*To be Argued by:*
CHRISTOPHER RENZULLI
*(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

# REPLY BRIEF FOR DEFENDANT-APPELLANT

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

CP COUNSEL PRESS (800) 4-APPEAL • (380092)

– 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.*

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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 MACKNEIL, A.M., a minor, and LATISHA ROGERS,

Action No. 2
Index No. 805896/23

*Plaintiffs-Respondents,*

– 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.*

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

Action No. 3
Index No. 810316/23

*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.*

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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,

Action No. 4
Index No. 810317/23

*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.*

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## PRELIMINARY STATEMENT

Defendant-Appellant Mean L.L.C. ("Mean") submits this combined brief in reply to the Respondents' briefs submitted on behalf of Plaintiffs-Respondents (collectively, "Plaintiffs").

* * *

In clear recognition that the broad immunity afforded under the Protection of Lawful Commerce in Arms Act ("PLCAA") bars their claims against the manufacturers of the firearm, ammunition, component part manufacturers and even the illegal magazine in the firearm used by Payton Gendron ("Shooter") during this horrific event, Plaintiffs have not brought claims against any of these entities. Instead, they are targeting the manufacturer of what is essential a threaded pin as a cause of this incident. Plaintiffs seek to bypass clear Congressional intent to immunize firearm and ammunition industry members when firearm related products are used in incidents such as this one, a heinous and unthinkable act of a racist criminal.

While it is uncontroverted that the Shooter removed and destroyed Mean's MA Lock before the incident with items from an Anderson Manufacturing lower parts kit, thus restoring it to its original design and making it illegal in New York, Plaintiffs collectively decided not to file suit against Anderson Manufacturing. Clearly, Plaintiffs believe that such a claim would be futile given the immunity under

the PLCAA provided to firearm component parts manufacturers and sellers. If the replacement parts seller is immune from suit, then the PLCAA requires that Mean be treated no differently and the Complaints against it should be dismissed.

Plaintiffs collectively miss the mark and the PLCAA bars this suit. It protects the firearms industry from suits "for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended." 15 U.S.C. § 7901(b)(1) and 15 U.S.C. § 7903(5)(A). The law requires such suits to be dismissed at the threshold; they may not be "brought" in "any Federal or State court." *Id*. § 7902(a). Notwithstanding their *three* separately filed Respondents' Briefs in this consolidated appeal, Plaintiffs fail to grapple with this unambiguous Congressional declaration underpinning the enactment of the PLCAA.

Mean's MA Lock constitutes a "qualified product" under the PLCAA. The New York Attorney General's Office recently conceded before the United States Court of Appeals for the Second Circuit that a "piece of vulcanized rubber" attached to a firearm would be considered a component part as it relates to the PLCAA, stating, "Congress intentionally made this [i.e., the PLCAA] extraordinarily broad. A qualified product includes any component part of a firearm" (R. 1297-1298). Plaintiffs' semantic gymnastics in attempting to mischaracterize the MA Lock are unavailing, particularly given that the MA Lock's sole function was to modify the

functionality of a firearm and make it legal in certain states with restrictions on the types of semi-automatic firearms that are legal to sell, purchase and possess.

And, contrary to the Motion Court's and Plaintiffs' flawed reasoning, qualification under the PLCAA is not based on the ease or difficulty of a component part's removal. Rather, the focus must be on the part's function and intended purpose within the firearm in the context of its operation. As established in Mean's Main Brief, the MA Lock's primary function, when installed, is to alter the firearm to render the magazine fixed. In New York, a semi-automatic rifle with a fixed magazine is permitted to have certain features (pistol grip, muzzle break and folding stock), whereas one with a detachable magazine may not include any of these features. It is undisputed that the MA Lock requires specialized tools to remove, and once removed, it is destroyed. Conspicuously absent from Plaintiffs' briefs is any hint that had the MA Lock been installed on the subject rifle at the time of this shooting, the Shooter would have been prevented from using the illegal detachable magazines he had purchased in a neighboring state. This fact alone establishes the MA Lock as a component part, irrespective of its ability to be subsequently removed. All component parts can be removed and replaced from a firearm, including a trigger, barrel, hammer or stock; and no one would question the fact that each of these items are "component parts" of a firearm. Surely, the MA Lock must be

considered a qualified product; and the Attorney General of the State of New York, whom Plaintiffs also rely upon to support their claims against Mean, agrees.

Furthermore, Plaintiffs' decision not to sue Anderson Manufacturing, the maker of the component parts the Shooter used when he replaced the Mean MA Lock on this rifle, directly contradicts their claim that Mean's MA Lock should be treated differently under the PLCAA. This omission speaks volumes in their acknowledgement that the PLCAA applies to bar suit against Anderson Manufacturing – despite the filing of no less than four complaints and even amended complaints to add other parties. *If Anderson Manufacturing's "lower parts kit" is subject to PLCAA immunity as a component part, there is no principled basis to deny the same protection to Mean's MA Lock*. Plaintiffs cannot selectively attempt to invoke and disregard the PLCAA based on their preferred outcome.

Plaintiffs' desperate attempts to evade the preemptive force of the PLCAA through invocation of its narrow exceptions are likewise demonstrably baseless. Their primary reliance on the predicate exception fails simply because General Business Law §§ 349 and 350 are not statutes specifically applicable to the sale or marketing of firearms. Moreover, even if these are predicate statutes, Plaintiffs cannot establish a knowing violation by Mean that proximately caused the harm, especially given the Shooter's independent and criminal acts of purchasing illegal magazines from a neighboring state, removing the MA Lock, replacing it with a

traditional magazine release button from Anderson Manufacturing's lower parts kit, and then using this now illegal rifle to murder innocent shoppers at a grocery store. Furthermore, the negligence *per se* exception is patently inapplicable since Mean was not involved in any sale to the Shooter and did not violate any law regarding its manufacture and sale of the MA Lock. Thus, the PLCAA stands as an impenetrable shield given the factual allegations in the pleadings, warranting immediate dismissal of these legally deficient claims against Mean.

Whether or not the PLCAA applies to these matters, dismissal is also necessary for the additional and independent reasons that Plaintiffs: [1] could never establish proximate cause under New York common law given the multiple criminal heinous acts committed by the racist Shooter which are without question extraordinary, inexplicable homicidal violence and far too attenuated from any action or inaction on the part of Mean; and [2] lack standing to assert, and substantively fail, to state G.B.L. Section 349 and 350 claims. The Social Media defendants have also argued that Plaintiffs' claims cannot survive a proximate cause analysis at the pleadings stage; and if the Court agrees with the Social Media defendants on this issue, it must also dismiss Mean for lack of proximate cause.

Lastly, the Court lacks personal jurisdiction over Mean.

As demonstrated, Plaintiffs' Complaints fail to state any claim against Mean as a matter of law. The PLCAA requires that this matter be resolved now. The

Motion Court's decisions should be reversed, and the Complaints dismissed in full as to Mean.

## REPLY ARGUMENT

## THE MOTION COURT ERRED IN DENYING MEAN'S MOTION TO DISMISS THE COMPLAINT

### POINT I

### A. Plaintiffs' Claims Are Barred By The PLCAA

As established in Mean's Main Brief, Congress enacted the PLCAA in 2005 in response to the wave of lawsuits against firearm industry members seeking redress for "harm caused by the misuse of firearms by third parties, including criminals." 15 U.S.C. § 7901(a)(3). It declared that firearms companies "are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products . . . that function as designed and intended." *Id*. § 7901(a)(5). Suits trying to impose such liability are "an abuse of the legal system," and rest on legal theories that invite the "destabilization of other industries and economic sectors." *Id.* § 7901(a)(6).

To prevent such suits, the PLCAA bars any "qualified civil liability action" from being "brought" in "any Federal or State court." *Id*. § 7902(a). The bar applies to any claim against a "manufacturer or seller" of qualified products "for damages . . . resulting from the criminal or unlawful misuse of a" firearm by any "third party." *Id*. § 7903(5)(A). It contains only six narrow exceptions, including one that has come to be known as the "predicate exception," which allows firearm and ammunition companies to still be held liable if they "knowingly" violate a "statute applicable to

the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought…" *Id*. § 7903(5)(A)(iii). As a qualifying industry member and federal firearms licensee (R. 81, 327-328, 374 [FN 11], 487-488, 839-840, 880, 1261), it does not matter whether Mean manufactured or sold the firearm or ammunition used by the Shooter to inflict harm on the Plaintiffs, Mean is entitled to the protections under the PLCAA, and Plaintiffs' Complaints are clearly Qualified Civil Liability Actions. Thus, the only issue should be whether any of the exceptions apply regarding the claims against Mean.

Even if this Court finds that only the manufacturers and sellers of the actual firearm and ammunition used by the Shooter are entitled to immunity from the PLCAA, by looking beyond the plain language of the PLCAA, Plaintiffs' claims against Mean still fail because the MA Lock is a "qualified product" under the PLCAA. Plaintiffs and the Motion Court devote a great deal of attention to the purported "removability" of the MA Lock, in support of their argument that this somehow renders the MA Lock an "accessory" rather than a component (*Jones* and *Stanfield* p. 5, *Patterson* p. 4, *Salter* p. 13). This unavailing argument fails to grasp the MA Lock's critical function as a component part within the specific regulatory landscape of New York law and, in any event, is not predicated on the actual language of any codified New York statute. To be clear, the MA Lock, despite its name, is not a firearm locking device, such as a cable lock or trigger lock; it is a

specialized part intended to convert a firearm from having a detachable magazine to one with a fixed magazine.

Plaintiffs' persistent assertion that the MA Lock is merely an accessory hinges on a supposed requirement they represent as requiring absolute permanence under New York law. Critically, Plaintiffs' assertion lacks any foundation, as evidenced by their neglect to cite to the actual language of any case law or New York statute in support of the "absolute permanence" requirement. More specifically, Plaintiffs cannot cite such direct language because *no such caselaw or statute exists* to support their assertions that the MA Lock "must be permanent" (*Jones* and *Stanfield* p. 5, *Patterson* p. 4) or that it "cannot be removed" (*Salter* p. 41) to be a component part. This argument is not only without foundation, but is also absurd because all component parts of a firearm are removable and replaceable, including a firearm's hammer, firing pin, trigger, barrel, grip or stock. And no one would argue that any of those items are not "component parts" of a firearm.

Instead, Plaintiffs' assertion largely rests on the single thread of a former "Q&A" printout section of a New York State website, which no longer appears to be in operation, that merely states a legal modification of a semi-automatic rifle to become New York compliant is only accomplished if "cannot be reversed through reasonable means" (R. 1336). First, this Q&A upon which Plaintiffs rely lacks the force of statutory authority as it is merely a general interpretation and not a codified

legal mandate. Significantly, as now unaddressed by Plaintiffs, neither the Penal Code nor any other New York laws or regulations define the terms "fixed magazine," or "permanently fixed" (Main Brief p. 9). This critical absence of statutory definition – and, more importantly, the absence of a definition to the degree of absolute permanence upon which Plaintiffs' Complaints rely – directly undermines the Plaintiffs' central premise. If the law itself does not delineate what constitutes a "fixed" versus a "permanently fixed" magazine, then their argument that the MA Lock fails to meet a non-existent legal standard of permanence necessarily collapses. Accordingly, Plaintiffs' entire argument characterizing the MA Lock as an "accessory" *solely* due to its removability is built upon the shifting sand of unsubstantiated assertions. Reversal of the Motion Court's orders are warranted for this reason alone.

Moreover, even if the Court deems it necessary to analyze the removal of the MA Lock to determine its status as a component part, this analysis does not fare any better for Plaintiffs. First, as heretofore established, there is not a scintilla of an allegation that the MA Lock is removable in the field – put simply, it is not. In fact, the MA Lock's purpose is to stand as the direct replacement of the rifle's magazine release button, a component part essential for the operation of a semi-automatic rifle with a detachable magazine. It is also undisputed that the proper use of the MA Lock would limit the number of rounds available to the firearm to those held within the

fixed magazine, establishing the importance of the MA Lock for New York State owners since it is the gateway for compliance with the SAFE Act.

Secondly, Plaintiffs' collective decision not to file suit against Anderson Manufacturing, the manufacturer of the "lower parts kit" the Shooter used to replace the MA Lock, despite the filing of no less than four separate complaints, speaks volumes. Ultimately, it comes as no surprise since Plaintiffs are well aware that the PLCAA would bar a suit against the manufacturer of the replacement parts kit (R. 85-86, 166, 172, 174, 359-362). Plaintiffs' implied concession regarding the immunity of suit against Anderson Manufacturing underscores the appropriateness of dismissal for Mean under the PLCAA. If the manufacturer or seller of the magazine release button the Shooter installed on his rifle so he could utilize illegal magazines during this incident cannot be sued pursuant to the PLCAA, surely the manufacturer and seller of the part that was replaced is equally entitled to immunity. Plaintiffs cannot have it both ways, if the "lower parts kit" is subject to the immunity under the PLCAA, there is no ground to treat Mean's MA Lock any differently.

By substituting the standard magazine release mechanism with the MA Lock, the rifle's functionality is directly and materially altered with the intention to comply with New York law. As established in *Lowy v. Daniel Def., LLC* (No. 1:23-CV-1338, 2024 WL 3521508, at *3 (E.D. Va. July 24, 2024) (appeal pending)), the substitution of original components with after-market parts renders those parts component parts

themselves. *See also, Prescott v. Slide Fire Sols., LP*, 341 F.Supp.3d 1175, 1189 (D. Nev. 2018). The MA Lock is not merely added to the rifle; it replaces an existing component and its purpose is to change the firearm's method of operation.

Moreover, even assuming *arguendo* that New York State law requires the MA Lock to reach some level of absolute permanence, which it does not, the Complaints confirm that the MA Lock is only removable with specialized tools, including a "power drill" equipped with a "screw extractor" (R. 172-174, 501, 772, 1022, 1541) – firmly distinguishing the MA Lock from a readily detachable accessory. In fact, the MA Lock cannot be removed during normal reloading or operation of the rifle; to the contrary, removal involves disassembly of the rifle and the destruction of the MA Lock itself (R. 82, 172-174, 329). This level of effort and the irreversible nature of the removal process underscore that the MA Lock is intended as a limiting mechanism against the installation of removable magazines and, more importantly, as a component part under the PLCAA.

Finally, Plaintiffs fare no better under the guise of a "single shot theory" — that the ability to fire a single round after the MA Lock's removal somehow relegates it to accessory status. This overly simplistic view necessarily – and improperly – ignores the firearm's intended design as a semi-automatic firearm and the MA Lock's role in modifying that function. First, it is undisputed that the Shooter was only able to use detachable magazines during the incident because he replaced the MA Lock

with the standard magazine release button using the "lower parts kit." (R. 85-86, 166, 172, 174, 359-362). Again, by Plaintiffs' same flawed reasoning, a stock, and every other part that "could be" removed and still allow the rifle to discharge one cartridge, would also not be "component parts" (R. 84). This would be an absurd result. Analogously, a car can be driven just on its rims, but does that make tires an accessory? Of course not. Ultimately, the focus should remain on the MA Lock's function within the legal and operational context of the firearm as configured for compliance, not on a hypothetical single shot capability after a process of disassembly and potential further modification.

Plaintiffs' cited cases and attempts to distinguish the case law cited in Mean's Main Brief is unavailing. As in *Sambrano v. Savage Arms, Inc*. 338 P.3d 103 (N.M. App. 2014), Plaintiffs here were injured through the criminal misuse of a rifle, which is clearly a qualified product. The *Sambrano* plaintiffs' attempt to sue the firearm manufacturer Savage Arms failed despite the claim it was the distributor of a cable lock, an accessory that accompanied the rifle. The plaintiffs argued that Savage was not entitled to PLCAA immunity because their claims were based on "Savage's actions related to the [cable] lock rather than on [the shooter's] criminal action." *Id.* at 105. However, the court rejected this veiled argument, holding that the "allegations concerning the pairing of the Savage rifle with a [cable] lock do not alter the congressional intent [in passing the PLCAA]….[and] [e]ven assuming that

the lock was defective or unfit for its intended use, Plaintiffs' claimed damages nevertheless resulted from a third party's criminal or unlawful misuse of the rifle." *Id.* The *Sambrano* court went on to hold, "Plaintiffs' argument, however, misses the mark. Although Plaintiffs have framed their complaint to focus upon the lock as opposed to the rifle, Montoya nonetheless used a qualified product, the rifle, as the instrument to commit the crime that resulted in the harm to Plaintiffs. As a result, the congressional intent embraces Plaintiffs' action." *Id.* Just like in *Sambrano*, Plaintiffs miss the mark because the Shooter used a rifle to murder and injury Plaintiffs, thus Mean, as the manufacturer of a qualified product, is entitled to dismissal.

Accordingly, it is respectfully submitted that the Decisions and Orders appealed from should be reversed, and this Court should find that Mean is entitled to the immunity provided by the PLCAA because it is a manufacturer of firearms and the MA Lock is a qualified product.

### B. Plaintiffs Fail To Properly Plead That An Exception To The PLCAA Applies As To Mean

In Respondents' Briefs, Plaintiffs argue that if the PLCAA applies to their claims against Mean, two exceptions are implicated: the predicate exception and the negligence *per se* exception. They are wrong on both counts.

As to the predicate exception, Plaintiffs cannot meet the threshold issue of whether Mean "knowingly violated a State or Federal statute applicable to the sale

or marketing of [firearms…or component parts for firearms…], and the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). Plaintiffs' claims under the general G.B.L. Sections 349 and 350 clearly do not fall within the firearm-specific ambit of the predicate exception (R. 250-251, 794-795, 832-833, 1093-1096). These sections prohibit "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state[.]..." G.B.L. § 349(a). Contrary to Plaintiffs' arguments, the PLCAA does not allow claims based on generally applicable laws, such as public nuisance and consumer-protection statutes, because those are the exact types of claims that prompted Congress to pass the PLCAA back in 2005.

To demonstrate, in *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009), a case cited in Mean's Main Brief that Plaintiffs failed to effectively distinguish, the Ninth Circuit declined to apply California's codified tort laws to suffice as predicate statutes to avoid dismissal of the case based on the PLCAA. 565 F.3d at 1136. The Ninth Circuit concluded that the predicate exception cannot sensibly be interpreted to "cover[] all state statutes that could be applied to the sale or marketing of firearms." *Id*. at 1135-36. In this regard, the *Ileto* court found "an examination of the text and purpose of the PLCAA shows that Congress intended to preempt general tort theories of liability even in jurisdictions, like California, that have codified such

causes of action." *Id.* at 1136. Certainly, construing the word "applicable" in the predicate exception as Plaintiffs suggest, to encompass New York State's generally applicable public nuisance and consumer-protection statutes, would violate the cardinal rule that statutory provisions should not be read in a way that "would frustrate Congress' manifest purpose." *U.S. v. Hayes*, 555 U.S. 415, 427 (2009); *see also, City of N.Y. v. Beretta U.S.A. Corp.*, 524 F.3d 384, 400 (2d Cir. 2008) – holding that "a statute of general applicability that does not encompass the conduct of firearms manufacturers * * * does not fall within the predicate exception to the claim restricting provisions of the PLCAA."

Furthermore, Plaintiffs have neglected to sufficiently establish any appreciable difference between the codified nuisance statute in *Ileto* and codified consumer-protection statutes, as both are generally applicable to all products and all industries. Allowing Plaintiffs' claims to survive this legal challenge using G.B.L. §§ 349 and 350 as predicate acts would completely frustrate Congress's intent in passing the PLCAA, and would make the PLCAA a nullity in New York. No matter how much this Court might disagree with Congress in passing the PLCAA, it must still respect its authority and interpret the law as written and intended.

Moreover, even assuming *arguendo* that Sections 349 and 350 or any of the other statutes relied on by Plaintiffs somehow trigger the predicate exception – which Mean argues they do not – Plaintiffs must still prove that Mean "knowingly

violated" these statutes and the violation was a proximate cause of the harm for which relief is sought. 15 U.S.C. § 7903(5)(A)(iii). As established in Mean's Main Brief, Plaintiffs have failed to meet both of these independent requirements.

Ultimately, the Record is devoid of any notice to Mean that it "knowingly" violated anything, especially considering that at all relevant times: no person has ever been charged with violating New York's SAFE Act by possessing a semi-automatic rifle with the MA Lock installed; Defendant Vintage Firearms was not prosecuted for selling the Subject Rifle to the Shooter with the MA Lock installed; and no court in New York, or any other jurisdiction with similar "assault weapons" bans, has ruled that a firearm with the MA Lock installed is illegal. Further, the New York State Police never prohibited New York firearms dealers from selling firearms with an MA Lock installed. And at no time prior to this incident had any government authority contacted Mean with concerns about the effectiveness or legality of the MA Lock device when installed. There are simply no facts pled establishing that Mean "knowingly" violated any New York State statutes arising from the sale or marketing of the MA Lock.

Plaintiffs' arguments regarding proximate cause in this context similarly fail.[1] When Congress incorporates "proximate cause" into a federal statute, it has a "well

[1] Mean disputes the *Salter* Plaintiffs' representation that Mean somehow did not raise a "PLCAA proximate cause argument" before the Motion Court (*Salter* p. 30). As a preliminary matter, this

established" meaning that allows liability only if "the harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 201 (2017). New York's common law extending proximate cause beyond the federal statute cannot be used when applying this term as used in the PLCAA. Thus, absent a sufficient demonstration by Plaintiffs that a "close connection" exists between Mean's sale or marketing of the MA Lock to some unknown person somewhere in the United State and the harm caused by the Shooter, there is no proximate cause and Plaintiffs cannot meet their burden. In fact, this precise issue is currently before the United States Supreme Court in *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, Docket No. 23-1141, and a decision is expected by June 25, 2025.

It is axiomatic that a plaintiff must show a "sufficiently 'direct relationship'" between the defendant's unlawful conduct and the alleged injury. *Hemi Group, LLC v. City of New York*, 559 U.S. 1, 12 (2010) (plurality); *Anza v. Ideal Steel Supply*

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is at odds with Mean's filings in the Record (R. 375-376, 381-383, 384-386). In any event, as the *Salter* Plaintiffs are well-aware, even if Mean did not raise this issue, which it did, "an issue is reviewable where, as here, the issue presented is one of law that appears on the face of the record and that could not have been avoided." *United Servs. Auto. Ass'n v. Reid*, 255 A.D.2d 990, 991 (4th Dept. 1998); see also, *U.S. Bank Nat'l Ass'n v. Romano*, 231 A.D.3d 1079, 1085 (2nd Dept. 2024).

Mean further notes the *Salter* Plaintiffs' concession that this group of Plaintiffs did not raise SAFE Act claims. As the parties are aware, in the interests of efficiency of the Court and all parties involved, Mean filed a single consolidated brief in accordance with this Court's consolidation Order.

*Corp.*, 547 U.S. 451, 460-61 (2006); *Holmes v. Secs. Investor Protection Corp.*, 503 U.S. 258, 268 (1992). And "foreseeability alone does not ensure [that] close connection." *Bank of Am.*, 581 U.S. at 202.

Plaintiffs insist that foreseeability is the test (Salter p. 33). The principle is that the law "does not attribute remote consequences to a defendant." *S. Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533 (1918); *see Anza*, 547 U.S. at 461 (asking if violation "directly" led to injury); *Hemi*, 559 U.S. at 9-10 (asking whether the connection is too "remote," "contingent," and "indirect"); *Holmes*, 503 U.S. at 268-69 (same). A claim can be too indirect because the injury is derivative, *or* because independent intervening acts sever the chain. *See Anza*, 547 U.S. at 458-61. Either way, the fundamental inquiry is the same: Is there a "direct relationship" between the defendant's unlawful action and the injury? *Hemi*, 559 U.S. at 15. *See also Laborers Local 17 Health and Benefit Fund v. Philip Morris, Inc*., 191 F.3d 229, 238 n.4 (injuries "remote[] in time or space" can be "indirect" even if not "derivative"). Plaintiffs cannot meet this threshold requirement of establishing a direct connection between any acts or omissions by Mean and the harm suffered by Plaintiffs.

Plaintiffs' remaining arguments seeking to avoid PLCAA immunity are without merit. At bottom, the PLCAA prohibits the institution of a "qualified civil liability action" in any state or federal court. 15 U.S.C. §§ 7902(a). This prohibition

forecloses Plaintiffs' claims in the absence of any *knowing* violation of a statute – a threshold which, as heretofore established, Plaintiffs cannot and have not met. *Fagan v. AmerisourceBergen Corp.*, 356 F.Supp.2d 198, 214 (E.D.N.Y. 2004); *Prohaska v. Sofamor, S.N.C.*, 138 F.Supp.2d 422, 448 (W.D.N.Y. 2001); *Dubai Islamic Bank v. Citibank, N.A.*, 126 F.Supp.2d 659, 668 (S.D.N.Y. 2000); *German v. Federal Home Loan Mortgage Corp.*, 896 F.Supp. 1385, 1396 (S.D.N.Y. 1995); *Martin v. Herzog*, 228 N.Y.2d 164, 168-69 (1920). Further, even if the pled facts are sufficient to allege a knowing violation of a predicate statute, it is impossible for Plaintiffs to plead proximate cause and a direct connection between any such violation and the harm caused to Plaintiffs by the Shooter. Accordingly, the predicate exception to the PLCAA cannot apply to save Plaintiffs' Complaints.

Finally, Plaintiffs' arguments that the negligence *per se* exception saves their claims largely overlap with their arguments regarding the predicate exception. First, Plaintiffs argue that Mean is not just a manufacturer but also a seller of this product. They make this claim because the negligence *per se* exception only applies to "sellers." This argument falls flat. Every "manufacturer" must at some point "sell" its product. However, because the PLCAA treats manufacturers and sellers differently within certain exceptions, Mean must be treated here as the "manufacturer" of firearms or their component parts since it manufactured and sold the MA Lock. Further, there are no well pled facts that Mean sold the subject MA

Lock to the Shooter, Vintage Firearms, or anyone else in New York for that matter. As such, Mean is simply a "manufacturer" for purposes of this case.

Finally, based on the arguments above related to the predicate exception, Plaintiffs use of G.B.L. Sections 349 and 350 does not support their argument that the negligence *per se* exception applies to escape the immunity provided to Mean by the PLCAA.

## POINT II

## DISMISSAL IS STILL WARRANTED EVEN IF PLAINTIFFS' ACTIONS ARE NOT PREEMPTED BY THE PLCAA

Assuming *arguendo* that Mean is not entitled to PLCAA's immunity, or that the MA Lock is not a qualified product, or the predicate or negligence *per se* exceptions apply, Plaintiffs still must show proximate cause under New York common law as an essential element for all of their individual tort claims. They cannot do so even assuming all reasonable inferences in their favor. In the interests of brevity and judicial economy, Mean joins, adopts and incorporates by reference those proximate cause arguments raised in the Reply Brief by Defendants-Appellants Meta Platforms Inc., Alphabet, Inc., and Reddit, Inc. in parallel appeals at pages 58-62 that are consistent with Mean's Main Brief.[2]

[2] CA 24-00513, CA 24-00515, CA 24-00524, CA 24-00527, CA 24-01447, CA 24-01448, NYSCEF Doc. No. 141 filed on March 11, 2025.

Ultimately, allowing this case to survive a proximate cause analysis based on the well-pled facts would extend the notion of legal cause beyond anything before in New York. Boiled down, Plaintiffs are blaming Mean for manufacturing what is essentially a specialized screw or bolt for the racially motivated murderous rampage of the Shooter. Mean did not sell the Shooter anything. Mean did not communicate with the Shooter in any way. Mean did not manufacture the rifle or ammunition. Mean did not manufacture or sell to the Shooter the car he used to drive to Buffalo. Mean did not sell the Shooter the gas he used in his car to get to Buffalo. Mean did not sell the Shooter the computer he used to research the products and his targets. Arguably, all such entities are more causally connected than Mean to this event, but still, none are defendants in this case; nor should they be.

As more fully established above concerning the PLCAA's proximate cause analysis, and in Mean's Main Brief, it is axiomatic that "an intervening intentional or criminal act will generally sever the liability of the original tort-feasor." *Tennant v. Lascelle*, 161 A.D.3d 1565, 1566-67 (4th Dept. 2018) (quoting *Turturro v. City of New York*, 28 N.Y.3d 469, 484 (2016), *Kush v. City of Buffalo*, 59 N.Y.2d 26, 33 (1983)). A third party's "criminal act" is the paradigmatic example of such an unforeseeable intervening act. *Turturro v. City of New York*, 28 N.Y.3d 469, *supra*. And here, where the Shooter planned his murderous rampage for months, and

documented every detail of his product selections, reconnaissance missions, and targets, nothing could qualify as an "unforeseeable" intervening act if this does not.

The Shooter's heinous acts are without question extraordinary, inexplicable, and methodical homicidal violence and far too attenuated from any action or inaction on the part of Mean that led to Plaintiffs' harm. "Conjecture" is all that Plaintiffs proffer to support their nebulous proximate cause assertions, and that is not enough.

## POINT III

## PLAINTIFFS' REMAINING CLAIMS MUST BE DISMISSED

Plaintiffs' G.B.L. Section 349 and 350, negligence, public nuisance and other remaining tort claims must be independently dismissed pursuant to C.P.L.R. §§ 3211(3) and 3211(7) because Plaintiffs lack standing and the Complaints otherwise fails to state cognizable legal claims.

With respect to G.B.L. Section 349 and 350, Plaintiffs largely argue that they somehow can assert such claims because of Mean's alleged "deceptive conduct." This argument is without merit and does not overcome the fact that Plaintiffs' claims are derivative and unactionable under these sections. *See Voters for Animal Rights v. D'Artagnan, Inc.*, No. 19-CV-6158(MKB), 2021 WL 1138017 (E.D.N.Y. Mar. 25, 2021); see also, *Frintzilas v. DirecTV, LLC*, 731 F.App'x 71, 72 (2d Cir. July 20, 2018). In any event, as established in Mean's Main Brief, Plaintiffs have not shown a causal connection between Mean's alleged "deceptive" conduct and their injury

since this would necessarily require a causal relation between Mean and a third-party who used a rifle that was formerly equipped with such an MA Lock part, to intentionally shoot and murder multiple people. *See*, *City of N.Y. v. Smokes-Spirits*, 12 N.Y.3d 616, 618-19 (2009). If the Shooter had kept the MA Lock installed on his rifle and then he was arrested prior to this incident and charged with the illegal possession of an assault weapon under the SAFE Act, the Shooter might have had an argument for a cause of action under 349 or 350 against Mean. But here, the consumer of this MA Lock was fully aware of the legalities involved with removing the MA Lock, and thus, Plaintiffs cannot have "suffered harm as a result of the allegedly deceptive act or practice" by Mean. (*Jones* and *Harris* p. 38).

Plaintiffs' public nuisance claims also fail since they do not meet the requirements to bring a public nuisance claim as private persons because "[c]onduct does not become a public nuisance merely because it interferes with...a large number of persons" and the Complaints fail to allege facts to support "interference with a public right." *Monaghan v. Roman Catholic Diocese of Rockville Ctr*., 165 A.D.3d 650, 653 (2d Dept. 2018), *lv dismissed* 32 N.Y.3d 1192 (2019). Plaintiffs have not identified one incident where the MA Lock caused harm to the public. They also cannot point to even one person who possessed a rifle with an MA Lock installed who was arrested for illegally possessing an "assault weapon" in New York, or anywhere else around the country.

Accordingly, Plaintiffs' G.B.L. and tort related claims fail for these independent reasons.

## POINT IV

## THE COURT LACKS JURISDICTION OVER MEAN

Plaintiffs failed to establish that an exercise of personal jurisdiction over Mean would be appropriate. To the contrary, as demonstrated in Mean's Main Brief, Plaintiffs cannot establish a "substantial nexus between the business transacted and the cause of action sued upon" under C.P.L.R. § 302(a)(1). *Agency Rent A Car System, Inc. v. Grand Rent A Car Corp.*, 98 F.3d 25, 29 (2d Cir. 1996). That Mean may have sold other products to New York does nothing to establish personal jurisdiction in this matter since Plaintiffs' claims do not arise from Mean's shipment of these other products.

Likewise, under C.P.L.R. § 302(a)(3), Plaintiffs' specific causes of action must arise out of Mean's alleged tortious act and there is no evidence that Mean shipped the MA Lock at issue to a customer in New York who purchased it as a result of seeing Mean's advertisements or representations *in New York* regarding the MA Lock. In the absence of Plaintiffs meeting this requirement, Plaintiffs cannot establish personal jurisdiction exists over Mean.

## CONCLUSION

For the foregoing reasons, it is respectfully requested that the Decisions and Orders appealed from be reversed, dismissing the Complaints in their entirety as against Mean, with costs and disbursements, and such further relief as the Court deems just under the circumstances.

Dated: White Plains, New York
March 31, 2025

Respectfully submitted,

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## PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR § 1250.8(f) and (j) that the foregoing brief was prepared on a computer.

*Type*: A proportionally spaced typeface was used as follows:

Name of typeface: Times New Roman

Point size: 14

Line spacing: Double

*Word Count*: The total number of words in the brief, exclusive of those portions provided for in 22 NYCRR § 1250.8(j), is 5,968.

Arshia Hourizadeh

Dated: White Plains, New York
March 31, 2025