To be Argued by:
KRISTEN ELMORE-GARCIA
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Fourth Department

KIMBERLY J. SALTER, individually and as Executrix of the Estate of AARON W. SALTER, JR., MARGUS D. MORRISON, JR., Individually and as Administrator of the Estate of MARGUS MORRISON, SR., PAMELA O. PRICHETT, Individually and as Executrix of the Estate of PEARL LUCILLE YOUNG, MARK L. TALLEY, JR. Individually and as Administrator of the Estate of GERALDINE C. TALLEY, GARNELL W. WHITFIELD, JR., Individually and as Administrator of the Estate of RUTH E. WHITFIELD, JENNIFER FLANNERY, as Public Administrator of the Estate of ROBERTA DRURY, TIRZA PATTERSON, Individually and as parent and natural guardian of J.P., a minor, ZAIRE GOODMAN, ZENETA EVERHART, as parent and caregiver of Zaire Goodman, BROOKLYN HOUGH, JO-ANN DANIELS, CHRISTOPHER BRADEN, ROBIA GARY, individually and as parent and natural guardian of A.S., a minor, and KISHA DOUGLAS,

Plaintiffs-Respondents,

(For Continuation of Caption See Inside Cover)

Docket Nos.:
CA 24-00450
CA 24-00514
CA 24-01334
CA 24-01335

Action No. 1
Index No.
808604/23

BRIEF FOR PLAINTIFFS-RESPONDENTS IN ACTION NO. 2

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Erie County Clerk's Index Nos. 808604/23, 805896/23, 810316/23 and 810317/23

COUNSEL PRESS (800) 4-APPEAL • (514291)

– against –

META PLATFORMS, INC., f/k/a Facebook, Inc., INSTAGRAM LLC, REDDIT, INC, AMAZON.COM, INC., TWITCH INTERACTIVE, INC., ALPHABET, INC., GOOGLE, LLC, YOUTUBE, LLC, DISCORD, INC., SNAP, INC., 4CHAN, LLC, 4CHAN COMMUNITY SUPPORT, LLC, GOOD SMILE COMPANY, INC., GOOD SMILE COMPANY U.S., INC., GOOD SMILE CONNECT, LLC, RMA ARMAMENT, INC. d/b/a RMA, BLAKE WALDROP, CORY CLARK, VINTAGE FIREARMS, LLC, JIMAY'S FLEA MARKET, INC., JIMAYS LLC, and PAUL GENDRON and PAMELA GENDRON,

Defendants,

– and –

MEAN ARMS LLC d/b/a Mean Arms,

Defendant-Appellant.

DIONA PATTERSON, individually and as Administrator of the Estate of HEYWARD PATTERSON, J.P., a minor, BARBARA MAPPS, Individually and as Executrix of the Estate of KATHERINE MASSEY, SHAWANDA ROGERS, Individually and as Administrator of the Estate of ANDRE MACKNIEL, A.M., a minor, and LATISHA ROGERS,

Plaintiffs-Respondents,

Action No. 2
Index No. 805896/23

– against –

META PLATFORMS, INC., formerly known as Facebook, Inc., SNAP, INC., ALPHABET, INC., GOOGLE, LLC, YOUTUBE, LLC, DISCORD, INC., REDDIT, INC., AMAZON.COM, INC., 4CHAN, LLC, 4CHAN COMMUNITY SUPPORT, LLC, GOOD SMILE COMPANY INC., GOOD SMILE COMPANY US, INC., GOOD SMILE CONNECT, LLC, RMA ARMAMENT, VINTAGE FIREARMS, PAUL GENDRON and PAMELA GENDRON,

Defendants,

– and –

MEAN LLC.,

Defendant-Appellant.

WAYNE JONES, Individually and as Administrator of the Estate of CELESTINE CHANEY,

Plaintiffs-Respondents,

– against –

MEAN LLC,

Defendant-Appellant,

– and –

VINTAGE FIREARMS, LLC, RMA ARMAMENT, INC., ALPHABET INC., GOOGLE, LLC, YOUTUBE, LLC, REDDIT, INC., 4CHAN, LLC, 4CHAN COMMUNITY SUPPORT, LLC, PAUL GENDRON and PAMELA GENDRON,

Defendants.

Action No. 3
Index No. 810316/23

FRAGRANCE HARRIS STANFIELD, YAHNIA BROWN-MCREYNOLDS, TIARA JOHNSON, SHONNELL HARRIS-TEAGUE, ROSE MARIE WYSOCKI, CURT BAKER, DENNISJANEE BROWN, DANA MOORE, SCHACANA GETER, SHAMIKA MCCOY, RAZZ'ANI MILES, PATRICK PATTERSON, MERCEDES WRIGHT, QUANDRELL PATTERSON, VON HARMON, and NASIR ZINNERMAN, JULIE HARWELL, individually and as parent and natural guardian of L.T., a minor, LAMONT THOMAS, individually and as parent and natural guardian of L.T., a minor, LAROSE PALMER, JEROME BRIDGES, MORRIS VINSON ROBINSON-MCCULLEY, KIM BULLS, CARLTON STEVERSON, and QUINNAE THOMPSON,

Plaintiffs-Respondents,

– against –

MEAN LLC,

Defendant-Appellant,

– and –

VINTAGE FIREARMS, LLC, RMA ARMAMENT, INC., ALPHABET INC., GOOGLE LLC, YOUTUBE, LLC, REDDIT, INC., 4CHAN, LLC, 4CHAN COMMUNITY SUPPORT, LLC, PAUL GENDRON and PAMELA GENDRON,

Defendants.

Action No. 4
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INTRODUCTION

On May 14, 2022, an 18-year-old motivated by racist hatred used an assault weapon equipped with detachable 30-round magazines to commit a mass shooting at a Tops Friendly Markets in Buffalo. Three Black citizens were injured, and ten Black lives were lost that day, including the lives of Heyward Patterson, Katherine "Kat" Massey, and Andre Mackniel. Latisha Rogers, an assistant manager at Tops on the day of the shooting, thankfully survived and avoided serious physical injury, but she lives daily with serious trauma that has irrevocably changed her life. Ms. Rogers and relatives of Mr. Patterson, Ms. Massey, and Mr. Mackniel bring this action seeking accountability for the actors whose wrongful conduct contributed to this senseless and avoidable tragedy.

Defendant-Appellant MEAN LLC ("Mean") is one such actor. Mean's conduct enabled—and in fact encouraged—the Tops shooter to acquire an illegal assault weapon that could accept detachable magazines. To carry out the racist attack, the Tops shooter purchased and used a Bushmaster AR-15-style rifle installed with an easily removable firearms "lock" manufactured and sold by Mean, which Mean explicitly designed to evade New York's legal prohibitions. Mean marketed and distributed the so-called magazine "lock"—the MA Lock—while falsely representing that it would "permanently" lock a fixed magazine in place on an AR-

15-style rifle. Mean's claims about the MA Lock were knowingly and demonstrably false—as Mean's own statements, including instructions on the back of the MA Lock's packaging, reveal. Mean openly advised consumers that the MA Lock could be easily removed with simple tools, and the Tops shooter heard that message: he specifically sought out an AR-15-style rifle with Mean's MA Lock installed because Mean's marketing led him to believe that it would help him carry out his mission to "kill as many blacks as possible." R.749 (¶ 391).

The Plaintiffs-Respondents in this action paid the ultimate price for Mean's deceptive actions. Supreme Court correctly allowed their claims to proceed against Mean at this pre-answer stage, and this Court should affirm.

SUMMARY OF ARGUMENT

The Protection of Lawful Commerce in Arms Act ("PLCAA") does not entitle Mean to dismissal of Plaintiffs' claims as a matter of law. PLCAA shields certain gun-industry members from civil liability only when an action meets the statute's definition of a "qualified civil liability action." 15 U.S.C. § 7902(a). This action does not meet that definition for three independent reasons: (1) Mean's MA Lock is not a "qualified product" under PLCAA; (2) Mean is not a "manufacturer" as defined under PLCAA; and (3) Plaintiffs injuries did not result from the criminal or unlawful misuse of Mean's MA Lock. Mean's argument to the contrary—that it is entitled to PLCAA protection because the Tops shooter criminally misused a *different* product

that meets PLCAA's definition of a "qualifying product" and was manufactured by a *different* company that Mean asserts meets PLCAA's definition of a "manufacturer"—defies all logic and disregards the most basic canons of statutory construction. Put differently, at issue is simply whether Mean's MA Lock accessory falls within the bounds of PLCAA. Under a plain reading of the statute, it does not.

In any event, even assuming *arguendo* that this were a "qualified civil liability action" under PLCAA, it may still proceed under PLCAA's predicate exception because Mean knowingly violated laws applicable to the sale and marketing of firearms, specifically, G.B.L. §§ 349 and 350's prohibitions on deceptive and false marketing and, alternatively, New York's Firearms Industry Accountability Statute, G.B.L. §§ 898-a to 898-e. As Supreme Court correctly held, Plaintiffs have sufficiently stated claims for G.B.L. violations and have sufficiently pleaded facts showing that Mean's conduct proximately caused their injuries.

Finally, this Court clearly has jurisdiction over Mean because it designed, marketed, and sold the MA Lock into New York, and specifically targeted this forum for doing so.

Supreme Court's decision should be affirmed in its entirety.

COUNTERSTATEMENT OF CASE

I. FACTUAL BACKGROUND

A. Mean Designed a Product to Help Consumers Evade New York's Gun-Safety Laws

This lawsuit arises in part from the foreseeable and tragic consequences of Defendant-Appellant Mean's deliberate introduction of a product into the New York market that undoes New York's gun-safety laws. Possessing, manufacturing, transporting, or disposing of an assault weapon is unlawful in New York. R.768–69 (¶ 503); N.Y. Penal Law § 265.02. An assault weapon is defined in part as a semi-automatic rifle that has an ability to accept a detachable magazine and has at least one of a number of enumerated characteristics. R.768–69 (¶ 503); N.Y. Penal Law § 265.00(22) and (23). Modifications to assault-weapon features for the purposes of compliance with New York law "must be permanent" and a "change that cannot be reversed through reasonable means." R.769 (¶ 504), 909. At bottom, a magazine lock like Mean's MA Lock is supposed to permanently remove a firearm's ability to be an assault weapon. But Mean's easily-removeable MA Lock—which came with removal instructions on the back of every package—fails, by design and intent, to meet these requirements.

Mean's website openly and explicitly criticizes gun-safety laws like New York's. R.769 (¶¶ 507–09). Mean markets the MA Lock to consumers in a limited

number of states that it views as having "intrusive" firearms laws, purporting to sell a product that modifies an assault weapon to render the weapon "legal" in those states. R.760 (¶¶ 505, 508). Mean's website describes the MA Lock as "a shear bolt mechanism designed to lock . . . magazines in place." R.769 (¶ 506 n.222). Mean claims on its website that "installing the MA Lock makes AR firearms legal and compliant, leaving all your favorite tactical features in place. Installation of the MA Lock provides a true solution to fixed magazine laws . . ." R.769 (¶ 506). Mean references New York specifically, advertising that the MA Lock "satisfies" "NY state law." R.769 (¶ 510).

As recently as May 1, 2023, Mean shipped its MA Lock to New York. On or before May 10, 2023—the week that Plaintiffs and the New York Attorney General filed lawsuits against Mean—Mean changed its MA Lock webpage to read: "NOTE: We DO NOT ship MA Locks to NEW YORK." R.772 (¶ 526).

B. Mean Knew the MA Lock Was Easily Removable

Mean's statements highlight its product's removable nature. Mean's website states, "our MA Lock device will be removable" and "[t]his process will in no way harm your rifle." R.769–70 (¶ 511). On social media, Mean shares that "Using an easyout [sic] and simple tools [the MA Lock] can be removed and done quickly and without any damage to your rifle"; removal "only takes about 10 minutes." R.770–71 (¶¶ 516, 518). On the back of its MA Lock packaging, moreover, Mean included

four simple instructions for removal. R.771–72 (¶ 521) (packaging describing how to "[u]se any brand of screw extractor from your local hardware store" to remove an MA Lock).

C. The Tops Shooter Removed the MA Lock as Mean Recommended

The Tops shooter purchased an AR-15 rifle in New York that was sold with Mean's MA Lock installed. R.769 (¶ 505). The Tops shooter noted the presence of the MA Lock on the rifle prior to his purchase and viewed it in-store on multiple occasions. *See, e.g.*, R.767 (¶ 491) ("That bushmaster at Vintage Firearms will do very nicely . . . and has *the mean arms fixed mag release*.") (emphasis added). He documented the ease with which he removed the MA Lock. R.771 (¶¶ 519–20) (posting YouTube link on Discord, writing "[s]ame fixed mag release at vintage firearms, says you have to drill it out to get it," adding, "[s]peedout drill bit on hole and it will come right out."). He additionally wrote, "I investigated the AR at vintage firearms more and learned that I can take the fixed mag out if I get a screw extraction kit. Then I will have to replace it with a regular mag button and spring." R.772 (¶ 522).

The Tops shooter summarized, "[t]he person who had this before me installed a Mean Arms magazine lock, which fixed a 10 round magazine (higher capacity magazines are also illegal) to the gun. . . . I used a Cobalt Speedout #2 drillbit and my dad's power drill to take out the magazine lock, which I then replaced . . ." R.772

(¶ 524). He documented how he followed Mean's removal instructions, noting how easily and confidently he was able to remove the lock. R.772 (¶ 525). As a result, he was effortlessly able to use detachable magazines, which rendered the Tops massacre that killed Plaintiffs' loved ones all the more deadly. R.772 (¶ 525).

II. PROCEDURAL BACKGROUND

On May 14, 2023, one year after the Tops massacre, Plaintiffs filed their 140-page Complaint against Mean and others whose actions led to that tragic event. Mean moved to dismiss the claims against it, claiming total immunity under PLCAA for its purposefully deceptive actions.

Supreme Court Justice Paula L. Feroleto heard extensive arguments on November 16, 2023, R.483–519, ultimately concluding that "the MA Lock is a not a 'qualified product' and PLCAA does not prevent this personal injury lawsuit." R.30. Justice Feroleto additionally rejected Mean's jurisdictional arguments, finding that Mean's marketing and advertising of the MA Lock to New York customers "should have given Mean Arms the expectation that their MA Lock was being purchased and used in New York State and should its lock fail to act as intended, i.e. be permanent, consequences would follow in New York State." R.32–33. She likewise found that it is "far too early" to dismiss Plaintiffs' claims on proximate-cause grounds and that Plaintiffs have sufficiently pleaded, and have standing to assert, claims under New York's General Business Laws. R.34–35.

ARGUMENT

I. MEAN IGNORES THE HIGH BAR REQUIRED FOR DISMISSAL AS A MATTER OF LAW

Supreme Court correctly denied Mean's motion to dismiss because Plaintiffs' claims easily satisfy the liberal pleading standard that applies at this stage. It is long-established that on a motion to dismiss the court must construe the complaint liberally, accept the pleaded facts as true, and determine simply whether the facts as alleged fit into *any* cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (1994); *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977). The court must not only accept the material allegations of the complaint as true but draw all reasonable inferences in favor of plaintiffs. *See McGill v. Parker*, 179 A.D.2d 98 (1st Dep't 1992); *Foley v. D'Agostino*, 21 A.D.2d 60, 64 (1st Dep't 1964) (on a motion to dismiss "we look to the substance rather than to the form"). The movant bears the burden of demonstrating that a complaint states no legally cognizable cause of action; this test is so liberal that the court need only find that a plaintiff has *a* cause of action, not even whether one has been stated. *Wiener v. Lazard Freres & Co.*, 241 A.D.2d 114, 120 (1st Dep't 1998).

Mean's opening brief is bereft of any analysis regarding the appropriate standard of dismissal under C.P.L.R. 3211(a). Instead, just as it attempted to do in the trial court, Mean improperly includes purported factual allegations in its brief

that lie beyond the face of Plaintiffs' Complaint and asks this Court to improperly draw inferences in its favor. As this is not a summary judgment motion, this Court may not consider or accept as true any of those allegations. *Gould v. United Traction Co.*, 282 A.D. 812, 812 (3d Dep't 1953) (on "motion to dismiss the complaint, only the complaint and the formal admissions of the plaintiff may be considered"). For example, Mean asserts that its MA Lock "permanently fixes the magazine to the rifle" and that the lock is removeable using only "specialized tools." Appellant's Br. at 12, 2. Plaintiffs' allegations, and their additional evidence, speak otherwise. *See, e.g.*, R.772–73 (¶ 521) (Mean's packaging states that lock can be removed with "any brand of screw extractor from your local hardware store"); R.772 (¶ 524) (quoting Tops shooter's statement that he "used a Cobalt Speedout #2 drillbit and my dad's power drill" to remove MA Lock). *See also* R.935–36 (¶ 8) (Mean wrote on Facebook, "The MA Lock is removable using a tool such as an easy out. Regarding the easy out it is a tool you can purchase from most hardware stores." Mean then linked to the tool on homedepot.com); R.936 (¶¶ 10, 11) (Mean wrote on Facebook, "Also the MA Lock is completely reversible (with NO permanent changes required to your receiver) should you move to a state that no longer requires a fixed magazine rifle." One individual commented, "How is the lock removable? Drill?" Mean responded, "Using an easyout/speed out. You would drill out the tube

slightly and then use the speedout to remove the MA Lock. No damage to your lower and you can reuse the mag catch just as it was originally installed.").

Mean also asserts that the MA Lock "converts an otherwise illegal rifle into one that is legal in New York." Appellant's Br. at 4. Plaintiffs allege the opposite: that this assertion amounts to false advertising. R.795, 796 (¶¶ 683, 692). Additional examples abound, including Mean's improper reliance on affidavits containing statements that purport to contradict Plaintiffs' factual allegations or do not appear in the complaint at all. Appellant's Br. at 8–9 (citing affirmation and exhibits of Peter V. Malfa at R.83, 84, 330–34, 335–48, 349–54), At this preliminary stage, this Court is obligated to accept Plaintiffs' factual allegations as true and ignore all of Mean's factual assertions that purport to be to the contrary or are extraneous to Plaintiffs' allegations. *Evans v. Perl*, 19 Misc. 3d 1119(A), *9 (Sup. Ct., N.Y. Cty, 2008) ("Affidavits offered in support of pre-answer motion to dismiss for failure to state a claim should not be considered by the court."); *Gould*, 282 A.D. at 812. Supreme Court properly did so. Indeed, the discrepancies between Plaintiffs' and Mean's factual allegations—and Mean's attempt to convince the Court to improperly consider its contested version of the facts on a motion to dismiss—only underscore that Plaintiffs have stated cognizable causes of action.

II. PLCAA DOES NOT SHIELD MEAN FROM LIABILITY BECAUSE THIS LAWSUIT IS NOT A "QUALIFIED CIVIL LIABILITY ACTION"

PLCAA, 15 U.S.C. §§ 7901–03, shields certain gun-industry members from civil liability only when an action meets the statute's definition of a "qualified civil liability action." 15 U.S.C. § 7902(a). As relevant to this case, PLCAA defines a "qualified civil liability action" as an action brought "against a manufacturer or seller of a qualified product" and "resulting from the criminal or unlawful misuse" of the defendant's "qualified product." § 7903(5)(A). The term "manufacturer" is defined to include anyone "who is engaged in the business of manufacturing the [qualified] product . . . and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18." § 7903(2).[1] The term "qualified product" is defined, as relevant here, as "a firearm . . . , or component part of a firearm." § 7903(4).

None of Plaintiffs' claims against Mean fall within the definition of a "qualified civil liability action," for the three independent reasons discussed below.

A. The MA Lock Is Not a "Qualified Product" Under PLCAA's Plain Text

Because the MA Lock is not essential to a firearm's ability to fire a shot, it fails to meet PLCAA's definition of a "component part of a firearm." As Supreme

[1] The term "seller" is defined analogously, *see* § 7903(6), though Mean expressly denies that it is a seller within PLCAA's meaning. *See* Appellant's Br. at 4.

Court correctly concluded, inasmuch as the MA Lock is not a "component part of a firearm," it is not a "qualified product" under PLCAA. R.30.

Under PLCAA's plain text and the provisions of the federal Gun Control Act that PLCAA incorporates, the MA Lock does qualify as a "component part of a firearm" where the firearm can still fire a shot without it—or any replacement part—installed.

PLCAA defines "qualified product" by referencing definitions in the federal Gun Control Act, specifically, 18 U.S.C. § 921(a)(3), subparagraphs (A) and (B):

> The term "qualified product" means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18) . . . or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

15 U.S.C. § 7903(4). Because the MA Lock is not a firearm, it meets this definition only if it is a "component part of a firearm."

PLCAA does not independently define the term "component part of a firearm," but the statute defines "firearm" by incorporating the definition of "firearm" provided in 18 U.S.C. § 921(a)(3)(A)–(B). 15 U.S.C. § 7903(4). Thus, the term "component part of a firearm" must be read to mean "component part of a firearm [as that term is defined in 18 U.S.C. § 921(a)(3)(A)–(B)]." Those provisions of Title 18 define "firearm" as a weapon capable of firing a single shot. *See* 18 U.S.C. § 921(a)(3) ("The term 'firearm' means (A) any weapon . . . which will or is

designed to or may readily be converted *to expel a projectile* by the action of an explosive; [or] (B) the frame or receiver of any such weapon . . . .") (emphasis added). Therefore, the term "component part of a firearm" must be understood to mean a "component part of" a weapon capable of "expel[ling] a projectile," *i.e.*, firing a single shot.[2]

While PLCAA incorporates the Gun Control Act's definition of "firearm," it does not define the term "component part." This Court should thus look to those words' ordinary meaning to interpret them. *See Rosner v. Met. Prop. & Liab. Ins. Co.*, 96 N.Y.2d 475, 479 (2001) ("we construe words of ordinary import with their usual and commonly understood meaning . . ."); *United States v. Bedi*, 15 F.4th 222, 226–27 (2d Cir. 2021). As Mean concedes, the dictionary definitions of "component" and "part" instruct that "component" means "an essential part" and "part" means "an essential portion or integral element." *Prescott v. Slide Fire Sols., LP*, 341 F. Supp. 3d 1175, 1188 (D. Nev. 2018) (citing Merriam-Webster's Collegiate Dictionary 8, 255, 267, 902–03 (11th ed. 2003)); *accord* Appellant's Br.

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[2] PLCAA's inclusion of subparagraph (B) of 18 U.S.C. § 921(a)(3), referring to a firearm "frame or receiver," underscores this point because those items provide the essential "housing or structure" for firing components and thus are essential to a weapon's ability to fire a single shot. 27 C.F.R. § 478.12(a)(1)–(2). By contrast, PLCAA's definition of a "qualified product" excludes subparagraph (C) of 18 U.S.C. § 921(a)(3), which further defines "firearm" for purposes of the Gun Control Act to include "any firearm muffler or firearm silencer." That omission likewise supports the conclusion that a "component part" under PLCAA must be an essential part for firing a shot, as mufflers and silencers are not necessary for doing so.

at 17 ("A 'component part' of a firearm is one that is integral to its proper function."). Combining these dictionary definitions with the legal definition of "firearm" discussed above, a product must be essential or integral to a weapon's ability to fire a shot to qualify as a "component part of a firearm" under PLCAA. The MA Lock does not meet these criteria.

As at least one court has already determined, a large-capacity magazine was not a "component part of a firearm" where the manufacturer admitted that the firearm at issue could operate without that magazine or any magazine. *Green v. Kyung Chang Ind. USA, Inc.*, 2022 WL 987555, at *1 (Nev. 8th Jud. Dist. Clark County Mar. 23, 2022), *mandamus denied*, *Kyung Chang Ind. USA, Inc. v. Dist. Ct. (Jones)*, No. 84844 (Nev. Mar. 14, 2023), *cert. denied*, No. 22-1206 (U.S. Oct. 2, 2023); R.1341–43. The Nevada court found that "the 100 round gun magazine . . . 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." *Id.*

Here, too, the MA Lock "is not required for [guns] to operate and fire projectiles," a firearm "is capable of firing without [the MA Lock] inserted," and the MA Lock "[is] not included with" firearms when they are manufactured. *Id.* As alleged, the MA Lock is an after-market accessory that simply "fixe[s] a 10-round

magazine . . . to the gun," but is easily removable and non-permanent. R.772 (¶¶ 524–25). Mean's only retort is plainly sleight of hand, asserting that without the MA Lock or a replacement device in place, a detachable magazine will not be fixed in place to supply ammunition to the rifle. Appellant's Br. at 19. But that is beside the point, as it is well-known—and alleged—that a firearm can fire a shot without any magazine installed. *See, e.g.*, *Ocean State Tactical, LLC v. Rhode Island*, 646 F. Supp. 3d 368, 386 (D.R.I. 2022) ("a firearm can fire bullets without a detachable magazine."). Indeed, Mean admits that an AR-15-style rifle like the one used in the Tops shooting can fire without a magazine installed. R.878 ("the rifle simply becomes a single shot rifle" without the MA Lock or some other item to affix the magazine).

Against this dispositive admission, Mean's arguments to the contrary sidestep PLCAA's plain text. First, Mean harps on whether the MA Lock "materially affects" an AR-15-style rifle's operational "function" by allowing the rifle to fire with a fixed magazine instead of a detachable magazine. Appellant's Br. at 19. This point only underscores the fact that the rifle can fire with or without the MA Lock installed. The lock is thus not integral to the operation of a rifle's ability to fire a shot and, accordingly, is not a component part under PLCAA's statutory framework. Second, Mean asserts that the MA Lock "materially changes" a rifle's legal "function" by converting "an illegal rifle into one that is legal in certain states with 'assault

weapons' restrictions." Appellant's Br. at 19. Even assuming that were true (which Plaintiffs do not concede), compliance with New York's assault-weapon law is irrelevant to whether the rifle can fire a shot—and therefore to whether that rifle is a "firearm" under federal law.

Mean attempts to ignore reality by analogizing the MA Lock to a rifle stock or magazine. *See* Mean's Brief at 17–23. Mean argues: "Just like there is no 'rifle' without a 'stock,' there is no 'semi-automatic' function without a magazine." Appellant's Br. at 17. These analogies fail because the MA Lock is *not* a magazine or a rifle stock. Rather, it is, indisputably, an after-market accessory that can be purchased for $19.99 and added onto a rifle that otherwise functions without it. *See* R.772 (¶ 524), R.935–36 (¶ 8), R.936 (¶¶ 10–11), R.945 (¶ 37). Indeed, as Mean itself put it: removal of the "removable" MA Lock does not affect the firearm's functionality and "will in no way harm your rifle." R.769–70 (¶ 511). Mean's own assertions about the MA Lock show that it is merely an accessory and cannot and should not be considered a component part within the PLCAA regime.

In short, because the presence or absence of the MA Lock does not affect whether the rifle functions as a "firearm" as defined by PLCAA, the MA Lock is in no sense essential or integral and is thus not a "component part of a firearm" under PLCAA. As a result, the MA Lock is a firearms-related accessory not entitled to PLCAA protection. R.29 ("If [the MA Lock] is not a 'component part' it is an

accessory"); *see also Sambrano v. Savage Arms, Inc.*, 338 P.3d 103, 105 (N.M. Ct. App. 2014) (firearm-related product that is not essential or integral is a firearm "accessory"). Therefore, Supreme Court's determination that the MA Lock is not a qualified product—under the reasoning that "the MA Lock is not an integral part of the gun" because the "the lock could be and was removed and the firearm was still able to function"—was correct and should be affirmed. R.30.

To counter this plain-text reading of PLCAA, Mean cites several inapposite cases and other unpersuasive authority. Appellant's Br. at 17–18. Specifically, Mean points to two cases wherein the parties did not dispute that the products at issue were "component parts." *Prescott*, 341 F. Supp. 3d at 1189 (holding that a bump stock was a component part because bump stock simply replaced the rifle's stock, and parties agreed that the stock was a component part); *In re Academy, Ltd.*, 625 S.W.3d 19, 26 (Tex. 2021) (parties did not dispute, and court was not asked to decide, whether magazine at issue was a component part). Notably, neither case involved a determination of whether a magazine lock was a component part. And both cases stand in contrast to the situation presented here, where the parties actively dispute whether the MA Lock is a component part.

Another case Mean cites, *Lowy v. Daniel Def., LLC*, 2024 WL 3521508, at *3 (E.D. Va. July 24, 2024), *appeal docketed*, No. 24-1822 (4th Cir. Aug. 28, 2024), followed *Prescott*'s reasoning, finding that replacement parts, including a

magazine—but not a magazine lock—were "qualified products." But the *Lowy* court's cursory reasoning skipped any assessment of whether those parts were essential for the rifle's ability to fire a shot. That analysis is crucial to differentiating a "component part of a firearm" from other firearm-related accessories that do not fall under PLCAA, like silencers, sights, or compensators. *Cf.* R.30 (trial court noting that a "court found that 'sights and compensators' are accessories because 'the carbine will fire without the sights or compensator'" (quoting *Auto-Ordnance Corp. v. United States*, 822 F.2d 1566, 1570–72 (Fed. Cir. 1987))). Because the MA Lock is not essential to firing a shot, Supreme Court aptly compared the MA Lock to an "accessory," which is not a "qualified product" but is rather defined as "an object or device that is not essential in itself . . . ." R.29. *See also Sambrano*, 338 P.3d at 105 (where parties agreed that rifle lock was an accessory, PLCAA did not bar claims against the lock distributor).[3]

Even if this Court is inclined to give any credit to Mean's arguments, it would still be premature at this stage to dismiss Plaintiffs' claims based on the conclusion that the MA Lock can only be classified as a "component part." The function of the MA Lock and its categorization under PLCAA are appropriately resolved only after

[3] Mean cites an oral argument remark in a separate case about whether New York's Firearms Industry Accountability Statute violates the Dormant Commerce Clause. Appellant's Br. at 20–21. That remark has no relevance here and is certainly not binding on Plaintiffs. *See* R.1297–98.

the benefits of discovery. *See King v. Klocek,* 187 A.D.3d 1614, 1615–16 (4th Dep't 2020) (declining to dismiss on PLCAA grounds where defendant ammunition seller disputed plaintiffs' allegation that ammunition used in shooting was "handgun ammunition" under state and federal statutes).

B. Mean Does Not Meet PLCAA's Definition of a Protected "Manufacturer"

Even assuming *arguendo* that the MA Lock met PLCAA's definition of a "qualified product"—and it does not— this action would still not be a "qualified civil liability action" because Mean is not a "manufacturer" under PLCAA. Mean's argument to the contrary—that its "status as a federally licensed 'manufacturer'" entitles it to PLCAA protection because PLCAA applies to any firearms manufacturer whenever any qualified product is used—fails under the plain text of the statute and would sweep too broadly. Appellant's Br. at 16.

PLCAA defines "manufacturer" as, "*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." § 7903(2) (emphasis added). This is a two-prong test. Under PLCAA, a "manufacturer" must be both (i) "engaged in the business" of manufacturing the qualified product and (ii) "licensed to engage" in that business. *Id.*

Taking the second prong first (and assuming for the sake of argument that the MA Lock is a "qualified product"—it is not, for the reasons previously discussed), Mean is not "licensed to engage" in the business of manufacturing MA Locks, or any other firearms accessory, because there is no relevant federal license for the manufacture of firearms accessories. In short, Mean's business of manufacturing the MA Lock does not make it a "manufacturer" under PLCAA because Mean is not federally licensed to engage in that business. 15 U.S.C. § 7903(2).

Turning to the first prong, PLCAA protection extends only to manufacturers actually "engaged in the business" of manufacturing a qualified product. PLCAA defines "engaged in the business" by cross-referencing the Gun Control Act. *See* 15 U.S.C. § 7903(1) (defining "engaged in the business," other than with respect to a seller of ammunition, as having "the meaning given that term in section 921(a)(21) of title 18"). The Gun Control Act is explicit that the term "engaged in the business" *can only be applied* to (1) firearm manufacturers, (2) ammunition manufacturers, (3) firearm dealers, (4) firearm importers, and (5) ammunition importers. *See* 18 U.S.C. § 921(a)(21). Nothing in the record or the briefing in this case shows that Mean actually makes firearms for sale, and even if it did, that would be irrelevant to its manufacture of the MA Lock at issue in this specific case. Merely holding a license to manufacture firearms, as Mean contends it does, does not make a company

"engaged in the business" of manufacturing firearms.[4] Indeed, were Mean to be correct, it could never be sued in tort for *any* product it manufactured and sold, however attenuated from a firearm, simply because it was licensed to manufacturer firearms. Such an argument disregards the plain meaning of PLCAA, which tethers the analysis to the alleged "qualified product" at issue in the particular case, rather than to a defendant's other product offerings. McKinney's Statutes § 141 (courts should avoid interpreting a statute in a way that would lead to absurd results); *cf. Majewski v. Broadalbin-Perth Cent. School. Dist*., 91 N.Y.2d 577, 587 (1998) (construction of a statute that would render a provision meaningless should be avoided). Mean's business—the manufacture of firearm-related accessories *but not firearms themselves*—is thus outside PLCAA's scope.

Because there is no basis to conclude that Mean meets PLCAA's definition of a "manufacturer" within the context of this case, its argument for PLCAA protection on the basis of that status necessarily fails.

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[4] Even if Mean were "engaged in the business" of manufacturing firearms, no Mean firearm is at issue in this case that could be a qualifying product sufficient bring this action under PLCAA. No Mean-manufactured firearm was used in the Tops shooting. The only Mean product at issue here is the MA Lock.

C. Plaintiffs' Injuries Did Not Result from the Criminal or Unlawful "Misuse" of the MA Lock

Even if the MA Lock met PLCAA's definition of a "qualified product," and *even if* Mean met PLCAA's definition of a "manufacturer," this action would still not be a "qualified civil liability action" because Plaintiffs' claims do not seek "relief[ ] resulting from the criminal or unlawful misuse of a qualified product by . . . a . . . third party . . ." 15 U.S.C. § 7903(5)(A). Plaintiffs do not allege that the Tops shooter criminally or unlawfully misused the MA Lock itself in his attack. Rather, Plaintiffs allege that the Tops shooter criminally misused a Bushmaster XM-15 in the shooting and that he had removed the MA Lock from the rifle beforehand in accordance with Mean's explicit instruction. R.772 (¶ 525). The MA Lock's easy removal—with removal directions provided by Mean on the back of the lock's packaging—was certainly the intended "use," rather than a "misuse" of the product. R.771–72 (¶ 521). Indeed, this is why Mean targeted its marketing toward specific jurisdictions like New York, which have laws requiring such locks to be permanent. To this end, Plaintiffs are seeking relief resulting from harms caused by Mean's false, deceptive, and reckless marketing and advertising practices regarding the MA Lock, not related to a "misuse" of the MA Lock. Those practices were a substantial factor in the Tops shooter's ability to acquire and use an AR-15 with detachable

magazines, which rendered his shooting more rapid and thus more lethal. R.795–96 (¶¶ 682–84, 691–93).

In short, because the MA Lock was designed to be, and had been, removed prior to the shooting, it was not an "instrument" that was misused "to commit the crime that resulted in the harm to Plaintiffs." *Sambrano*, 338 P.3d at 105. Since Mean's deceptive practices and violations of New York's consumer-protection statutes caused Plaintiffs' harm, this action is not a "qualified civil liability action" under PLCAA.

III. THE TOPS SHOOTER'S USE OF A RIFLE MANUFACTURED BY A DIFFERENT COMPANY DOES NOT ENTITLE MEAN TO PLCAA PROTECTION

Mean also argues that, regardless of whether the MA Lock is a qualified product, and regardless of whether Mean manufactured any "qualified product" at issue in these cases, it enjoys blanket protection under PLCAA in *any* suit arising out of the misuse of *any* firearm simply because that firearm—manufactured by a different company—was in some way involved. Appellant's Br. at 15–16. This argument sweeps too broadly and would render whole swaths of PLCAA superfluous. Supreme Court correctly declined to award Mean such "broad immunity," which would shield Mean from liability "even though [it] did not

manufacture the [Bushmaster rifle] used in this shooting." R.31. As Supreme Court avowed, "Mean may not step into Bushmaster's shoes for purposes of PLCAA." *Id.*

Mean's attack on this conclusion lacks any basis in law or logic. Indeed, the Ninth Circuit has expressly rejected it, ruling that "PLCAA preempts specified types of liability actions; it does not provide a blanket protection to specified types of defendants." *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1145 (9th Cir. 2009). Instead, a "logical reading" of PLCAA "require[es] a nexus between the basis of the allegations and the nature of the defendant's business." *Id.* at 1146.

Here, a PLCAA-related nexus between Mean's business and the shooting that caused Plaintiffs' injuries is plainly lacking. The Tops shooter harmed Plaintiffs using a rifle manufactured by Bushmaster, a company unaffiliated with Mean. This case is thus exactly like *Ileto*, in which a defendant argued that it should enjoy PLCAA protection because it was a seller of ammunition, even though the case did not involve ammunition sold by that defendant. *See id*. at 1145. That argument was properly rejected there, and it should fare no better here. Supreme Court's determination that "[t]he protection of PLCAA is not transferrable among manufacturers" is sound and should stand. *See* R.31.

Mean's arguments are simply grasping. It asserts, for example, that PLCAA protects entities like trade associations, which Mean posits, "do not manufacture or sell any qualified products." Appellant's Br. at 16 (emphasis omitted). But Mean

ignores that PLCAA protects trade associations only if they have "2 or more members [who] are manufacturers or sellers." § 7903(8)(C). Under a plain reading, a trade association presumably may not invoke PLCAA unless the product at issue was manufactured or sold by one of its members. *See Ileto, Inc.*, 565 F.3d at 1145. That PLCAA protection *may* exist in a case involving a trade association does not imply that Mean—a private company, not a trade association—can claim PLCAA protection for its own accessory product by parasitically latching onto a product manufactured and sold by a separate gun-industry actor.

Contrary to Mean's argument, *Sambrano* supports the conclusion that PLCAA does not protect a gun-industry defendant when another company's firearm was used to harm the plaintiff. *See* Appellant's Br. at 21–23. The *Sambrano* court presumed that a firearm manufacturer enjoys PLCAA protection only for its own products: "One purpose of the PLCAA is to prevent handgun manufacturers from defending against negligence claims based on the criminal misuse of *their* firearms." *Sambrano*, 338 P.3d at 105 (emphasis added). Indeed, while the *Sambrano* court held that PLCAA protected the manufacturer of the rifle used in a shooting, it denied PLCAA immunity to the distributor of a cable lock sold with the rifle and allowed claims to proceed against that distributor. *Id.* at 105. Those facts mirror the facts of this case, and Plaintiffs' claims should likewise be allowed to proceed against Mean.

IV. EVEN IF THIS WERE A "QUALIFIED CIVIL LIABILITY ACTION," PLAINTIFFS' CLAIMS SHOULD PROCEED UNDER PLCAA'S PREDICATE EXCEPTION WHERE MEAN KNOWINGLY VIOLATED LAWS APPLICABLE TO THE SALE OR MARKETING OF FIREARMS

Even if this Court were to conclude that Plaintiffs' claims fall within PLCAA's definition of a "qualified civil liability action," this action could still proceed under what is commonly known as PLCAA's "predicate exception." Under the predicate exception, PLCAA protection does not apply in "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 . . . ." § 7903(5)(A)(iii) (emphasis added).

Plaintiffs' claims against Mean meet this exception. Plaintiffs allege that Mean violated G.B.L. §§ 349 and 350's prohibitions on deceptive trade practices and false advertising, as well as New York's Firearms Industry Accountability Statute, G.B.L. §§ 898-a to 898-e ("Accountability Statute"). These statutory violations meet the requirements of the predicate exception because: (1) these statutes are "*applicable to*" the sale or marketing of firearms; (2) Mean "*knowingly*" violated these statutes; and (3) the violations were a "*proximate cause*" of Plaintiffs' harms.

Mean's narrow construction of the predicate exception—that it applies only to "firearms-specific" laws—contradicts PLCAA's plain text and statutory context. Appellant's Br. at 25. Consequently, persuasive authority holds that the predicate exception encompasses consumer-protection laws such as G.B.L. §§ 349 and 350. And even if Mean's construction were correct, the Accountability Statute *is* a firearms-specific law.

Finally, so long as one of Plaintiffs' claims falls within the predicate exception, all of Plaintiffs' claims against Mean can proceed without a claim-by-claim analysis. *Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 151 (4th Dep't 2012), *opinion amended on reargument*, 103 A.D.3d 1191 (4th Dep't 2013); *Chiapperini v. Gander Mtn. Co.*, 48 Misc. 3d 865, 876 (Monroe Cty. Sup. Ct. Dec. 23, 2014).

A. Mean's Violations of G.B.L. §§ 349 and 350 Satisfy PLCAA's Predicate Exception

As courts across the country have held, claims made under consumer-protection statutes like G.B.L. §§ 349 and 350 may proceed under PLCAA's predicate exception. In arguing to the contrary—positing that only "firearms-specific" statutes may be considered predicate-exception statutes—Mean conveniently ignores those holdings.

Soto v. Bushmaster Firearms Int'l, LLC, 331 Conn. 53, 120 (2019) persuasively rejected such a narrow construction of the predicate exception in a

thorough analysis of PLCAA's text and statutory context. As that case determined, PLCAA's use of "applicable to" signals a choice *not* to restrict the predicate exception to firearms-specific laws: "If Congress had intended to limit the scope of the predicate exception to violations of statutes that are *directly*, *expressly*, or *exclusively* applicable to firearms . . . it easily could have used such language, as it has on other occasions." *Soto*, 331 Conn. at 120 (italics in original). Instead of restrictive language, "the drafters opted instead to use only the term 'applicable,' which is susceptible to a broad reading . . . ." *Id.*

Under this correct broader reading, "there is little doubt that state consumer protection statutes" such as the Connecticut Unfair Trade Practices Act (as in *Soto*) or G.B.L. §§ 349 and 350 (as here) "would qualify as predicate statutes." *Id.* at 119. This straightforwardly flows from the "ordinary, dictionary meaning" of "applicable to," a term which means "capable of being applied." *Id.* at 119 (quoting Applicable, Black's Law Dictionary (10th ed. 2014)). Moreover, this conclusion—that state consumer-protection laws are "applicable" to the sale and marketing of firearms—comports with how "[t]he only state appellate court to have reviewed the predicate exception construed it." *Id.* (citing *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422, 431, 434–35 & n.12 (Ind. App. 2007)).

PLCAA's statutory framework also supports reading the predicate exception to encompass consumer-protection laws. As the *Soto* court observed, when

Congress enacted PLCAA it must have been aware that, at the time, "no federal statutes directly or specifically regulated the marketing or advertising of firearms," though a few state laws regulated advertising with respect to certain categories of firearms or the location of the advertising. *Soto*, 331 Conn. at 121–22 & 122 n.43; *see also Matter of Amorosi v. S. Colonie Indep. Cent. Sch. Dist.*, 9 N.Y.3d 367, 373 (2007) ("Legislature is presumed to be aware of the law in existence at the time of an enactment.") (citations omitted). Thus, "[i]t would have made little sense for the drafters of the legislation to carve out an exception for violations of laws applicable to the marketing of firearms if no such laws existed." *Soto*, 331 Conn.at 122.

City of New York v. Beretta U.S.A. Corp., 524 F.3d 384 (2d Cir. 2008), is consistent with and reinforces the interpretation adopted by the *Soto* court. There, the Second Circuit concluded that "a statute of general applicability" can "qualify as a predicate statute," finding "nothing in [PLCAA] that requires any express language regarding firearms to be included in a statute in order for that statute to fall within the predicate exception." *Id.* at 400, 406 n.1. *Beretta* concluded that the exception "encompasses" laws that "do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms," as well as statutes "that courts have applied to the sale and marketing of firearms." *Id.* at 404. The *Soto* court found the Second Circuit's reasoning in *Beretta* consistent with its own. *Soto*, 331 Conn. at 124–25.

Mean, by contrast, urges this Court to read PLCAA's exceptions narrowly. Appellant's Br. at 27. But principles of statutory construction do not support that approach. In fact, "modern courts are more likely to interpret both exceptions and provisos in terms of legislative intent or statutory meaning, and not presume that qualifying language should be strictly construed." § 47:11. Exceptions, 2A Sutherland Statutory Construction § 47:11 (7th ed.) Rather, "statutory exceptions are to be read fairly, not narrowly, for they 'are no less part of Congress's work than its rules and standards—and all are worthy of a court's respect.'" *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 594 U.S. 382, 396 (2021) (quoting *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 239 (2021)).[5]

The canon of *noscitur a sociis*—which Mean cites to support its narrow interpretation of the term "applicable to"—is immaterial. *See Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 288–89 (2010) (*noscitur a sociis* is properly employed to interpret words that appear "as a string of statutory terms" or as "items in a list"); *United States v. Williams*, 553 U.S. 285, 294–95 (2008) (interpreting the terms "promotes" and "presents" in light of their

[5] It is PLCAA's preemptive scope that this Court should read narrowly to avoid unintended preemption of state-law causes of action. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (explaining presumption "that Congress does not cavalierly pre-empt state-law causes of action," which requires that "questions concerning the scope of [a pre-emption law's] intended invalidation of state law" should be given "a narrow interpretation" to preserve "the historic primacy of state regulation of matters of health and safety").

inclusion in exhaustive "string of operative verbs—'advertises, promotes, presents, distributes, or solicits'" in criminal statute), *cited in* Appellant's Br. at 25. Indeed, *Soto* rejected this very argument, concluding that PLCAA's inclusion of two non-exhaustive examples of predicate violations were added "not to define or clarify the narrow scope of the exception" but instead to ensure that the predicate exception would be viable in particular cases. 331 Conn. at 141. As the court explained, the examples were formulated in response to public outcry following the 2002 District of Columbia sniper attacks and a subsequent civil action by families of the victims against the gun dealer from whom one of the perpetrators stole a rifle. *Id.* at 141–42. In response to the critique that PLCAA would have blocked that lawsuit despite the dealer's "history of lax inventory control procedures," Congress inserted the two examples into PLCAA, "not in an effort to define, clarify, or narrow the universe of laws that qualify as predicate statutes but, rather, simply to stave off [a] politically potent attack." *Id*. at 142–43.

That statutory context persuasively supports applying the ordinary meaning of "applicable to." This is not a matter of choosing among three established meanings of a statutory term based on context, as in *Deal v. United States*, 508 U.S. 129, 131–32 (1993). *See* Appellant's Br. at 25. Mean's construction of the predicate exception instead requires overriding the established ordinary meaning of "applicable to" by inserting restrictive language such as "directly, expressly, or

exclusively" ahead of "applicable to," a reading that *Soto* rejected. 331 Conn. at 120. This Court should decline Mean's invitation to construe the predicate exception contrary to its plain text. *See* McKinney's Statutes § 240 ("where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded").

With this understanding of the predicate exception's scope, Mean's deceptive marketing and false advertising violations of G.B.L. §§ 349 and 350 plainly fall within the exception. As *Soto* held, consumer-protection laws "such as the [Federal Trade Commission] Act and state analogues that prohibit the wrongful marketing of dangerous consumer products such as firearms represent precisely the types of statutes that implicate and have been applied to the sale and marketing of firearms." *Soto*, 331 Conn. at 126–27 (holding that Connecticut Unfair Trade Practices Act satisfies predicate exception). Other courts have followed suit, finding that various state consumer-protection laws can serve as predicate statutes. *See Prescott v. Slide Fire Sols.*, LP, 410 F. Supp. 3d 1123, 1138–39 (D. Nev. 2019) (holding that Nevada's Deceptive Trade Practices Act qualifies as predicate statute); *Doyle v. Combined Sys., Inc.*, 2023 WL 5945857, at *11 (N.D. Tex. Sept. 11, 2023) (holding "that prohibitions on unfair or deceptive trade practices are exempt from the PLCAA under the predicate exception"); *Goldstein v. Earnest*, 2021 WL 12321922, at *5

(Cal. Super. Ct. July 2, 2021) ("[T]he Court finds that [California's Unfair Competition Law] qualifies as a 'predicate statute.'"). Here, G.B.L. §§ 349 and 350 are materially indistinguishable from other states' consumer-protection laws that have served as predicate statutes; they serve as "mini-FTC" statutes and are used to address deceptive and misleading conduct in various industries. *See People ex rel. Spitzer v. Applied Card Sys., Inc.*, 11 N.Y.3d 105, 120 (2008).[6]

Soto's analysis also shows why Mean's invocation of *Ileto*, 565 F.3d 1126, does not support Mean's construction of the predicate exception. Appellant's Br. at 26. In *Ileto*, the Ninth Circuit rejected the argument that the predicate exception requires a "violation of a statute that pertained *exclusively* to the sale or marketing of firearms." 565 F.3d at 1134. Instead, as the *Soto* court noted, *Ileto* recognized that PLCAA allows firearm manufacturers and sellers to be liable for violations of sales and marketing regulations. *Soto*, 331 Conn. at 129 n.53, 152 (citing *Ileto*, 565 F.3d at 1137). *Ileto*'s holding that PLCAA forecloses reliance on "general tort theories of liability" that have been codified as statutes, 565 F.3d at 1135–36, simply has no application here because G.B.L. §§ 349 and 350 are consumer-protection

[6] Consumer-protections laws like G.B.L. §§ 349 and 350 "clearly can be said to implicate the purchase and sale of firearms." *Beretta*, 524. F.3d at 404. Indeed, they have been applied to the sale and marketing of firearms. The New York Attorney General has sued Mean for violations of G.B.L. §§ 349 and 350 related to the MA Lock and has issued cease-and-desist letters to firearms website operators in reliance on G.B.L. §§ 349 and 350.

laws, not codifications of the common law or general theories of tort liability. Indeed, as our Legislature has recently noted, "Section 350 was enacted in 1963 amid concerns that common law causes of action and the New York Penal Law were ineffective in fighting the effects of false advertising," and "Section 349 was added to New York's General Business Law in 1970 to broaden existing protections provided to consumers from simply false advertising to varied forms of deception." Sponsor's Memo, Active Bill S7756A, L 2023. Accordingly, a district court within the Ninth Circuit, applying *Ileto*, has concluded that Nevada's analogous consumer-protection law is a predicate statute. *Prescott*, 410 F. Supp. 3d at 1138–39 ("*Ileto* does not foreclose the NDTPA from serving as a predicate statute, and instead appears to permit it.").

For the foregoing reasons, G.B.L. §§ 349 and 350 are valid predicate exceptions under PLCAA, and Plaintiffs have more than sufficiently alleged that Mean violated those statutes. *See* Part VI, *infra*.

B. Mean's Violations of G.B.L. §§ 898-a to 898-e Alternatively Satisfy PLCAA's Predicate Exception

Mean does not address another statute under which Plaintiffs have stated a claim that clearly satisfies the predicate exception: New York's Accountability

Statute, G.B.L. §§ 898-a to 898-e. R.793–94.[7] The Accountability Statute was enacted in July 2021 to hold gun-industry members accountable for harms they have caused in New York. *See Nat'l Shooting Sports Found., Inc. v. James*, 604 F. Supp. 3d 48, 55 (N.D.N.Y. 2022). Section 898-b(1) imposes civil liability on gun-industry members who "knowingly or recklessly create, maintain or contribute to a condition in New York state that endangers the safety or health of the public through the sale, manufacturing, importing or marketing of a qualified product." Section 898-b(2) further requires that "[a]ll gun industry members who manufacture, market, import or offer for wholesale or retail sale any qualified product in New York state shall establish and utilize reasonable controls and procedures to prevent its qualified products from being possessed, used, marketed

[7] *See Williams*, 100 A.D.3d at 149–50 (motion to dismiss on PLCAA grounds should be denied even when "the complaint does not specify the statutes allegedly violated[,]" if plaintiff "sufficiently alleges facts supporting a finding that defendants knowingly violated federal gun laws."). While Plaintiffs neither believe nor concede that the MA Lock is a "qualified product" under the Accountability Statute for the same reasons the lock is not a "qualified product" under PLCAA, Plaintiffs invoke the Accountability Statute in the event the Court disagrees with them, and in the event the Court disagrees that G.B.L. §§ 349 and 350 constitute PLCAA predicate-exception statutes. *See* G.B.L. § 898-a(6) (defining "[q]ualified product" to "have the same meaning as defined in 15 U.S.C. section 7903(4)"). If the Court agrees that the MA Lock is *not* a qualified product, Plaintiffs will not pursue Accountability Statute claims against Mean. Thus, the motion to dismiss was properly denied irrespective of whether the MA Lock is a "qualified product." Plaintiffs are aware of a pending facial challenge to the Accountability Statute, currently on appeal to the U.S. Court of Appeals for the Second Circuit. *See Nat'l Shooting Sports Found.*, 604 F. Supp. 3d at 69 (N.D.N.Y.) (granting State's motion to dismiss and upholding statute in its entirety), *appeal filed June 28, 2022* (2nd Cir. case no. 22-1374). Plaintiffs will notify the Court if a decision issues in that case that might affect their potential claims.

or sold unlawfully in New York state." This language undoubtedly qualifies as a "statute applicable to the sale or marketing." *See id*. at 59 ("No reasonable interpretation of 'applicable to' can exclude a statute which imposes liability exclusively on gun manufacturers for the manner in which [their products] are manufactured, marketed, and sold."). Plaintiffs action may thus proceed under the predicate exception even assuming the MA Lock is deemed a "qualified product."

C. Mean Knowingly and Purposefully Violated the Predicate-Exception Statutes

Plaintiffs' allegations are sufficient to satisfy the predicate exception's "knowingly" requirement. Under New York or federal law, a person "knowingly" violates a law when they have "knowledge of facts and attendant circumstances that comprise a violation of [a] statute, [which does] not [require] specific knowledge that one's conduct is illegal." *United States v. Weintraub*, 273 F.3d 139, 147 (2d Cir. 2001); *Bryan v. United States*, 524 U.S. 184, 193 (1998); *People v. D. H. Ahrend Co.*, 308 N.Y. 112, 113 (1954) ("Knowingly . . . means merely a knowledge of the existence of the facts constituting the crime."). It cannot be gainsaid that Mean had "knowledge of the facts and attendant circumstances that comprise a violation of" G.B.L. §§ 349 and 350. Mean knew about every statement it made regarding the MA Lock's ability to sidestep New York law, and it knew that it was making those statements to New York consumers. Those statements form the basis of Plaintiffs'

G.B.L. claims, including but not limited to statements about the supposed permanent nature and non-removability of the lock, and statements telling consumers how to easily remove that very lock. *See Infra* Part VI.A. That is more than enough to meet the predicate exception's "knowingly" requirement.

In contending that Plaintiffs have not sufficiently alleged that Mean "knowingly violated" G.B.L. §§ 349 and 350, Mean of course does not attempt to argue that it did not have knowledge of its own statements. Appellant's Br. at 27–28. Instead, Mean relies on arguments that conflate knowledge of law with knowledge of facts and are otherwise irrelevant to Plaintiffs' claims—another attempt at sleight of hand. Whether Mean knew that semiautomatic rifles with the MA Lock installed, like the Bushmaster XM-15 the Tops shooter purchased, met New York's statutory definition of assault weapon is a matter of legal, not factual, knowledge. And whether enforcement actions have been taken against dealers who sell such rifles is immaterial to Plaintiffs' G.B.L. claims. *Cf. United States v. Batchelder*, 442 U.S. 114, 124 (1979) ("Whether to prosecute and what charge to file or bring . . . are decisions that generally rest in the prosecutor's discretion."). Accordingly, Mean's arguments fail.

D. PLCAA Does Not Impose a Freestanding Federal Proximate Cause Standard

For the reasons discussed in Part V, *infra*, Plaintiffs' allegations easily suffice to show that Mean's conduct proximately caused their harms under New York Law. Plaintiffs' claims thus meet all the requirements of PLCAA's predicate exception and may accordingly proceed under that exception.

Mean's efforts to evade liability go so far as to baselessly assert that "PLCAA imposes a freestanding proximate cause requirement as a matter of federal law, which means that the federal proximate cause standards apply." Appellant's Br. at 29. Mean does not cite a single case in support of its imagined "federal proximate cause requirement" because it cannot—the notion that proximate cause under PLCAA is a matter of federal law is a complete fiction. Rather, this Court and other state courts uniformly apply state-law proximate cause standards where, as here, both the predicate statutes and the Plaintiffs' causes of action are creatures of state law. *See, e.g.*, *Chiapperini*, 48 Misc. 3d at 875; *Williams*, 100 A.D.3d at 152 (applying state law of proximate cause applicable to negligence claim after finding that predicate exception was met); *see also Brady v. Walmart Inc.*, 2022 WL 2987078, at *13 (D. Md. July 28, 2022); *Whitson v. Polymer80, Inc.*, 2022 Cal.

Super. LEXIS 93666, at *10 (Cal. App. Dep't Super. Ct. Oct. 17, 2022); *Englund v. World Pawn Exch.*, 2017 Ore. Cir. LEXIS 3, at *16 (Or. Cir. Ct. June 30, 2017).

Mean's citation to *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189 (2017), is inapposite and misleading. Appellant's Br. at 29. In that case, the U.S. Supreme Court explained that "[p]roximate-cause analysis is controlled by the nature of the statutory cause of action" and applied a proximate-cause analysis specific to the claim at issue, which was a violation of the federal Fair Housing Act. *Id.* at 201. Here, however, PLCAA specifically does *not* create a federal cause of action. 15 U.S.C. § 7903(5)(C) ("[N]o provision of this chapter shall be construed to create a public or private cause of action or remedy."). Therefore, this Court should apply the proximate-cause analysis of the state-law claims Plaintiffs have asserted against Mean under New York statutes.[8] As discussed below, Plaintiffs have adequately alleged proximate cause under those statutes.

In any event, Mean fails to satisfactorily explain how a federal proximate-cause standard differs from New York's or why Plaintiffs' claims are deficient under

[8] Mean's cites a pending Supreme Court case, *Smith & Wesson Brands, et al. v. Estados Unidos Mexicanos*, 21-1141 (Order List: 603 U.S. _), which Mean asserts will "address the scope of the PLCAA's proximate cause requirement in the predicate exception and how it should be applied in *these* types of cases." Appellant's Br. at 29 n.8. (emphasis added). It is unclear what types of cases Mean is referring to, given that *Estados Unidos Mexicanos* is a federal case asserting claims of aiding and abetting federal statutes, and the questions presented do not address Mean's unsupported theory that this Court's proximate-cause analysis for state-law claims must include federal proximate-cause standards.

either. Mean insists that federal law requires a "close connection" between the harm and the prohibited conduct, Appellant's Br. at 29, but even if that were the right standard to apply, Plaintiffs' allegations meet this test.

V. PLAINTIFFS HAVE SUFFICIENTLY ALLEGED FACTS SHOWING THAT MEAN'S CONDUCT WAS A PROXIMATE CAUSE OF THEIR HARMS

Plaintiffs have alleged ample facts showing that Mean's actions were a proximate cause of their injuries. R.922–23. Mean's argument to the contrary—that the actions of the Tops shooter "break any causal chain as a matter of law"—is erroneous and fails both as a matter of law and of fact at this preliminary stage. Appellant's Br. at 34.

As a threshold matter, "[t]ypically, the question of whether a particular act of negligence is a substantial cause of the plaintiff's injuries is one to be made by the factfinder." *Hain v. Jamison*, 28 N.Y.3d 524, 529 (2016). New York courts "have repeatedly emphasized that just as with determinations regarding proximate cause generally, because questions concerning what is foreseeable and what is normal may be the subject of varying inferences, whether an intervening act is foreseeable or extraordinary under the circumstances generally is for the fact finder to resolve." *Scurry v. N.Y.C. Hous. Auth.*, 39 N.Y.3d 443, 454 (2023) (cleaned up). Indeed, the Court of Appeals has addressed a superseding, intervening-cause defense at least seven times, and in *every* instance has found that issues of fact exist. *See*, *e.g.*, *Hain*,

28 N.Y.3d at 529; *Mazella v. Beals*, 27 N.Y.3d 694, 705–06 (2016); *Cohen v. St. Regis Paper Co.*, 65 N.Y.2d 752, 754 (1985); *Kush v. City of Buffalo*, 59 N.Y.2d 26, 33 (1983); *Derdiarian v. Felix Contr. Corp.*, 51 N.Y.2d 308, 314 (1980); *McLaughlin v. Mine Safety Appliances Co.*, 11 N.Y.2d 62, 70 (1962); *Rosebrock v. Gen. Elec. Co.*, 236 N.Y. 227 (1923). Mean seeks a determination on proximate cause as a matter of law, but "[o]nly in rare cases can the issue be decided as a matter of law." *Scurry*, 39 N.Y.3d at 454 (internal quotation marks omitted). Instead, "questions of proximate cause and foreseeability should generally be resolved by the factfinder." *Voss v. Netherlands Ins. Co.*, 22 N.Y.3d 728, 737 (2014) (citing *Derdiarian*, 51 N.Y.2d at 315). Here, Mean has failed to establish that the factfinder should be deprived of that role, especially at this early juncture.

Moreover, assuming the truth of Plaintiffs' allegations, as the Court must on a motion to dismiss, the facts alleged in the Complaint do not depict an unforeseeable, extraordinary intervening act that breaks the chain of causation at this stage of the litigation. "When a question of proximate cause involves an intervening act, liability turns upon whether the intervening act is a *normal or foreseeable consequence* of the situation created by the defendant's negligence." *Hain*, 28 N.Y.3d at 529 (internal quotation marks omitted) (emphasis in original). Importantly, "where the acts of a third person intervene between the defendant's conduct and the plaintiff's injury, the causal connection is not automatically

severed." *Id.*; *see also* P.J.I. 2:70 Proximate Cause In General ("[t]here may be more than one cause of an injury"). Mean's argument that it bears no responsibility for Plaintiffs' injuries because the shooter's action supposedly broke the chain of causation ignores the extent of Mean's actions in this case that led to foreseeable results—Mean provided an intentionally easily removeable lock to the New York market along with removal instructions, thus creating a prime hazard that someone would follow those instructions and insert detachable magazines, thereby perpetrating a deadlier attack. There can be nothing unforeseeable or extraordinary to Mean about the Tops shooter's removal of the lock when Mean specifically instructed its customers on how to remove the lock. R.769 (¶¶ 511–17). In short, the Complaint's allegations are more than sufficient to establish that Mean "put in motion or significantly contribute[d] to" Plaintiffs' harms, which were magnified by the easy, foreseeable removal of the MA lock. *Hain*, 28 N.Y.3d at 532.

Accordingly, Plaintiffs have sufficiently alleged proximate cause.

VI. PLAINTIFFS HAVE SUFFICIENTLY PLEADED G.B.L. CLAIMS

A. Plaintiffs Have Stated Cognizable Claims for Relief Under G.B.L. §§ 349 and 350

The Court of Appeals has articulated three elements for establishing claims for deceptive practices and false advertising under G.B.L. §§ 349 and 350. Appellant's Br. at 36. To make out a claim under either, a plaintiff must establish

that (1) a defendant engaged in conduct that was materially misleading; (2) such conduct was consumer-oriented; and (3) the plaintiff suffered harm as a result of the allegedly deceptive act or practice. *See, e.g.*, *Koch v. Acker, Merrall & Condit Co*., 18 N.Y.3d 940, 941 (2012). As Supreme Court properly held, Plaintiffs have alleged facts sufficient to support each element. R.35.

First, Plaintiffs have alleged that Mean materially misled consumers by marketing its MA Lock as a "true solution to fixed magazine laws" like New York's and advertising that, once installed, the lock "cannot be removed with a tool, which satisfies CA and NY state law." R.769, 794 (¶¶ 506, 510, 680). The alleged facts show that Mean knew those statements were false—Mean taught consumers how to remove its lock easily, with simple tools, in approximately 10 minutes. R. 769–772 (¶¶ 511–18, 521).

The alleged facts also show that Mean's deceptive statements were material, or "important to consumers and, hence, likely to affect their choice of, or conduct regarding, [Mean's] product." *Bildstein v. MasterCard Intern. Inc.*, 329 F.Supp.2d 410, 414 (S.D.N.Y. 2004). *See* R.771–72 (¶¶ 520–25) (alleging consumer-shooter specifically sought out firearm with an MA Lock); R.767 (¶ 491) (shooter's statement that MA Lock-equipped firearm "will do very nicely" for maximum killing); R.767 (¶ 493) (shooter's statement that firearm with MA Lock "will be VERY effective"); R.772 (¶ 523) (consumer-proprietor of Vintage Firearms

suggesting that MA Lock provides plausible deniability to sell firearms with "safety features"). Moreover, this issue is not ripe for a determination on a motion to dismiss: whether a practice is materially misleading is "usually . . . a question of fact." *Goldemberg v. Johnson & Johnson Consumer Cos., Inc.*, 8 F. Supp. 3d 467, 478 (S.D.N.Y. 2014).

Second, the allegations make clear that Mean's misleading statements were consumer-oriented—they appeared on Mean's website and elsewhere as part of Mean's efforts to sell MA Locks to customers specifically in States like New York. R.769–71 (¶¶ 506, 510, 516–18). *See*, *e.g.*, *Casper Sleep, Inc. v. Mitcham*, 204 F. Supp. 3d 632, 644 (S.D.N.Y. 2016) (company's website statements are consumer-oriented).

Finally, Plaintiffs have alleged facts sufficient to show a causal connection between their injuries and Mean's deceptive marketing practices. Mean's practices led New York consumers to believe that the MA Lock is a permanent fixture that brings otherwise prohibited weapons into compliance with state law. R.769 (¶ 510). That deception caused consumer-dealers in New York like Vintage Firearms to hide behind a veneer of legality to purchase and sell weapons equipped with MA Locks that were easily convertible into illegal, functioning, assault weapons. R.772 (¶ 523). This allegation is substantiated by the New York Attorney General's lawsuit against Mean. R.772–73 (¶ 527); R.939 (¶ 2) ("the MA Lock did not

effectively impede the ability of the Bushmaster XM-15 used by the Buffalo shooter to accept a detachable magazine. Using basic tools in his family's home and following easily available instructions, within a matter of minutes, the Buffalo shooter simply removed the MA Lock."). That lawsuit details how "Mean Arms is well aware that the MA Lock is simple to remove" and that it is "designed to be removed quickly, easily, and without damaging the semiautomatic rifle, with Mean Arms even providing removal instructions on the product label." R.948 (¶¶ 54–55). Plaintiffs agree and have pleaded facts sufficiently showing that "Mean Arms' conduct has resulted in people in New York possessing semiautomatic rifles with MA Locks." R.950 (¶ 70). The Tops shooter's AR-15 was one such illegal weapon that would not have been available in New York without Mean's unlawful conduct. R.772–73 (¶¶ 527–28). Accordingly, Plaintiffs have alleged facts sufficient to survive Mean's motion to dismiss.

Despite the foregoing, Mean baldly argues that Plaintiffs have not stated claims for relief under G.B.L. §§ 349 and 350. Appellant's Br. at 36–37. Mean does not meaningfully contest that its statements were materially misleading or consumer-oriented, but disputes causation.[9] Appellant's Br. at 37. As discussed, Plaintiffs

[9] Mean spends three sentences asserting that its practices were not misleading or consumer-oriented because the Tops shooter thought that removing the MA Lock would make his firearm illegal. Appellant's Br. at 38. But whatever the Tops shooter's personal knowledge was, it does not negate Mean's own knowledge of its false statements. Mean's business practices *relied on*

have alleged facts sufficiently showing that Mean's practices led to the harms they have suffered, and the trial court's decision should be upheld on that basis alone. *Supra* Part V. The hypothetical that Mean posits in support of its argument—that the shooter "could have purchased the same rifle in New York . . . simply missing the other features that have no effect on the rifle's function"—is inapposite and irrelevant, as it ignores the actual facts of this case, specifically, Mean's intentional marketing of its product to attract customers like the Tops shooter. Appellant's Br. at 37. It also purports to rely on disputed factual assertions. Indeed, if the Court could consider the facts set forth in Mean's motion (which it cannot), it would have to conclude that too many disputed facts go to the issue of causation. *See, supra*, Section I. It would be improper to dismiss Plaintiffs' §§ 349 and 350 claims now, without further factual development. *See Guggenheimer*, 43 N.Y.2d at 275 ("unless it can be said that no significant dispute exists regarding [a material fact claimed by the pleader], dismissal should not eventuate").

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claiming one thing to the general public and another to customers: Mean claimed online that the MA Lock "cannot be removed with a tool, which satisfies CA and NY state law" in order to sell in New York. R.769 (¶ 510); at the same time, Mean's representatives were assuring potential customers that the MA Lock could be removed using "simple tools," "without any damage to your rifle," in "about 10 minutes." R.770–71 (¶¶ 516, 518). Mean cannot claim that its patently false statements were not deceptive because the company provided a subset of its consumers with the truth. *See Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Co., Inc.*, 37 N.Y.3d 169, 178 (2021) (a qualifying deceptive practice "need not be directed to *all* members of the public") (emphasis in original).

B. Plaintiffs Have Standing Because They Suffered Direct, Non-Derivative Injuries that Epitomize the Harm Mean Has Caused to the Public

Mean's standing contention is far-fetched. Plaintiffs have suffered exceptional harms as a result of Mean's deceptive practices. Those harms are independent—and not derivative—of any harms that direct consumers of Mean's MA Lock may have incurred and epitomize the grave harms that Mean's practices have caused the New York public. Plaintiffs thus have standing to pursue G.B.L. §§ 349 and 350 claims.

1. Mean Mischaracterizes G.B.L. §§ 349 and 350 Standing

Mean mischaracterizes New York's consumer-protection law when it argues that only direct "consumers of Mean's products" and "direct competitors of Mean" have standing to sue the company for §§ 349 and 350 violations. Appellant's Br. at 34–35. On the contrary, "[t]he critical question" under §§ 349 and 350 "is whether the matter affects the public interest in New York, *not* whether the suit is brought by a consumer or a competitor." *Securitron Magnalock Corp. v. Schnabolk*, 65 F.3d 256, 264 (2d Cir. 1995) (emphasis added). Correspondingly, the law broadly authorizes "*any person* who has been injured by reason of *any violation* of this section" to file suit for injunctive and/or monetary relief. G.B.L. § 349(h) (emphasis added). *See* McKinney's Statutes § 94 (plain language of a statute evinces the

legislative intent); *Majewski*,*v. Broadalbin-Perth Cent. School Dist.*, 91 N.Y.2d 577, 583 (1998).

In *Blue Cross v. Philip Morris*, 3 N.Y.3d 200 (2004), the Court of Appeals held that plaintiffs may not bring § 349 claims if their harm is too attenuated or derivative of others'—i.e., if their injury "arises solely as a result of injuries sustained by another party." *Id.* at 207. But it cannot seriously be argued that Plaintiffs' injuries—being shot at, killed, and traumatized by rapid fire from an illegal assault weapon—arose "solely as a result of injuries sustained by" anyone else. Indeed, in *Blue Cross*, the Court noted that it was not barring actions by non-consumers like Plaintiffs but was merely attempting to ensure that "the party actually injured be the one to bring suit." *Id*. at 208. Here, Plaintiffs are "the part[ies] actually injured." *Id.* And their injuries underscore just how gravely Mean's deception "affects the public interest in New York." *Securitron*, 65 F.3d at 264.

2. Plaintiffs Have Suffered Direct, Non-Derivative Harms

Because "the party actually injured" is the proper plaintiff in a consumer-protection action, courts have rightfully denied motions to dismiss consumer-protection claims brought by non-consumers who have suffered harms independent of harms suffered by direct consumers. *See In re Opioid Litig.*, 2018 N.Y. Slip Op. 31229, *13 (Sup. Ct., Suffolk Cty., Jun. 18, 2018) (collecting cases). Supreme Court

properly did so here, holding that "the plaintiffs in this case have direct injuries." R.35. This Court should uphold that decision.

As noted *supra*, Section IV.A, the Connecticut Supreme Court allowed plaintiff-victims of the 2012 Sandy Hook mass shooting to proceed with wrongful-advertising claims against firearms manufacturers. *Soto*, 331 Conn. at 98–99. Rejecting the manufacturers' argument that the harms suffered by the victims were derivative of the manufacturers' consumers, the Court held that when "it is the direct victims of gun violence who are challenging the defendants' conduct[,] no private party is better situated . . . to bring the action." *Id.*

The Suffolk County Supreme Court denied a motion to dismiss § 349 claims against opioid manufacturers brought by New York counties, even though the counties were neither direct opioid consumers nor competitors, because the counties had alleged their own pecuniary harms that were not derivative of the harms suffered by opioid consumers. *In re Opioid Litig.*, 2018 N.Y. Slip Op. 31229 at *19–20. Likewise, the Eastern District of New York recently allowed prisoners who had received false drug tests to proceed with § 349 claims against a urinalysis company, even though the prisoners were neither direct consumers nor competitors of the company, because they "allege[d] direct injury that does not rely on injuries sustained by others." *Steele-Warrick v. Microgenics Corp.*, 2024 U.S. Dist. LEXIS 11931, at *10 (E.D.N.Y. Jan. 23, 2024); *see also M.V.B. Collision, Inc. v Allstate*

Ins. Co., 728 F. Supp. 2d 205, 217–18 (E.D.N.Y. 2010) (allowing auto-repair shop to sue insurance company for deceptive statements made to consumer-insureds); *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 497 F. Supp. 3d 552, 667–69 (N.D. Cal. 2020) (allowing school districts to pursue deceptive-marketing claims against vaping company because districts' harms were distinct from harms to consumer-youths' health).

Here, Plaintiffs have alleged facts showing that they are "the part[ies] actually injured" by Mean's conduct and thus proper plaintiffs to hold Mean accountable. *Blue Cross*, 3 N.Y.3d at 208. Plaintiffs have suffered specific physical and emotional harms, which are wholly distinct and independent from any harm a purchaser of Mean's MA Lock could claim to suffer as a result of the company's deceptive marketing practices (i.e., that relying on those practices led them to purchase or possess an illegal assault weapon). The lone case Mean relies on in support of its derivative-harm argument is inapposite, as it involved a special legal relationship between consumers and non-consumer plaintiffs (landlord-tenant) that is not present here and held that defendants had not made any materially misleading statements on which anyone could state a § 349 claim. Appellant's Br. at 35 (citing *Frintzilas v. DirectTV, LLC*, 731 F.App'x 71, 72 (2d Cir. July 20, 2018)). Here, like the Sandy Hook families, the Buffalo families are the "direct victims of gun

violence" challenging Mean's conduct and "no private party is better situated to bring this action." *Soto*, 331 Conn. at 99.

3. Mean's Deceptive Practices Harm the Public Interest

The harm Mean's marketing practices have caused to New York's public interest is manifest—shootings rendered deadlier. Mean's false and deceptive representations concerning the permanent nature of its MA Lock allowed and caused dealers like Vintage Firearms and individuals like the Tops shooter to possess and transfer firearms that were easily convertible into functional, illegal assault weapons while escaping state regulators. *See Securitron*, 65 F.3d at 264 (finding "harm to the public was manifest" when defendant provided false information to New York regulatory agency). In fact, Plaintiffs' own experiences underscore just how gravely Mean's actions have harmed the public: On May 14, 2022, Plaintiffs were members of the public shopping for groceries; they sought no relationship with Mean but nevertheless became victims of the company's deceptive practices.

This case exemplifies why it makes no sense to limit standing to direct consumers instead of those who have suffered direct harms. Mean's representations concerning the supposedly permanent nature of its MA Lock gave cover to New York consumers—including dealers like Vintage Firearms and purchasers like the Tops shooter—to buy and sell firearms that could be easily converted into functional, illegal assault weapons. Some if not many of those same consumers,

including the Tops shooter, simultaneously sought out or were provided with instructions for removing the MA Lock from Mean. R.770–71 (¶¶ 512–18). That is, New York consumers sought out firearms fitted with MA Locks *specifically because the locks are removable and not permanent*. R.770–71, 767 (¶¶ 512–25, 491) (shooter stating MA Lock-equipped firearm "will do very nicely" for his massacre). Yet they could only purchase such products in New York because Mean lied to New York regulators about its lock being permanent. R.938–55. Bad customers do not and should not let Mean escape liability for its deceptions, especially here, where Mean has marketed its product to those customers, and where the most directly foreseeable harm is not to those customers but to other members of the New York public. *Cf. In re of Brooklyn Navy Yard Asbestos Litig.*, 971 F.2d 831, 839 (2d Cir. 1992) ("there is nothing unjust in holding defendants liable for their own negligence, notwithstanding [employer's] additional lapse."). No, here, the "most directly foreseeable harm associated with [Mean's practices] is that innocent third parties could be shot" with a firearm modified to accept a more deadly, detachable magazine. *Soto*, 331 Conn. at 99. Plaintiffs are innocent third parties who were shot with a firearm containing a more deadly, detachable magazine. They should accordingly be allowed to proceed with their §§ 349 and 350 claims.[10]

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[10] Mean additionally asserts in its opening brief that Plaintiffs' negligence claim should be dismissed. Appellant's Br. at 38. The *Patterson* Plaintiffs note that they have not brought a

VII. THE COURT HAS JURISDICTION OVER MEAN

Since Mean purposefully availed itself of New York by creating and selling a product only to be purchased in states like New York, and Plaintiffs' claims arise from Mean's product that was sold, purchased, and used in New York, this state's specific jurisdictional statute is satisfied.

C.P.L.R. 302 (a)(1) provides that jurisdiction is proper when "defendant's activities . . . were purposeful and there is a substantial relationship between the transaction and the claim asserted." *Fischbarg v. Doucet*, 9 N.Y.3d 375, 380 (2007). "[E]ven when physical presence is lacking, jurisdiction may still be proper if the defendant . . . projects himself or herself into this state to engage in a sustained and substantial transaction of business." *Id.* at 382. *See also Parke-Bernet Galleries, Inc. v. Franklyn*, 26 N.Y.2d 13, 17 (1970) ("[O]ne can engage in extensive purposeful activity here without ever actually setting foot in the State."). "[T]he inquiry under the statute is relatively permissive;" the legal claim just must not be "completely unmoored" from the transaction. *Licci v. Lebanese Canadian Bank*, 20 N.Y.3d 327, 339 (2012); *see also Al Rushaid v. Pictet & Cie*, 28 N.Y.3d 316, 329 (2016) (The "claim need only be 'in some way arguably connected to the

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standalone negligence claim against Mean. To the extent the *Patterson* Plaintiffs' wrongful death and/or personal injury claims against Mean rely on a showing of negligence, Plaintiffs adopt the arguments made by the *Salter, Jones,* and *Stanfield* Plaintiffs in their briefing on this consolidated appeal.

transaction.'"). Moreover, this is a "single act statute," such that "proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful . . ." *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 467 (1988); *Corp. Campaign, Inc. v. Local 7837, United Paperworkers Int'l Union*, 265 A.D.2d 274, 274 (1st Dep't 1999).

Under C.P.L.R. 302(a)(3), jurisdiction is proper where a defendant "First . . . committed a tortious act outside the State; second . . . the cause of action arises from that act; third, that the act caused injury to a person or property within the State; fourth, that defendant expected or should reasonably have expected the act to have consequences in the State; and fifth, that defendant derived substantial revenue from interstate or international commerce." *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 214 (2000); *see also Merck Eprova AG v. Gnosis S.p.A.*, 2008 WL 5336587, at *4 (S.D.N.Y. Dec. 12, 2008).

It cannot be disputed that the MA Lock at issue was sold, bought, and removed in this State. That, alone, suffices for specific jurisdiction. Moreover, Mean engaged in "sustained and substantial transaction of business" within New York at the time of the Tops shooting, regularly doing business here. *Fischbarg*, 9 N.Y.3d at 382. Mean has acknowledged that its webpage referenced the "NY Safe Act" and assured customers that it had "[n]o issue shipping to customers in . . . NY." R.897, 769

(n.225). On or before May 10, 2023, however, Mean changed its website to state that it would no longer ship the MA Lock to New York. R.772 (¶ 526). This change is an acknowledgement that Mean *did* target New York consumers and disproves Mean's protestations to the contrary. Appellant's Br. at 41–42.

Furthermore, gun owners in states that do not have restrictions similar to New York's have no need for Mean's MA Lock. Mean's website describes the product as "for states with intrusive" and "anti-firearm laws." R.769 (¶¶ 506, 508–09). Thus, the market for the MA Lock is restricted to a limited number of states like New York, as Mean acknowledges. *See* R.769 (¶ 510). Mean targeted New York by designing a product for use specifically in this State, and it conducts substantial business within New York. *See J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011) (defendant said to be targeting the forum is subject to jurisdiction). Plaintiffs' claims stem from the company's contacts with New York—Mean does not dispute that its product was installed on the rifle that the Tops shooter purchased in New York to use as his murder weapon. Plaintiffs' claims arise from that purchase and subsequent removal. *See Kreutter*, *supra*.

Similarly, in *LaMarca*, the Court of Appeals ruled that dismissal of a case for lack of personal jurisdiction was improper where defendant knew its product would be used in New York, purposely pursued business ties with New York, and was motivated by a desire to sell in New York. Those same facts hold true here. Mean

knew its MA Lock would be used in New York and therefore "had reason to expect that any defects would have direct consequences in this State." *LaMarca*, 95 N.Y.2d at 215. Mean "forged the ties with New York. It took purposeful action, motivated by the entirely understandable wish to sell its products here." *Id.* at 217. Thus, like the *LaMarca* Court, this Court should have "no difficulty in concluding" that C.P.L.R. 302(a)(3) is satisfied. *Id.* at 215.

Lastly, as the U.S. Supreme Court's due-process precedents provide, "[s]o long as a party avails itself of the benefits of the forum, has sufficient minimum contacts with it, and should reasonably expect to defend its actions there, due process is not offended if that party is subject to jurisdiction even if not present in that state." *Fischbarg*, 9 N.Y.3d at 384–85; *see also Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 355 (2021). The Court of Appeals has indicated that in only extremely rare circumstances will exercising jurisdiction under C.P.L.R. 302 not comport with federal due process. *Al Rushaid*, 28 N.Y.3d at 331. Holding Mean accountable for designing and selling a product in New York comports with traditional notions of fair play and substantial justice.

CONCLUSION

For the foregoing reasons, this Court should affirm Supreme Court's order denying Mean's motion to dismiss in its entirety and award costs to Plaintiffs-Respondents.

Dated: February 28, 2025

RESPECTFULLY SUBMITTED,

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