizona Court of Appeals held
12 that a defendant’s violation of a statute prohibiting the furnishing of a firearm to a minor
13 without parental consent constituted negligence per se. *Bloxham*, 53 P.3d at 202; *see also*
14 *Crown*, 764 P.2d at 1148–49. Here, Plaintiff alleges that Defendants’ conduct violated
15 federal statutes that “are designed to prevent crime by keeping guns out of the hands of
16 certain persons who have a heightened risk of misusing guns or are otherwise not entitled
17 to possess them. (Doc. 1 at 53 ¶ 134 (citing 18 U.S.C. § 921 *et seq.*)). Because Plaintiff
18 alleges that Defendants violated federal statutes intended to prevent firearm misuse, this
19 action is similar to *Crown* and distinguishable from *Bloxham*. Although there does not
20 appear to be Arizona Supreme Court authority directly on point, *Crown* supports a
21 finding that statutes regulating the sale of firearms may establish a tort duty of care.¹⁰

22 In addition to alleging the violation of statutes designed to prevent firearm misuse,
23 the Complaint plausibly alleges that Plaintiff and its citizens, as victims of gun violence,

24 ¹⁰ “When interpreting state law, federal courts are bound by decisions of the state’s
25 highest court” and, in the absence of any such decisions, “must predict how the highest
26 state court would decide the issue using intermediate appellate court decisions, decisions
27 from other jurisdictions, statutes, treatises, and restatements as guidance.” *Strother v. S.*
28 *Cal. Permanente Med. Grp.*, 79 F.3d 859, 865 (9th Cir. 1996) (internal quotation marks
omitted); *see also Medical Lab. Mgmt. Consultants v. American Broad. Cos.*, 306 F.3d
806, 812 (9th Cir. 2002) (“When a decision turns on applicable state law and the state’s
highest court has not adjudicated the issue, a federal court must make a reasonable
determination of the result the highest state court would reach if it were deciding the
case.” (internal quotation marks omitted)).

1 are within the class of persons the statutes at issue are designed to protect. Accordingly,
2 the Complaint adequately alleges a duty of care arising from public policy identified from
3 federal statutes.

4 The Court is unconvinced by Defendants' arguments that the Second Amendment
5 and A.R.S. § 12-714(A) negate recognizing a duty of care here. The Second Amendment
6 does not protect unlawful firearm sales. *See District of Columbia v. Heller*, 554 U.S.
7 570, 626–27 (2008) (Second Amendment does not prohibit “laws imposing conditions
8 and qualifications on the commercial sale of arms” or laws forbidding felons from
9 possessing firearms). And A.R.S. § 12-714(A) is intended to protect from liability
10 businesses engaged in the lawful, rather than unlawful, sale of firearms. *See* A.R.S. § 12-
11 714(B)(3).¹¹

12 Because the Complaint adequately alleges a duty of care under a negligence per se
13 theory, and Defendants raise no other grounds for dismissal of Plaintiff's negligence,
14 gross negligence, and negligence per se claims, the Court will deny Defendants' Motion
15 to Dismiss as to those claims.

16 **4. Public Nuisance**

17 “[A] public nuisance is broadly defined as an unreasonable interference with a
18 right common to the general public.” *Mutschler v. City of Phoenix*, 129 P.3d 71, 77
19 (Ariz. App. 2006) (internal quotation marks omitted). The interference “must affect a
20 considerable number of people or an entire community or neighborhood.” *Spur Indus.,*
21 *Inc. v. Del E. Webb Dev. Co.*, 494 P.2d 700 (Ariz. 1972). “Private parties may bring
22 public nuisance claims in Arizona if the alleged nuisance caused the plaintiff special
23 injury, meaning damage that is different in kind or quality from that suffered by the
24 public in common.” *Hopi Tribe v. Arizona Snowbowl Resort Ltd. P'ship*, 430 P.3d 362,
25 363–64 (Ariz. 2018) (internal quotation and alteration marks omitted).

26 Defendants argue that Plaintiff lacks standing to assert a claim for public nuisance
27 because it is not a member of the general public; that Mexico has not alleged any special

28 ¹¹ Furthermore, A.R.S. § 12-714(A) is not directly applicable, as it applies only to civil
actions brought in Arizona courts by political subdivisions of the State.

1 injury; and that the sale of lawful products cannot be a basis for a public nuisance claim.
2 (Doc. 19 at 49–50.) Plaintiff argues that recklessly supplying a dangerous product may
3 constitute a public nuisance even if the product itself is lawful, and that the special injury
4 requirement is not applicable because it is an element only of a private plaintiff’s *prima*
5 *facie* public nuisance claim rather than a claim asserted by a government. (Doc. 26 at
6 47–48.)

7 “[A] foreign nation is generally entitled to prosecute any civil claim in the courts
8 of the United States upon the same basis as a domestic corporation or individual might
9 do.” *Pfizer, Inc. v. Gov’t of India*, 434 U.S. 308, 318–19 (1978). Plaintiff provides no
10 authority for its position that, when suing in the United States, it should be treated as a
11 governmental entity rather than a private party. The Court finds that Plaintiff is entitled
12 to prosecute a public nuisance claim upon the same basis as a private plaintiff and,
13 therefore, that Plaintiff must allege a special injury in order to state a *prima facie* claim.
14 Plaintiff’s Complaint alleges a variety of injuries resulting from Defendants’ alleged
15 public nuisance (Doc. 1 at 114–15 ¶¶ 267–273), but it fails to allege how these injuries
16 differ in kind or quality from those suffered by the public in common, and Plaintiff does
17 not argue in response to Defendants’ Motion to Dismiss that it can satisfy the special
18 injury requirement. Accordingly, the Court will grant Defendants’ Motion to Dismiss to
19 the extent it seeks dismissal of Plaintiff’s public nuisance claim.

20 **5. Negligent Entrustment**

21 To state a claim for negligent entrustment under Arizona law, a plaintiff must
22 allege that the defendant supplied “‘directly or through a third person a chattel for the use
23 of another whom the supplier knows or has reason to know to be likely . . . to use it in a
24 manner involving unreasonable risk of physical harm to himself and others whom the
25 supplier should expect to share in or be endangered by its use.’” *Verduzco v. Am. Valet*,
26 377 P.3d 1016, 1019 (Ariz. App. 2016) (quoting Restatement (2d) of Torts § 390 (1965)).
27 Section 390 of the Restatement (Second) of Torts is a special application of the rule set
28 forth in Section 308, which provides: “It is negligence to permit a third person to use a

1 thing or to engage in an activity which is under the control of the actor, if the actor knows
2 or should know that such person intends or is likely to use the thing or to conduct himself
3 in the activity in such a manner as to create an unreasonable risk of harm to others.”
4 Restatement (2d) of Torts § 308; *see also* Restatement § 390 cmt. b. The “right to control
5 the chattel” is an “essential element of a negligent entrustment claim.” *Tissicino v.*
6 *Peterson*, 121 P.3d 1286, 1289 (Ariz. App. 2005) (reversing summary judgment in favor
7 of mother alleged to have entrusted gun to son who used it to shoot another due to
8 genuine issue of material fact regarding whether mother had right to control gun).

9 Defendants argue that the Complaint fails to state a claim for negligent
10 entrustment because Defendants did not own or control the firearms at issue when they
11 were criminally misused in Mexico and there is no relationship between Defendants and
12 the criminals using the firearms in Mexico. (Doc. 19 at 21–22.) Defendants further
13 argue that application of Arizona’s negligent entrustment doctrine has not been extended
14 to sellers of goods, and that extending the doctrine to sellers would be “akin to imposing
15 absolute liability on a product seller for any misuse by a buyer at any time in the future.”
16 (*Id.* at 22–23.)

17 Plaintiff argues that the Complaint states a claim for negligent entrustment by
18 alleging that Defendants sold firearms despite indicators of straw purchasing and
19 trafficking. (Doc. 26 at 28–29.) Plaintiff further argues that there is wide support for the
20 proposition that sellers may be considered suppliers of chattels for purposes of the
21 negligent entrustment rule. (*Id.* at 29–30.)

22 Comment a to Section 390 of the Restatement (Second) of Torts states that the
23 negligent entrustment rule “applies to sellers.” Arizona has adopted Section 390 of the
24 Restatement. *See Estate of Hernandez v. Arizona Bd. of Regents*, 866 P.2d 1330, 1340
25 (Ariz. 1994) (noting that “Arizona’s courts have repeatedly followed” Restatement §
26 390). Furthermore, the Arizona Supreme Court has applied Restatement § 390 in finding
27 that a tavern owner has a duty of reasonable care in selling liquor to those who, by reason
28 of immaturity or over-indulgence, may injure themselves or others. *See Brannigan*, 667

1 P.2d at 216. The Arizona Supreme Court’s decision in *Brannigan*, and Arizona’s
2 adoption of Restatement § 390, support the proposition that the doctrine of negligent
3 entrustment under Arizona law extends to product sellers. Defendants rely on the Texas
4 Supreme Court’s decision in *In re Academy, Ltd.*, but that case is inapposite because
5 Texas—unlike Arizona—has not adopted Section 390 of the Restatement. *See* 625
6 S.W.3d 19, 31 (Tex. 2021).

7 Viewing the factual allegations of the Complaint in the light most favorable to
8 Plaintiff, Plaintiff alleges that Defendants supplied firearms to third persons who were
9 essentially cartel agents and who Defendants had reason to know would use the firearms
10 in a manner involving unreasonable risk of physical harm to themselves and others. At
11 the time of the sales, Defendants had control of the firearms and could have prevented
12 them from being used for violent purposes by cartels in Mexico by refusing to sell them
13 when red flags indicated the seller was a straw purchaser or firearm trafficker. The Court
14 finds the Complaint adequately states a claim for negligent entrustment under Arizona
15 law.

16 **6. Unjust Enrichment**

17 An unjust enrichment claim under Arizona law requires proof of the following five
18 elements: “(1) an enrichment, (2) an impoverishment, (3) a connection between the
19 enrichment and impoverishment, (4) the absence of justification for the enrichment and
20 impoverishment, and (5) the absence of a remedy provided by law.” *Wang Elec., Inc. v.*
21 *Smoke Tree Resort, LLC*, 283 P.3d 45, 49 (Ariz. App. 2012). Stated another way, a
22 plaintiff must allege that it “conferred a benefit upon the defendant . . . at [the] plaintiff’s
23 expense” and “it would be unjust to allow [the] defendant to keep the benefit.” *USLife*
24 *Title Co. of Ariz. v. Gutkin*, 732 P.2d 579, 584 (Ariz. App. 1986).

25 Defendants argue that the Complaint fails to allege that Mexico conferred a benefit
26 on Defendants at its expense and further fails to allege the absence of an adequate
27 alternative legal remedy. (Doc. 19 at 48–49). Plaintiff argues that the benefit unjustly
28 conferred upon Defendants was Mexico’s expenditure of money to pay for the costs of

1 the harm caused by Defendants’ unlawful firearm sales—e.g., externalities. (Doc. 26 at
2 45–47.)

3 The Court finds that Plaintiff’s Complaint adequately alleges that Defendants were
4 unjustly enriched by Plaintiff bearing the costs of correcting harm that Defendants caused
5 for purposes of increasing their profits. *See Pyeatte v. Pyeatte*, 661 P.2d 196, 202 (Ariz.
6 App. 1982) (“A benefit may be any type of advantage, including that which saves the
7 recipient from any loss or expense”); *City of Boston v. Smith & Wesson Corp.*, No.
8 199902590, 2000 WL 1473568, at *18 (Mass. Super. July 13, 2000) (finding plaintiffs
9 stated a claim for unjust enrichment by alleging they bore the cost of correcting harm
10 caused by conduct undertaken by the defendants in pursuit of profit, e.g., externalities);
11 *City of Los Angeles v. Wells Fargo & Co.*, 22 F. Supp. 3d 1047, 1061 (C.D. Cal. 2014)
12 (same). Plaintiff has also alleged a connection between, and an absence of justification
13 for, the enrichment and impoverishment: Defendants profit from selling firearms to straw
14 purchasers and firearm traffickers, Defendants’ sales result in the flow of firearms to
15 cartels in Mexico, and Plaintiff bears the cost of harm inflicted by the resultant cartel
16 violence. Defendants have not identified an available alternative legal remedy.
17 Accordingly, Defendant’s Motion to Dismiss will be denied as to Plaintiff’s unjust
18 enrichment claim.

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1 **IT IS ORDERED** that Defendants' Motion to Dismiss (Doc. 18) is **granted in**
2 **part and denied in part.** The Motion is **granted** as to Plaintiff's CFA, RICO, and
3 public nuisance claims. The Motion is otherwise **denied.** The remaining claims in this
4 action are Counts One, Three, Four, Five, Six, and Eight¹² of the Complaint.

5 Dated this 22nd day of March, 2024.

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Honorable Rosemary Márquez
United States District Judge

¹² Count Eight asserts a claim for punitive damages. Defendants do not argue in their Motion to Dismiss that the factual allegations of the Complaint are insufficient to support a claim for punitive damages.