SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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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 MACKNIEL; A.M., a minor; and LATISHA ROGERS,

Plaintiffs,

-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; MEAN L.L.C.; PAUL GENDRON; PAMELA GENDRON,

Defendants.

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Index No.: 805896/2023

Hon. Paula L. Feroleto

Oral Argument Requested

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT MEAN L.L.C.'S MOTION TO DISMISS THE VERIFIED COMPLAINT PURSUANT TO THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT and C.P.L.R. §§ 3211(a)(3), 3211(a)(7) & 3211(a)(8)

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Defendant MEAN L.L.C. ("Mean" or "Defendant") respectfully submits this memorandum of law in support of its motion to dismiss plaintiffs' claims and causes against it pursuant to the Protection of Lawful Commerce in Arms Act, 15 U.S.C §§ 7901-03 ("PLCAA"), and C.P.L.R. §§ 3211(a)(3), 3211(a)(7), and 3211(a)(8).

I. SUMMARY OF THE ARGUMENT

Plaintiffs' claims against Mean must be immediately dismissed because they are barred by the PLCAA, a federal immunity statute that protects Mean from even having to present a defense to the allegations in the Complaint. According to the Complaint's factual allegations, there are no applicable exceptions to the PLCAA that could allow this case to proceed. Even if the claims against Mean were not barred by the PLCAA, they must still be dismissed because plaintiffs lack standing and otherwise fail to assert cognizable claims for violation of N.Y. General Business Law ("G.B.L.") Sections 349 and 350, the only specific causes of action pled against Mean. Plaintiffs' claims should also be dismissed based on the additional and alternative basis that this Court lacks personal jurisdiction over Mean. Finally, the claims of plaintiffs "J.P." and "A.M." must be dismissed because they are alleged to be minors and lack the capacity to sue without a parent or other legal guardian.

II. BACKGROUND

On May 14, 2022, ten people were murdered and three others wounded through the intentional and criminal acts of an 18-year-old male ("shooter").[1] Malfa Aff. ¶ 3, Ex. 1, Compl. ¶¶ 1-2. The shooter carried out this heinous act with a semi-automatic rifle, designated as XM15-E2S by its manufacturer. *Id.* ¶ 35. Plaintiffs commenced this action on May 12, 2023, naming numerous

[1] To avoid creating further notoriety for the murderer, his name will not be used in this motion.

defendants, including Mean, a federally licensed firearms manufacturer based in Woodstock, Georgia. *Id.* ¶ 36.

Mean manufactures and sells the "MA Lock," a component part for semi-automatic AR-type[2] rifles. The MA Lock is designed for lawful firearm owners who wish to convert semi-automatic rifles that accept detachable magazines into fixed magazine rifles.[3] This modification would typically be done to comply with certain states' so-called "assault weapons" laws restricting certain characteristics on semi-automatic rifles with the ability to accept detachable magazines.[4] The MA Lock permanently replaces a rifle's magazine release button.[5] A magazine release button is designed to temporarily lock a magazine in place. Malfa Aff. ¶ 13. When the MA Lock is installed in place of the magazine release button, it permanently fixes the magazine to the rifle and prevents it from being removed during normal operation and use.[6] The MA Lock cannot be removed from the rifle without the use of specialized tools. The MA Lock is destroyed during the removal process and cannot be reused. Malfa Aff. ¶ 17.

New York law defines an "assault weapon" as a semi-automatic rifle that has both: "an ability to accept a detachable magazine"; and at least one of the following characteristics:

> (i) a folding or telescoping stock; (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon; (iii) a thumbhole stock; (iv) a second handgrip or a protruding grip that can be held by the non-trigger hand; (v) a bayonet mount; (vi) a flash suppressor, muzzle break, muzzle compensator, or threaded barrel designed to accommodate a flash suppressor, muzzle break, or muzzle compensator; (vii) a grenade launcher . . . .

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[2] Malfa Aff. ¶ 11, n.3 ("AR" stands for "ArmaLite rifle." ArmaLite was the company that originally developed the rifle in the 1950s. *See*, *e.g.*, https://www.cga.ct.gov/asaferconnecticut/tmy/0128/Brian%20Harte%201.pdf).
[3] Malfa Aff. ¶ 11, Ex. 1, Compl. ¶¶ 491, 505-06.
[4] Malfa Aff. ¶ 12; Compl. ¶¶ 503-05.
[5] Malfa Aff. ¶ 14; Compl. ¶ 521; *see also* Malfa Aff. Ex. 5 (MA Lock Installation Instructions).
[6] Malfa Aff. ¶ 15. This is performed by removing all components of the magazine release button except the magazine catch, and replacing it with the MA Sleeve. *See id.* Ex. 5 (MA Lock Installation Instructions); *see also* U.S. Patent No. 11,112,194 col. 7 l. 9-18 (filed Feb. 11, 2020). Then, after engaging the magazine in place in the magazine well, the installer continues to turn the head of the lock until it shears off, leaving the lock permanently installed. Malfa Aff. ¶ 16. Once installed, the MA Lock can be removed only by disassembling the rifle and drilling out and destroying the bolt shaft that holds the MA Lock assembly together. *Id.*; Compl. ¶¶ 511, 521.

NY Penal Code § 265.00(22)(a). Stated differently, a semi-automatic rifle with the ability to accept a detachable magazine is legal in New York if it does not have one of the prohibited features.[7] *Id.* This is easily accomplished as, for example, there are grips specifically designed to comply with New York law, such as the Thorsden stock (https://www.thordsencustoms.com/frs-15-gen-iii-rifle-a2-stock-kits.html), which do not in any way change the functionality of the rifle, and which the shooter could have also purchased and installed. Similarly, a semi-automatic rifle with one of more of the prohibited characteristics is still legal in New York so long as it has a fixed magazine. Malfa Aff. ¶¶ 23-24; *id.* Ex. 7 (Thordsen stock). New York law specifically excludes from the definition of an "assault weapon" a "semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition." *Id.* § 265.00(22)(g)(ii). The photos below illustrate the difference between two such rifle configurations, which are both legal in New York:

	
DS-15 M4 Style Fixed Magazine (not capable of accepting a detachable magazine)	DS-15 M4 Style Featureless (capable of accepting a detachable magazine)

Both of these rifles shoot the same caliber ammunition, with the same rate of fire, and have the same 10-round magazine capacity. Malfa Aff. ¶¶ 25-26; *id.* Ex. 8 (DS-15 Fixed), Ex. 9 (DS-15 "Featureless"). Thus, whether a semi-automatic rifle has a detachable or fixed magazine is not determinative of whether it is legal to possess in New York. The DS-15 "Featureless" rifle depicted

[7] An example of such a rifle conversion kit can be found at https://ddsranch.com/new-york-state-compliance-parts/ and an example of a New York compliant complete semi-automatic rifle at https://www.recoilweb.com/video-overview-of-the-black-rain-ordnance-new-york-rifle-42549.html. Malfa Aff. ¶¶ 23-24, 26; *id.* Ex. 6 (component parts/kits),

above on the right can accept 20 or 30 round magazines, which would be illegal to possess in New York, but its ability to accept such magazines does not make the rifle an "assault weapon" in New York. Importantly, neither the Penal Code nor any other New York laws or regulations define the terms "detachable magazine," "fixed magazine," or "permanently fixed."

Based on the factual allegations in the Complaint, which the Court must assume are true for purposes of deciding this motion, the shooter purchased a New York compliant semi-automatic rifle, but then illegally converted it into an illegal "assault weapon" using tools that are not traditionally required to maintain or repair a firearm. Prior to the shooting, the shooter purchased a used AR-15 style rifle with an already installed MA Lock permanently affixing a 10-round magazine, thereby making it compliant with New York law. Malfa Aff. ¶ 3, Ex. 1, Compl. ¶¶ 492, 505-06, 524. He also purchased a replacement Anderson Manufacturing lower parts kit for an AR-15 style rifle. *Id.* ¶ 490. A "lower parts kit" includes substantially all internal components of the rifle's fire control system (i.e., trigger, hammer, selector, magazine release button/spring, and bolt catch).[8] The shooter subsequently used "a Cobalt Speedout #2 drillbit and [his] dad's power drill to take out" the MA Lock. *Id.* ¶ 524. He then allegedly modified his rifle by replacing the now destroyed MA Lock with a "regular mag[azine] button and spring." *Id.* ¶¶ 522, 524.

The photograph of the shooter's rifle on page 24 of the Complaint reveals that it had only one of the seven prohibited characteristics listed in NY Penal Code § 265.00(22)(a): a "pistol grip that protrudes conspicuously beneath the action of the weapon." Accordingly, even after making this modification (removal of the MA Lock), the rifle would have still been legal for the shooter to possess in New York if he had simply removed the pistol grip (which would be accomplished by using a screwdriver to remove one screw/bolt). Malfa Aff. ¶ 30. In fact, if the shooter had

[8] Malfa Aff. ¶ 28; *id.* Ex. 10 (https://andersonmanufacturing.com/stainless-steel-hammer-trigger-lower-parts.html).

simply replaced the existing stock with a New York compliant stock, which is accomplished by removing one screw/bolt, his rifle would have been legal to possess in New York, even after removing the MA Lock and replacing it with the magazine release button. Malfa Aff. ¶ 31. The photos below illustrate a comparison between the shooter's rifle and a legal rifle in New York:

	
Not Legal in NY – Complaint (¶ 78)	Legal in NY

The Complaint asserts six causes of action against Mean for: (1) loss of parental guidance; (2) violation of G.B.L. § 350; (3) violation of G.B.L. § 349; (4) wrongful death; (5) personal injuries; and (6) joint and several liability. Plaintiffs seek compensatory damages, punitive damages, costs, and other relief as the Court may deem appropriate. Compl. ¶¶ 644, 684, 693, 704, 708, 709-15. As will be shown below, all causes of action brought against Mean must be dismissed.

III. ARGUMENT

A. PLAINTIFFS' CLAIMS AGAINST MEAN MUST BE IMMEDIATELY DISMISSED PURSUANT TO THE PLCAA

1. Purpose of the PLCAA

The PLCAA, which was enacted on October 26, 2005, prohibits the institution of a "qualified civil liability action" in any state or federal court. 15 U.S.C. §§ 7902(a). One of the

stated purposes of the PLCAA is to "prohibit causes of action against manufacturers . . . of firearms or ammunition products … 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." *Id.* § 7901(b)(1). The following are among several explicit findings that Congress made regarding the necessity to enact the PLCAA:

- Lawsuits have been commenced against manufacturers, distributors, dealers and importers of firearms that operate as designed and intended which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

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

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

Id. §§ 7901(a)(3)-(5). Based upon the above findings, and to achieve the above purpose, the PLCAA prohibits the filing of a qualified civil liability action in any state or federal court.

2. This Case is a Qualified Civil Liability Action

As defined by the PLCAA, and subject to six limited exceptions, a "qualified civil liability action" is a "civil action . . . brought by any person against a manufacturer . . . of a qualified product . . . for damages, punitive damages, injunctive or declaratory relief, or penalties or other relief resulting from the criminal or unlawful misuse of a qualified product by . . . a third party . . ." 15 U.S.C. § 7903(5)(A). Based on the allegations in the Complaint, this case is a civil proceeding brought by persons (the plaintiffs) against a manufacturer (Mean) of a qualified product (a

component part of a firearm) for damages resulting from the criminal or unlawful misuse of a qualified product (the removal of the MA Lock creating an illegal "assault weapon" in New York and/or the intentional shooting of plaintiffs and plaintiffs' decedents) by a third party (the shooter). Malfa Aff. ¶ 3, Ex. 1, Compl. ¶¶ 17-22, 36, 524-25.

3. The MA Lock is a Qualified Product

The PLCAA defines a "qualified product" as a firearm, ammunition, "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) (emphasis added). A "component part" of a firearm is one that is integral to its proper function. *See Prescott v. Slide Fire Sols., LP*, 341 F. Supp. 3d 1175, 1189 (D. Nev. 2018) (holding that a bump stock is a qualified product as defined by the PLCAA). Just like a trigger, bolt, hammer, or buffer tube, a magazine for a semi-automatic firearm is unquestionably a component part of such a firearm. *See In re Academy, Ltd.*, 625 S.W.3d 19, 29 (Tex. 2021) ("As explained, both firearms and magazines (along with other component parts) are 'qualified products' subject to the PLCAA's general prohibition against qualified civil liability actions…"). The ATF defines a "semiautomatic rifle" as "any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge." *See* 27 C.F.R. § 478.11. Without a magazine, there is no "next round" available to be chambered, and the "semi-automatic" design feature of such a rifle will not function; the rifle simply becomes a single shot rifle. In *Prescott*, the court found that "a 'stock' is a component part" because it "is an integral component of a rifle as it permits the firearm to be fired from the shoulder." 341 F. Supp. 3d at 1189. The court further relied upon ATF's definition and guidebook to support its conclusion. Just like there is no "rifle" without a "stock," there is no "semi-automatic" function without a magazine.

The MA Lock, or any other component part that creates a fixed magazine rifle, and the magazine release button, which temporarily holds a detachable magazine in place, are integral to a semi-automatic rifle's proper function because, without one of them installed, the rifle will not function as intended.[9] Without the MA Lock, or some other part to affix the magazine, the rifle will not function as intended as a semi-automatic rifle because the magazine would fall out and there will be no "next round" to be automatically chambered. Furthermore, in New York, the MA Lock is an integral component part because without it, and assuming the rifle has one or more of the other features outlined above, the rifle is illegal to possess.

Further, any argument that the MA Lock is an "accessory" or "after-market" replacement, and thus not a qualified product, has been addressed and rejected by the *Prescott* court. There, the court held that the fact that "bump stocks enhance a rifle's operation and are installed after purchase by an end user do not negate the fact that bump stocks are substituted in for the original stock rendering them essential units." 341 F. Supp. 3d at 1189. The same holds true here, the MA Lock was substituted for an original component part rendering it an "essential unit" of the rifle and made it legal to possess in New York (and other states with similar laws)

Pursuant to the allegations in the Complaint, "the person who had [the rifle] before [the shooter] installed a Mean Arms magazine lock, which fixed a 10 round magazine to the gun." Malfa Aff., ¶ 3, Ex. 1, Compl. ¶ 524. Thus, the shooter's rifle came with an MA Lock installed, and he intentionally removed it. The shooter thereby illegally converted his fixed-magazine rifle into a banned "assault weapon" under New York law because he failed to remove the pistol grip,

[9] Courts have also held that a device may be a "part" of an article if it is "'dedicated irrevocably for use' with the article, and, once installed, the article cannot be used without it." *Auto-Ordnance Corp. v. United States*, 822 F.2d 1566, 1570 (Fed. Cir. 1987). The MA Lock is "dedicated irrevocably" because the only way to remove the MA Lock is to disassemble the rifle's action, destroy the MA Lock, remove its remnants from the rifle, and then replace it with other parts.

which is a prohibited feature in New York. *Id.* ¶¶ 505, 524-25, 684, 693. The MA Lock, which is designed to be dedicated irrevocably for use as a component of a fixed-magazine rifle, and essential for the rifle to function in that capacity, is a qualified product pursuant to the PLCAA.

4. Mean is a Manufacturer

The PLCAA defines a manufacturer, with respect to a qualified product (i.e., a component part of a firearm such as the MA Lock), in relevant part as "a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code." 15 U.S.C. § 7903(2). Mean is a "manufacturer" pursuant to the PLCAA. *Id.* . ¶ 36.[10]

5. Plaintiffs' Injuries Resulted from the Criminal Use of a Qualified Product by a Third Party

The Complaint alleges that the shooter illegally converted his fixed-magazine rifle into an "assault weapon" under New York law by destroying and criminally removing the MA Lock that came installed on the rifle when he bought it. Compl. ¶¶ 505, 524-25. The shooter then used his now illegal rifle to kill Heyward Patterson, Katherine Massey, and Andre MacKniel, and injure Latisha Rogers. *Id.* ¶¶ 49, 60, 62, 64-66. Accordingly, plaintiffs' injuries resulted from the criminal use (the illegal modification of the rifle and the murders of Heyward Patterson, Katherine Massey, and Andre MacKniel and the intentional shooting of Latisha Rogers) of a qualified product (the MA Lock and rifle) by a third party (the shooter). *Id.* ¶¶ 505, 524-25. Plaintiffs' claims against Mean are therefore considered to constitute a qualified civil liability action and the PLCAA divests the court of jurisdiction requiring the immediate dismissal of all causes of actions and claims brought against Mean. *See Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 633 F.

[10] Malfa Aff. ¶ 9; *id.* Ex. 4 (ATF's FFLeZCheck result for MEAN L.L.C.); *see also* https://www.atf.gov/resource-center/2021-annual-firearms-manufacturers-and-export-report-afmer identifying MEAN L.L.C. as the holder of a type 07 manufacturer's federal firearms license.

Supp.3d 425, 441-442 (D.Mass. 2022) ("Statutes that completely prohibit certain types of actions or that address[ ] a court's competence to adjudicate a particular category of cases are best read as jurisdiction-stripping statute[s]" and "[T]he PLCAA, therefore, is a jurisdictional statute."(internal quotations and citation omitted)).

B. NONE OF THE NARROW EXCEPTIONS TO THE DEFINITION OF A QUALIFIED CIVIL LIABILITY ACTION ARE APPLICABLE

There are six narrow categories of claims that the PLCAA excludes from the definition of a qualified civil liability action and therefore does not bar:

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

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

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including –

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

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

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

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as

> intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or
>
> (vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of Title 18 or chapter 53 of Title 26.

15 U.S.C. § 7903(5)(A). Based on the allegations in the Complaint, the only exception that could potentially be applicable to plaintiffs' claims is the exception for "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 the proximate cause of the harm for which relief is sought." *Id.* § 7903(5)(A)(iii) (commonly referred to as the "predicate exception").[11] As explained in detail below, this exception does not apply to Mean or the MA Lock for multiple reasons.

1. The Predicate Exception is Inapplicable

The so-called "predicate exception" allows a manufacturer or seller of firearms to be sued if it "knowingly violated a State or Federal statute applicable to the sale or marketing of [firearms, ammunition, or component parts for firearms of ammunition], 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). New York's General Business Law Sections 349 and 350 are generalized consumer protection statutes, violations of which do not qualify as predicate acts.

[11] 15 U.S.C. § 7903(5)(A)(ii), the exception for negligent entrustment or negligence per se, does not apply because Mean is a manufacturer, not a seller, in this matter. *See* Compl. ¶ 36. There is no allegation, and the alleged facts show, that Mean did not sell the MA Lock to the shooter or any of the plaintiffs. As relevant here, a "seller" is a firearms "dealer" (as defined in 18 U.S.C. § 921(a)(11)) who is "licensed to engage in business as such a dealer" under federal law. *Id.* § 7903(6). This contrasts with "manufacturer[s]," who are "engaged in the business of manufacturing the product in interstate or foreign commerce and who [are] licensed to engage in business as such a manufacturer." *Id.* § 7903(2).

The PLCAA specifically identifies the types of firearm-specific statutes Congress considered "applicable to" the sale and marketing of firearms when it enacted the law. It identifies laws:

- Requiring manufacturers and sellers to keep "record[s] . . . with respect to [firearms]." 15 U.S.C. § 7903(5)(A)(iii)(I).
- Prohibiting manufacturers and sellers from aiding, abetting, or conspiring with any person in making a "false or fictitious . . . statement" that is "material to the lawfulness of the sale or other disposition of a [firearm]." *Id*.
- Prohibiting manufacturers and sellers from aiding, abetting, or conspiring with anyone "to sell or otherwise dispose of a [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited from possessing or receiving a firearm." *Id*. § 7903(5)(A)(iii)(II).

To satisfy the predicate exception, an action must not only be based on an "applicable" firearms law, but a plaintiff must also show that a defendant knowingly violated a state or federal statute that "appli[es]" specifically to the "sale or marketing of [firearms, ammunition, or component parts for firearms of ammunition]." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). The statute does not allow claims based on generally applicable laws, such as public nuisance and consumer-protection statutes, because those are the types of claims that the PLCAA was enacted to foreclose.

a) The Predicate Exception Recognizes Only Firearms-Specific Statutes

The plain text, structure, and context of the PLCAA show that the predicate exception applies only to claims based on firearms-specific laws, not laws of general applicability. Read in isolation, there are only two textually permissible readings of a "statute applicable to the sale or marketing of" firearms. 15 U.S.C. § 7903(5)(A)(iii). First, it could refer broadly to all laws that are "[c]apable of being applied" to firearms sales and marketing. BLACK'S LAW DICTIONARY (11th ed. 2019). Or, more narrowly, the term "applicable" could mean—especially in reference to "a rule, regulation, law, etc."—"affecting or relating to a particular person, group, or situation; having

direct relevance." *Id*. On this reading, the predicate exception applies only to claims under laws that specifically regulate firearms *in particular*.

When the predicate exception is read in context, the narrower meaning is clearly the right one. It is a "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Deal v. United States*, 508 U.S. 129, 132 (1993). Here, all of the relevant context—including the statutory structure, purpose, and history—confirm that the predicate exception is narrowly limited to firearms-specific laws.

A broad reading of the predicate exception would allow precisely the type of claim that Congress sought to bar when it enacted the PLCAA. Congress noted with disapproval that various "[l]awsuits ha[d] been commenced" seeking to hold firearms companies liable for "harm caused by the misuse of firearms by third parties, including criminals." 15 U.S.C. § 7901(a)(3). The lawsuits that had been commenced at the time were based on generally applicable statutes prohibiting "negligent marketing," "public nuisance," and "deceptive trade practices." *See* Timothy D. Lytton, *Tort Claims against Gun Manufacturers for Crime-Related Injuries: Defining a Suitable Role for the Tort System in Regulating the Firearms Industry*, 65 Mo. L. Rev. at 6-50 2000). One lawsuit that Congress focused on, in particular, involved statutory claims for public nuisance and negligence in California. *See Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009) (noting that Congress considered "this very case as the type of case they meant the PLCAA to preempt"); *see, e.g.*, 151 CONG. REC. E2162-63 (2005) (statement of Rep. Stearns) (describing as a "predatory lawsuit" the "case of *Ileto v. Glock*"); *id.* 19135 (statement of Sen. Craig) ("Another example of a lawsuit captured by this bill is the case of *Ileto v. Glock*."). In *Ileto*, a case arising out of a highly publicized mass shooting, plaintiffs argued that California's statutory tort laws sufficed

as predicate statutes to avoid dismissal based on the PLCAA. 565 F.3d at 1136. The Ninth Circuit disagreed and 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 (emphasis in original). That would violate the cardinal rule that statutory provisions should not be read in a way that "would frustrate Congress' manifest purpose." *United States v. Hayes*, 555 U.S. 415, 427 (2009).

The Second Circuit reached the same conclusion one year before *Ileto*, explaining that the predicate exception cannot refer to all general laws that are merely "capable of being applied," because that would make the exception "far too[]broad." *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 394, 403 (2d Cir. 2008). It "would allow the predicate exception to swallow the statute, which was intended to shield the firearms industry from vicarious liability for harm caused by firearms that were lawfully distributed into primary markets." *Id*. Avoiding this type of nonsensical result is exactly why the Supreme Court has instructed courts to "read [statutory] exception[s] narrowly in order to preserve the primary operation of" the general rule. *Commissioner of Internal Revenue v. Clark*, 489 U.S. 726, 739 (1989).

Finally, Congress made the point especially clear by providing three examples in the text of the predicate exception, all of which are firearms specific. *See* 15 U.S.C. § 7903(5)(A)(iii)(I)-(II). In light of these firearms-specific examples, the meaning of the predicate exception is "narrowed by the commonsense canon of *noscitur a sociis*—which counsels that a word is given more precise content by the neighboring words with which it is associated." *United States v. Williams*, 553 U.S. 285, 294 (2008).

b) *Plaintiffs Have Not Plausibly Alleged a Violation of Any Firearms-Specific Statute*

Plaintiffs have solely alleged that Mean violated New York's General Business Law Sections 349 and 350. Malfa Aff. ¶ 3, Ex. 1, Compl. ¶¶ 675-93. G.B.L. Sections 349 and 350 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). "These statutes on their face apply to virtually all economic activity, and their application has been correspondingly broad." *Karlin v. IVF Am., Inc.*, 93 N.Y.2d 282, 290 (1999). Both sections are broadly worded to protect the public from any form of deceptive business practices. *Himmelstein, McConnel, Gribben, Donoghue & Joseph, LLP, v. Matthew Bender & Co.*, 37 N.Y.3d 169, 177 (2021). There can be no argument that they are the type of firearms-specific statutes that can be used to satisfy the predicate exception – because they are not.

Neither G.B.L. § 349 nor § 350 satisfies the predicate exception because both statutes regulate commercial transactions in general. Neither contains any provision specifically applicable to the sale or marketing of firearms.

c) *Plaintiffs Cannot Establish Proximate Cause Even if G.B.L. §§ 349 and 350 Are Viable Predicate Statutes*

The predicate exception not only requires that a firearm-specific statute be knowingly violated, but also that the alleged violation be a proximate cause of the harm. Here, plaintiffs claim that Mean's "consumer-oriented conduct was materially misleading, deceptive, and inaccurate." Malfa Aff. ¶ 3, Ex. 1, Compl. ¶ 679. However, the focus of G.B.L. §§ 349 and 350 is on "the seller's deception and its subsequent impact on consumer decision-making, not on the consumer's ultimate use of the product." *Himmelstein*, 37 N.Y.3d at 177. Plaintiffs allege no consumer decision-making based on Mean's advertising, whether by themselves, or by the shooter.

Plaintiffs were not consumers of the MA Lock, nor do they allege that they contemplated purchasing the MA Lock or viewed any advertisement for the product before filing this action.

This should, as a threshold matter, negate their G.B.L. §§ 349 and 350 claims because they are "directed at wrongs against the consuming public." *Singh v. City of New York*, __ N.E.3d __, 2023 N.Y. Slip Op. 02141, 2023 WL 3098734, at *3 (NY Apr. 27. 2023) (quoting *Oswego Laborers' Loc. 214 Pension Fund v. Mar. Midland Bank, N.A.*, 85 N.Y.2d 20, 24 (1995)). Sections 349 and 350 are not intended to prevent the criminal or unlawful misuse of otherwise legal products. Plaintiffs do not plausibly allege that their injuries were caused by the shooter's decision to purchase a rifle with an MA Lock installed and to subsequently remove it; their injuries stem from his subsequent criminal actions. In fact, the shooter could have just as easily and legally purchased the same rifle with the ability to accept a detachable magazine, but with, for example, a Thorsden stock instead of the pistol grip so that it was not classified as an "assault weapon" pursuant to New York law; and then purchased either illegal 30-round magazines, or legal 10-round magazines and used them in that differently equipped rifle.

Plaintiffs allege that Mean advertised the MA Lock as a device capable of making firearms comport with New York's "assault weapons" law. Malfa Aff. ¶ 3, Ex. 1, Compl. ¶¶ 506, 510-11, 514-15. Plaintiffs do not allege that this is in any way false or inaccurate, nor do they allege any reason that Mean knew this information to be false or inaccurate. No court has ruled that a firearm modified with the MA Lock is an illegal "assault weapon." New York's "assault weapons" law does not define "fixed magazine." However, states with similar regulatory schemes define a "fixed magazine" as an ammunition device that cannot be removed "without disassembly of the weapon." *See* CONN. GEN. STAT. ANN. § 53-202a(4); CAL. PENAL CODE § 30515(b); MD. CODE ANN., CRIM. LAW § 4-301(i). In their Complaint, plaintiffs concede that the MA Lock can only be removed by disassembling the firearm on which it is installed. Malfa Aff. ¶ 3, Ex. 1, Compl. ¶ 511. Plaintiffs acknowledge that while the MA Lock was installed, the shooter's rifle was not an illegal firearm.

In fact, there is no allegation that the dealer who sold the rifle to the shooter was cited, charged or convicted of illegally selling an "assault weapon." At most, plaintiffs allege that defendant Vintage Firearms negligently entrusted the shooter with this rifle, and that it was unreasonable for it to sell the rifle to him. Plaintiffs try to wedge a post hoc rationalization that his rifle was not legal in New York after he removed the device that made it legal into a theory of false advertising. They do this entirely without any allegation that Mean knowingly violated New York law, which fails to meet the requirements of the predicate exception.

Plaintiffs are not consumers of Mean's product. They are third parties harmed by an alleged consumer of a product that, at one time, incorporated Mean's MA Lock device. The ultimate use of the product is not within the purview of the statute. *Himmelstein*, 37 N.Y.3d at 177. There is no alleged deception that affected plaintiffs' or the shooter's decision-making regarding the MA Lock. Because the plaintiffs' injuries are beyond those contemplated by G.B.L. §§ 349 and 350, they fail the requirement that a violation of a statute be the proximate cause of their harm to satisfy the predicate exception to the PLCAA.

C. MEAN'S ALLEGED ACTS DID NOT PROXIMATELY CAUSE PLAINTIFFS' INJURIES

Even if plaintiffs could satisfy the predicate exception to the PLCAA, they have not adequately alleged that Mean's acts were the proximate cause of their injuries. The gravamen of proximate cause is that a defendant's negligence proximately causes a plaintiff's injury when "it is a substantial cause of the events which produced the injury." *Hain v. Jamison*, 28 N.Y.3d 524, 528-29 (2016) (internal quotation omitted). Where a question of proximate cause involves an intervening act, it must be determined "whether the intervening act is a *normal or foreseeable consequence* of the situation created by the defendant's negligence." *Id.* at 529 (internal quotation omitted) (emphasis in original).

In *Hain*, the Court of Appeals identified two features common to cases holding that intervening acts break the chain of causation: (1) cases in which the intervening act was unforeseeable; or (2) "the defendant's actions did not 'put in motion' or significantly contribute to 'the agency by which the injuries were inflicted,'" but "merely fortuitously" placed a plaintiff in a position in which the intervening negligence independently harmed the plaintiff. 28 N.Y.3d at 531-32. In *Maheshwari v. City of New York*, the plaintiff was attacked at a music festival in a New York City park and sued the concert producers and the City for negligence for insufficient security. 2 N.Y.3d 288, 291-93 (2004). There the Court of Appeals held that the plaintiff did not establish proximate cause because the violent attack was not foreseeable and far removed from the defendants' conduct, breaking the causal nexus. *Id.* at 295. "The attack was extraordinary and not foreseeable or preventable in the normal course of events." *Id.* In this case, to hold Mean responsible based on a marketing or consumer protection claim for the intentional and murderous actions of the shooter clearly exceeds any reasonable expectation of the misuse of Mean's MA Lock, and as a matter of law must break the chain of causation.

In *Morales v. City of New York*, victims of arson sued the gas station which sold the arsonist the gasoline used to burn a social club. 70 N.Y.2d 981, 983 (1988). The plaintiffs sought to hold the gas station liable because it sold the gas in a container that did not conform with the City of New York's regulations for approved gas containers, combined with a cause of action for those "burned by the explosion of any compound or mixture the sale of which is prohibited by this title." *Id.* The Court of Appeals held that there was no legal connection between the regulatory violation and the injury, but was instead "a mere technical [violation] bearing no practical or reasonable causal connection not the injury sustained." *Id.* at 984. The plaintiffs alleged that the harm might not have occurred had the gas station refused to sell gas in an unapproved container. However, the

court stated the purpose of the regulation was not to make it more difficult to buy untanked gasoline at night, but to make transport and storage of gas safe by preventing accidental leaks or explosion. *Id.* Mean's alleged violation of consumer protection statutes has no legal connection to the shooter's murder of plaintiffs' decedents, or his intentional shooting of Latisha Rogers. The purpose of G.B.L. §§ 349 and 350 is to ensure that businesses do not defraud their customers, not to ensure that third parties do not intentionally violate the state's "assault weapons" ban and commit murder. *See also Jantzen v. Leslie Edelman of New York, Inc.*, 221 A.D.2d 594 (2d Dept. 1995) (holding that a technical violation by defendant selling a shotgun did not prove the "practical or reasonable causal connection" that led to a police officer being killed with that shotgun).

Plaintiffs have not adequately alleged—other than a conclusory recitation—that Mean's actions substantially led to the injuries they suffered. The shootings at the Tops Market are extraordinary and far removed from Mean's manufacture and sale of a device designed and intended to help lawful firearm owners comply with certain states' firearms laws. While the shooting was allegedly more deadly due to the shooter's use of a detachable magazine, as noted previously, detachable magazines for semi-automatic rifles are legal in New York, and the installation and subsequent illegal removal of the MA Lock did not put into motion, or substantially contribute to, the harm the shooter created. The causal chain is too attenuated to find that Mean proximately caused plaintiffs' injuries, and therefore the Complaint must be dismissed as to Mean.

D. DERIVATIVE INJURY CLAIMS ARE NOT ACTIONABLE UNDER G.B.L. §§ 349 AND 350

Plaintiffs' claims pursuant to G.B.L. §§ 349 and 350 against Mean must be dismissed pursuant to C.P.L.R. §§ 3211(3) and 3211(7) because they lack standing to bring such claims and the Complaint otherwise fails to state cognizable legal claims.

1. Plaintiffs' Claims Are Derivative

Derivative injury claims are not actionable under G.B.L. §§ 349 and 350. As such, plaintiffs have not suffered a cognizable injury under either section. Plaintiffs are neither consumers of Mean's products, nor are they direct competitors of Mean. Therefore, plaintiffs' injuries are, at best, derivative of other consumers' exposure to the alleged misleading statements and are not actionable under New York law. *See Voters for Animal Rights v. D'Artagnan, Inc.*, No. 19-CV-6158(MKB), 2021 WL 1138017 (E.D.N.Y. Mar. 25, 2021).

The New York Court of Appeals has explained that injuries that are too remote or derivative of a consumer's injuries are not cognizable injuries. *Blue Cross v. Philip Morris*, 3 N.Y.3d 200, 208 (2004) (holding "that a third-party payer has no standing to bring an action under [G.B.L. §] 349 because its claims are too remote" and "that what is required [under Section 349] is that the party actually injured be the one to bring suit"). In this matter, if the shooter has been charged with possession of an illegal "assault weapon" with the MA Lock installed on his rifle, or otherwise damaged in this regard, he may have had standing to bring a claim against Mean pursuant to G.B.L. §§ 349 and 350. "An injury is indirect or derivative when the loss arises solely as a result of injuries sustained by another person." *Id.* Furthermore, "a plaintiff may not recover damages under G.B.L. § 349 for purely indirect or derivative losses that were the result of third parties being allegedly misled or deceived." *In re Nassau County Consol. MTBE (Methyl Tertiary Butyl Ether) Prod. Liab. Lit.*, 29 Misc. 3d 1219(A), 918 N.Y.S.2d 399, 2010 WL 4400075, at *17 (Sup. Ct. Nassau Cty. Nov. 4, 2010), *judgment entered*, 2011 WL 12521632 (Sup. Ct. Nassau Cty. May. 7, 2011). As such, derivative claims are those arising from injuries to other persons **or** deceptions made by defendant to other persons.

In *Frintzilas v. DirecTV, LLC*, 731 F. App'x 71, 72 (2d Cir. July 20, 2018), plaintiff landlords alleged that defendant media providers' standard practice was to deceive tenant-

subscribers into signing misleading consent forms, and then armed with the consent forms, defendants installed their hardware in plaintiffs' buildings, which in turn harmed the landlord. While there were intervening steps between defendants' deceptive action and plaintiffs' harm, plaintiffs argued that so long as their harm (installation) is a proximate result of defendants' misleading conduct, they have standing to bring a G.B.L. § 349 claim. The Second Circuit disagreed, stating that standing under G.B.L. § 349 requires a direct rather than a derivative injury. The court found that plaintiffs must "plead that they have suffered actual injury caused by a materially misleading" act, not that a misleading act led to further steps which eventually harmed them. *Id.* Indeed, similar to the claims in this matter, the plaintiffs in *Frintzilas* attempted to avoid their standing problem by arguing that the tenant-subscribers suffered no injury; which might be argued here as to the shooter. However, the Second Circuit rebuked such an argument stating, "but if this is true (and it seems to be), plaintiffs cannot assert a claim under G.B.L. § 349, which requires that a materially misleading statement be made in the first place." *Id.*

Since none of the plaintiffs were customers of Mean, their harm, if any, is derivative of harm sustained by consumers of the MA Lock at issue.

2. Plaintiffs Fail to State Claims Under Both G.B.L. §§ 349 and 350

G.B.L. §§ 349 and 350 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); *see also Ortho Pharm. Corp. v. Cosprophar, Inc.*, 828 F. Supp. 1114, 1128-29 (S.D.N.Y. 1993). Courts have articulated the following elements necessary to establish claims for both deceptive practices under G.B.L. § 349 and deceptive advertising under G.B.L. § 350:

(i) that defendants engaged in conduct that was misleading in a material respect;

(ii) the deceptive conduct was 'consumer oriented'; and

(iii) that the plaintiff was injured 'by reason of' defendant's conduct.

See Ortho Pharm., 828 F. Supp. at 1128-29.

"A material misrepresentation is made when a statement 'is likely to mislead a reasonable consumer acting reasonably under the circumstances.'" *Anunziatta v. Orkin Exterminating Co., Inc.*, 180 F. Supp. 2d 353, 361 (N.D.N.Y. 2001) (citing *Stutman v. Chemical Bank*, 95 N.Y.2d 24, 30 (2000)). "The test is an objective one…[w]hether a representation is material and whether it is likely to mislead a reasonable consumer may be determined as a matter of law." *Id.* "To satisfy the 'by reason of' requirement, plaintiff[] need[s] only allege that the defendant['s] material deceptive act[s] caused the injury." *In re: Methyl Tertiary Butyl Ether Prods. Liab. Lit.*, 175 F. Supp. 2d 593, 631 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

A plaintiff need not have actually relied on the alleged deceptive conduct to assert a claim under Sections 349 and 350, however, a plaintiff seeking recovery under these statutes must show a causal connection between the defendant's alleged conduct and the plaintiff's injury. *See id.* Here, plaintiffs allege that Mean represented that the MA Lock is sufficient to transform an otherwise illegal "assault weapon" in New York into a legal one, by affixing the magazine to the rifle. Nothing more, nothing less. Whether or not this is accurate, or whether a finder of fact would find that Mean's advertising of the MA Lock was misleading in this regard, any such finding cannot be causally related to a third-party using a rifle that was formerly equipped with such a part, to intentionally shoot and murder multiple people. "But-for cause" is the best plaintiffs can allege in this situation, but it is insufficient to state a claim for violation of G.B.L. §§ 349 or 350. *City of N.Y. v. Smokes-Spirits*, 12 N.Y.3d 616, 618-19 (2009).

Furthermore, it is clear from the allegations in the Complaint with respect to the shooter's "knowledge" of the MA Lock, that he was fully aware of the MA Lock's purpose, utility, function, and versatility. Malfa Aff. ¶ 3, Ex. 1, Compl. ¶¶ 501, 519-522, 525. Thus, it is clear that when the

shooter purchased the subject rifle with the MA Lock, he knew it had been installed to comply with New York's "assault weapons" ban, he knew that removing it would result in it being illegal in New York, and he knew replacement parts would be necessary to make the rifle functional again. As such, there was nothing "misleading" in Mean's advertising or marketing, the alleged deception that the MA Lock made an illegal "assault weapon" into a legal semi-automatic rifle was not "consumer oriented," and above all else, plaintiffs were not injured as a result of Mean's alleged advertising or marketing related conduct.

E. THE COURT LACKS JURISDICTION OVER MEAN

The Complaint cursorily asserts personal jurisdiction over Mean in one paragraph, stating:

> Mean Arms has purposefully availed itself of New York law by manufacturing and selling locks and other products that are sold in this State and Plaintiffs' injuries arise out of and relate to Mean Arms' purposeful availment. New York's assertion of personal jurisdiction over Mean Arms therefore is consistent was historic notions of fair play and substantial justice.

Compl. ¶ 36.

Pursuant to New York law, for a "'plaintiff to demonstrate personal jurisdiction over a defendant ... the plaintiff must show either that the defendant was present and doing business in New York within the meaning of C.P.L.R. § 301,' 'or that the defendant committed acts within the scope of New York's long-arm statute, C.P.L.R. § 302.'" *Dingeldey v. VMI-EPE-Holland B.V.*, No. 15-CV-916-A(F), 2016 WL 6273235, at *2 (W.D.N.Y. Sept. 28, 2016), *report and recommendation adopted*, 2016 WL 6248680 (W.D.N.Y. Oct. 26, 2016). "When a defendant objects to the court's exercise of personal jurisdiction, the ultimate burden of proof rests upon the plaintiff." *Serota v. Cooper*, 216 A.D.3d 1019, 1020 (2d Dept. 2023); *see also Matter of William A.*, 192 A.D.3d 1474, 1475 (4th Dept. 2021) ("the ultimate burden of proof rests with the party asserting jurisdiction"). Here, plaintiffs have failed to allege sufficient contacts, or that any such

contacts have a relationship to the cause of action asserted to subject Mean to personal jurisdiction in this court.

1. General Jurisdiction

Mean is a Georgia limited liability company with its principal place of business located in Woodstock, Georgia. Malfa Aff. ¶ 3, Ex. 1, Compl. ¶ 36. "[A] court may assert general jurisdiction over foreign (sister-state or foreign country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). It is not enough for a company to engage in regular and systematic sales within a state to subject it to general jurisdiction within that state. Those sales most be so great and so continuous, that the forum state is essentially the company's "home." As such, courts have held that the states of incorporation and principal place of business are essentially the only jurisdictions where a corporation can be sued using a general jurisdiction analysis. *See Daimler AG v. Bauman*, 571 U.S. 117 (2015). Mean is not incorporated in New York and its principal place of business is not located in New York. As such, there is no general jurisdiction in New York over Mean.

2. Specific Jurisdiction

Specific jurisdiction permits a court to exercise jurisdiction only where the suit arises out of, or relates to, the defendant's contacts with the forum state. *See Bristol-Myers Squibb Co. v Superior Ct. of California, San Francisco County*, 582 U.S. 255 (2017). If a defendant committed a tortious act outside the State of New York,[12] the plaintiff must rely on C.P.L.R. § 302, and show that: (1) the defendant committed a tortious act outside New York; (2) the cause of action arose from that act; (3) the tortious act caused an injury to a person or property in New York; (4) the

[12] There is no allegation in the Complaint that Mean committed a tortious act within the State of New York.

defendant expected or should reasonably have expected the act to have consequences in New York; and (5) the defendant derived substantial revenue from interstate or international commerce. *Penguin Group (USA) Inc. v. Am. Buddha*, 16 N.Y.3d 295, 302 (2011); *see also LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210 (2000).

When a defendant timely asserts that there is a lack of personal jurisdiction, "a New York court may not exercise personal jurisdiction over a non-domiciliary unless two requirements are satisfied: (1) the action is permissible under the long-arm statute (C.P.L.R. § 302); and (2) the exercise of jurisdiction comports with due process." *Williams v. Beemiller, Inc.*, 33 N.Y.3d 523, 528 (2019). If either one is lacking, the action cannot proceed. *Id.* Due process requires that there be minimum contacts with the forum and "that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* (*citing Int'l Shoe Co. v. State of Wash., Off. of Unemployment Compensation and Placement*, 326 U.S. 310 (1945)).

Here, plaintiffs do not allege that Mean sold any products directly into New York. In addition, plaintiffs fail to allege that Mean targeted New York customers through any marketing or advertising prior to the incident. At best, plaintiffs allege that Mean manufactures "locks that are advertised to render firearms complaint [sic] for sale in states **like** New York…" Malfa Aff. ¶ 3, Ex. 1, Compl. ¶ 507 (emphasis added). Plaintiffs simply allege that Mean manufactures "locks and other products that are sold in this State." *Id.* ¶ 36. Importantly, plaintiffs do not allege that Mean sold the MA Lock that was allegedly installed in the shooter's rifle when he purchased it, either directly to a person or company within the State of New York.

The U.S. Supreme Court has held that:

> a defendant's placing goods into the stream of commerce with the expectation that they will be purchased by consumers in the forum State may indicate purposeful availment. But that statement does not amend the general rule of personal jurisdiction. It merely observes that a defendant may in an appropriate case be

> subject to jurisdiction without entering the forum—itself an unexceptional proposition—as where manufacturers or distributors seek to serve a given State's market.

J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 881-82 (2011) (internal citations and quotation marks omitted) (finding that expectation lacking). In *J. McIntyre* the Court went on to state, "the defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, *it is not enough that the defendant might have predicted that its goods will reach the forum State*." *Id.* at 882 (emphasis added). This is the case here. Mean may have "predicted" its MA lock would reach New York, but that is not enough according to the Supreme Court. Plaintiffs must establish that Mean "targeted" New York. The factual allegations in the Complaint do not suggest that Mean did so. The closest that plaintiffs come is a citation to a frequently asked question ("FAQ") on Mean's website that refers to New York. Malfa Aff. ¶ 3, Ex. 1, Compl. ¶ 510. However, when read in full, this FAQ response cannot be deemed an effort by Mean to target the New York market:

> **Are MA Loaders and MA Locks capable of being shipped to CA or NY?**
>
> Here is our most recent take with regards to CA DOJ and the NY Safe Act. After reading the most recent version of the new CA DOJ rules regarding assault rifles, it is our belief that by fixing your magazine in place with our MA Lock, you no longer possess an assault rifle. Therefore any "evil" features you keep on your rifle become a moot point. We designed our MA Lock product as a complete fixed magazine solution. Once installed, it cannot be removed with a tool, which satisfies CA and NY state law. We have no issue shipping to customers in CA or NY.

Id. at footnote 225 (emphasis added). This one note embedded in the "FAQ" section of a website cannot be deemed sufficient as a matter of law for Mean to have "targeted" the New York forum. As such, this Court lacks personal jurisdiction over Mean, and plaintiffs' claims against it must be dismissed.

F. PLAINTIFFS J.P. AND A.M. LACK CAPACITY TO SUE

C.P.L.R. § 3211(3) permits dismissal when "the party asserting the cause of action has not legal capacity to sue." It is axiomatic that when an "infant" brings an action, those claims by the "infant" must be brought through a legal guardian, because a child does not have the legal capacity to sue. *See* C.P.L.R. § 1201 ("Unless the court appoints a guardian ad litem, an infant shall appear by the guardian of his property or, if there is no such guardian, by a parent having legal custody, or, if there is no such parent, by another person or agency having legal custody, or, if the infant is married, by an adult spouse residing with the infant …").

Plaintiff "J.P." is described as the "15-year-old son of Heyward Patterson." Malfa Aff. ¶ 3, Ex. 1, Compl. ¶ 18. Mr. Patterson is described as one of the deceased victims of the shooting with his daughter, plaintiff Diona Patterson designated as the Administrator of his Estate. *Id.* ¶ 17. However, J.P. is listed in the caption simply as "J.P., a minor." There is no designation of a parent or guardian bringing the action on behalf of J.P. As such, plaintiff J.P. lacks legal capacity to sue based on the factual allegations in the Complaint, and his claims must be dismissed.

Plaintiff A.M. is described as the "4-year-old son of Andre MacKniel." *Id*. ¶ 21. Mr. MacKniel is described as one of the deceased victims of the shooting with his daughter, plaintiff Shawanda Rogers, designated as the Personal Representative of his Estate. *Id.* ¶ 20. However, A.M. is listed in the caption simply as "A.M., a minor." There is no designation of a parent or guardian bringing the action on behalf of A.M. As such, plaintiff A.M. lacks legal capacity to sue based on the factual allegations in the Complaint, and his claims must be dismissed.

Dated: White Plains, New York
September 1, 2023

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

I hereby certify that the word count of this memorandum of law complies with the word limits set forth in the agreement between counsel memorialized via e-mail on September 1, 2023. According to the word-processing system used to prepare this memorandum of law, the total word count for all printed text exclusive of the material omitted under 22 N.Y.C.R.R. § 202.8-b(b) is 9,217 words.

Dated: White Plains, New York
September 1, 2023

By: _____
Peter V. Malfa