STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

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, 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.	Index No. 805896/2023 Hon. Paula L. Feroleto Mot. Seq # 018

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT MEAN L.L.C.'S MOTION TO DISMISS

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PRELIMINARY STATEMENT

On May 14, 2022, ten Black residents of Buffalo were murdered and three wounded in approximately two minutes in a mass shooting at Tops Friendly Markets. The shooting was perpetrated by Payton Gendron,[1] an 18-year-old white male, who meticulously planned the racist attack for months, and wrote for posterity in chilling and excruciating detail why he chose his murder weapon. The Bushmaster AR-15 rifle he used came installed with an easily removable firearms "lock" designed, manufactured, and sold by MEAN L.L.C. ("Mean").

Mean claims its MA Lock converts assault weapons that are illegal in New York into legal firearms by "locking" a magazine in place, thereby preventing a rifle from accepting a detachable magazine. This is false. Mean's purported "lock" defies New York law. As has also been alleged by Attorney General Letitia James, Mean's lock is so simple to remove that it aids the illegal possession of assault weapons. *See* NYSCEF Doc. No. 1. ¶ 527 ("Compl.). Here, the MA Lock did not prevent the Tops shooter from using detachable magazines during his attack. Using his father's common household drill, and following simple instructions Mean provided, the Tops shooter easily removed the MA Lock from his rifle prior to his massacre.

As Plaintiffs and the Attorney General have both identified—and as Mean's statements quoted in the Complaint to this action make plain—installing an MA Lock does not eliminate a semiautomatic rifle's ability to accept a detachable magazine as is necessary to comply with New York law. Rather, the lock is designed and marketed as simple to remove without damaging a rifle. While state law requires that rifles like the Tops shooter's be permanently rendered unable to accept detachable magazines, the back of every MA Lock package provides simple instructions for removing the lock, thereby allowing a firearm to accept detachable magazines. Mean's motion to dismiss—grounded in baseless arguments—should be denied.

First, Mean's submission includes multiple statements that purport to contradict the facts laid out in Plaintiffs' Complaint. This Court must accept the facts Plaintiffs allege as true for

[1] Because mass shooters often seek notoriety, a movement seeking responsible media coverage of mass shootings urges using a shooter's name only once as a reference point. This brief thus does not repeat the name of the perpetrator of the heinous crimes, but identifies the perpetrator as the "Tops shooter."

purposes of deciding this motion. Mean's gratuitous factual statements should not be considered by the court, and only underscore why Plaintiffs should be afforded the opportunity to proceed with discovery.

Second, the Protection of Lawful Commerce in Arms Act ("PLCAA") does not apply to Mean's MA Lock. An easily removable and optional lock fails to satisfy PLCAA's requirement that it applies only to "component parts" of firearms that are necessary for functionality—not mere accessories. Mean asks this Court to rule that a magazine lock is an essential component part of a firearm—which no court has ever done (nor has the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF")). Even were the Court to make that finding at some future point (assuming it even turns on disputed facts outside the Complaint), the statutorily enumerated "predicate exception" to PLCAA removes any protection, as it did in litigation after the mass shooting at Sandy Hook Elementary School.

Finally, Plaintiffs have pled claims for relief for deceptive practices and false advertising in violation of New York General Business Law ("G.B.L.") §§ 349 and 350. Mean marketed its product as a lock that cannot be removed and provides a "true solution" to New York's assault weapons law, assertions it knew were false and which led to the proliferation of firearms in New York that were easily convertible into functional, illegal assault weapons, including the Tops shooter's AR-15. Due to Mean's deceptive practices, Plaintiffs suffered unspeakable harms derivative of no one else, harms that epitomize the damage Mean has caused the general public.[2]

The Court should accordingly deny Mean's motion.

[2] Plaintiffs J.P. and A.M. are represented by their legal guardians. Plaintiffs unintentionally omitted the guardians' names and will amend the Complaint to substitute those names for the minors if this Court determines not to disregard such an inadvertent omission. *See* C.P.L.R. § 2001 ("at any stage of an action . . . the court may permit a mistake, omission, defect or irregularity . . . to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded . . ."). Only one cause of action (Thirteenth) is brought by the minors alone; no other causes of action could possibly be affected by Mean's argument that the minors lack capacity to sue. Def's Br. at 29.

FACTUAL BACKGROUND

Mean Contemplates that the MA Lock Will Be Sold in New York

Plaintiffs seek in part to recover for the foreseeable and tragic consequences of Mean's deliberate introduction of a product into the New York market that undoes New York's gun-safety laws. Possessing, manufacturing, transporting, or disposing of an assault weapon is unlawful in New York. Compl. ¶ 503; N.Y. Penal Law § 265.02. An assault weapon is defined in part as a semi-automatic rifle that has an ability to accept a detachable magazine and has at least one of a number of enumerated characteristics. Compl. ¶ 503; N.Y. Penal Law § 265.00(22) and (23). To comply with New York Law, modifications to assault weapon features that would otherwise render the weapon illegal "must be permanent" and a "change that cannot be reversed through reasonable means." Compl. ¶ 504; NY Safe Act, *Gun Owners* (Nov. 29, 2016) https://web.archive.org/web/20161129092548/https://safeact.ny.gov/gunowners?width=550&height=275&inline=true#rifle ("Gun Owners Guidance"). Use of Mean's easily-removed MA Lock fails to meet these requirements.

Mean is a Woodstock, Georgia-based manufacturer formed in 2012. Compl. ¶ 36. Mean's website openly and explicitly criticizes gun-safety laws like New York's. Compl. ¶¶ 507–09. Mean then markets the MA Lock to consumers in those states that it views as having "intrusive" firearms laws, purporting to sell a product that modifies an assault weapon so it becomes legal there. Compl. ¶ 505, 508. Mean's website describes the MA Lock as "a shear bolt mechanism designed to lock . . . magazines in place." Compl. ¶ 506 n.222. Mean claims on its website that "installing the MA Lock makes AR firearms legal and compliant, leaving all your favorite tactical features in place. Installation of the MA Lock provides a true solution to fixed magazine laws . . ." Compl. ¶ 506. Mean references New York specifically, advertising that the MA Lock "satisfies" "NY state law[]." Compl. ¶ 510.

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

Mean Knows the MA Lock is Easily Removable

Mean's statements highlight its product's removable nature. Mean's website states, "our MA Lock device will be removable" and "[t]his process will in no way harm your rifle." Compl. ¶ 511. Mean shares "Using an easyout and simple tools [the MA Lock] can be removed and done quickly and without any damage to your rifle"; removal "only takes about 10 minutes." Compl. ¶¶ 516, 518. Finally, on the back of its packaging, Mean includes four simple instructions for removal. Compl. ¶ 521 (packaging describing how to "[u]se any brand of screw extractor from your local hardware store" to remove an MA Lock).

The Tops Shooter Easily Removes the MA Lock as Mean Recommends

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

The Tops shooter summarized, "[t]he person who had this before me installed a Mean Arms magazine lock, which fixed a 10 round magazine (higher capacity magazines are also illegal) to the gun. . . . I used a Cobalt Speedout #2 drillbit and my dad's power drill to take out the magazine lock, which I then replaced . . .". Compl. ¶ 524. He documented how he followed Mean's removal instructions, noting how easily and confidently he was able to remove the lock. Compl. ¶ 525. As a result, he was easily able to illegally use detachable magazines during the Tops massacre. Compl. ¶ 525.

LEGAL STANDARD

On a motion to dismiss, "the pleading is to be afforded a liberal construction." *Leon v. Martinez*, 84 N.Y.2d 83, 87 (1994). Courts must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Id.* at 87–88; *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326 (2002); *Reynolds v. Ferrante*, 107 A.D.3d 1424, 1425 (4th Dep't 2013).

The Court must accept not only the material allegations of the complaint, but also whatever can be reasonably inferred therefrom, in favor of the pleader. *McGill v. Parker*, 179 A.D.2d 98 (1st Dep't 1992). The standard is simply whether the plaintiff *has* a cause of action, not even whether one has been stated. *Wiener v. Lazard Freres & Co.*, 241 A.D.2d 114, 120 (1st Dep't 1998); *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977). The movant bears the burden of demonstrating that no legally cognizable cause of action exists. *Connolly v. Long Island Power Auth.*, 30 N.Y.3d 719, 728 (2018).

In assessing a motion under C.P.L.R. 3211(a)(7), a court may freely consider affidavits and evidence submitted by plaintiffs to remedy any defects in the complaint. *See, e.g.*, *AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co.*, 5 N.Y.3d 582, 591 (2005). Conversely, a court may <u>not</u> consider factual allegations defendants raise that lie beyond the complaint. *See, e.g., Gould v. United Traction Co.*, 282 A.D. 812, 812 (3d Dep't 1953); *J.A. Lee. Elec., Inc. v. City of New York*, 111 A.D.3d 652, 654 (2d Dep't 2014); *Evans v. Perl*, 19 Misc. 3d 1119(A), at *9 (N.Y. Sup. 2008) (same for defendant affidavits).

The Fourth Department and courts within it have consistently rejected dismissal as a matter of law where defendants move to dismiss on PLCAA grounds. *See, e.g.*, *King v. Klocek*, 187 A.D.3d 1614, 1616 (4th Dep't 2020) (affirming denial of motion to dismiss when "complaint allege[d] sufficient facts to bring this action within the PLCAA's predicate exception"); *Chiapperini v. Gander Mtn. Co.*, 13 N.Y.S.3d 777, 786 (Monroe Cnty Sup. Ct. Dec. 23, 2014) (denying dismissal when "[w]ithout the benefit of discovery, this court is not convinced that it can be definitively stated that all of these federal laws do not apply . . . . Proximate cause is normally

a question of fact for a jury."). When PLCAA is found to apply, Courts have allowed entire complaints to proceed after finding one applicable PLCAA exception, without a claim-by-claim PLCAA analysis. *Chiapperini*, 13 N.Y.S.3d at 786 (citing *Williams v. Beemiller, Inc.*, 103 A.D.3d 1191 (4th Dep't 2013) ("Having found one applicable PLCAA exception, the Fourth Department allowed the entire case to go forward, including a public nuisance claim.")).

Mean's motion falls far short of New York's stringent standard for pre-answer dismissal.

ARGUMENT

I. *Mean's Proposed Facts Contradict the Complaint and Should Not Be Considered.*

Mean improperly includes purported factual allegations in its motion and supporting affirmation that lie beyond the face of Plaintiffs' Complaint. As this is not a summary judgment motion, this Court may not consider or accept as true any of those allegations. *Evans*, 19 Misc. 3d at *9; *Gould*, 282 A.D. at 812.

For example, Mean asserts that an MA Lock "permanently fixes the magazine to the rifle" (NYSCEF Doc. No. 154, ¶ 15) ("Malfa Aff.") and that the lock "cannot be removed from the rifle without the use of specialized tools" (NYSCEF Doc. No. 165 at 4 ("Def's Br."); Malfa Aff. ¶ 17). Plaintiffs disagree. *See, e.g.*, Compl. ¶ 521 (Mean's packaging states that lock can be removed with "any brand of screw extractor from your local hardware store"); Compl. ¶ 524 (quoting Tops shooter's statement that he "used a Cobalt Speedout #2 drillbit and my dad's power drill" to remove an MA Lock). *See also* Rome Aff. ¶ 8 (Mean wrote on Facebook, "The MA Lock is removable using a tool such as an easy out. Regarding the easy out it is a tool you can purchase from most hardware stores." Mean then linked to the tool on homedepot.com); Rome Aff. ¶¶ 10, 11 (Mean wrote on Facebook, "Also the MA Lock is completely reversible (with NO permanent changes required to your receiver) should you move to a state that no longer requires a fixed magazine rifle." One individual commented, "How is the lock removable? Drill?" Mean responded, "Using an easyout/speed out. You would drill out the tube slightly and then use the

speedout to remove the MA Lock. No damage to your lower and you can reuse the mag catch just as it was originally installed.").[3]

Mean also asserts that the Tops shooter's murder weapon was "New York compliant." Def's Br. at 6. Plaintiffs allege the opposite: that this assertion amounts to false advertising. Compl. ¶¶ 683, 692. Additional examples abound, including Mean's factually inaccurate assertions relating to the definition of assault rifles and pistol grips. But on this motion, the court is obligated to accept Plaintiffs' factual allegations as true and ignore all of Mean's factual assertions to the contrary, all factual assertions that do not appear in Plaintiffs' filings, and the Malfa Affirmation in its entirety. *Evans*, 19 Misc. 3d at *9 ("Affidavits offered in support of pre-answer motion to dismiss for failure to state a claim should not be considered by the court."); *Gould*, 282 A.D. at 812. Indeed, the discrepancies between Plaintiffs' and Mean's factual allegations—and Mean's attempt to get the court to improperly consider its (hotly contested) version of the facts on a motion to dismiss—only underscore that material facts are in dispute, the motion should be denied, and the parties given a chance to develop the factual record.

II. *PLCAA Does Not Apply to Mean, the Manufacturer of an Easily Removable, Optional Lock that Is a Mere Firearm Accessory.*

PLCAA provides that "[a] qualified civil liability action may not be brought in any Federal or State court." 15 U.S.C. § 7902(a). A "qualified civil liability action" is "a civil action . . . brought by any person against a manufacturer or seller of a qualified product . . . for damages . . . or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. . . ." *Id.* at § 7903(5)(A)(iii). A "qualified product" is "a firearm . . . or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce." *Id.* at § 7903(4). Critically, without a "qualified product" at issue, PLCAA does not apply.

[3] The Tops shooter was an 18-year-old college student. Compl. ¶¶ 39, 216. That he could so easily remove the MA Lock using his "dad's power drill" is further indication of how easy removal is.

Under the circumstances of this case, Mean does not manufacture or sell a "qualified product" under PLCAA's definition.[4] While courts have analyzed whether certain products qualify as "component parts," PLCAA has never been held to apply to a lock manufacturer. On the contrary, courts *have* previously classified locks as "accessories"—and not "component parts"—under PLCAA. Mean now improperly calls for this Court to expand PLCAA beyond its plain text—and beyond what Congress intended.

Mean argues that PLCAA's prerequisites have all been met. Def's Br. pp.8–9. Plaintiffs vigorously disagree: Mean does not manufacture a qualified product (*infra Section* II.A), nor does this lawsuit result from the "criminal or unlawful misuse of a qualified product by the person or a third party" (*infra Section* II.B).

A. The MA Lock Is Not a "Qualified Product" Because an Easily Removable, Optional Lock Is Not Essential to the Proper Function of a Firearm.

Mean asserts that the MA Lock is a "component part" of a firearm, an obvious attempt to shoehorn its product into a statute that was lobbied for by, and designed to shield, firearms companies. *See* 15 U.S.C. § 7901(3).

PLCAA bars only claims brought against manufacturers or sellers of a "qualified product." A "qualified product" is defined narrowly as a firearm, ammunition, or "component part" of a firearm or ammunition. 15 U.S.C. § 7903(4). Because "component part" is not defined in PLCAA, this Court should use traditional rules of statutory interpretation, starting with the plain language of the statute "to ascertain and give effect to the intention of the Legislature." *See Yatauro v. Mangano*, 17 N.Y.3d 420, 426 (2011).

Courts have uniformly held that a "component part" must be an essential or integral part of a firearm, rather than a mere firearm "accessory." *See, e.g.*, *Sambrano v. Savage Arms, Inc.*, 338 P. 3d 103, 105 (N.M. Ct. App. 2014). As the Court explained in *Prescott v. Slide Fire Sols.,*

[4] Though Mean touts that it is a "federally licensed firearms manufacturer," that in no way imbues the company with immunity. First, Mean seeks to inject facts about its licensing status not alleged in the Complaint which cannot be considered. Moreover, PLCAA is not based on a company's status as a federal firearms licensee. *See Ileto v. Glock, Inc.*, 565 F.3d 1126, 1145 (9th Cir. 2009) ("[PLCAA] preempts specified types of liability actions; it does not provide a blanket protection to specified types of defendants.").

LP, "'component' is defined as a 'constituent part,' and 'constituent' means 'an essential part,' or 'serving to form, compose, or make up a unit or whole.' . . . . 'Part' means 'one of the often indefinite or unequal subdivisions into which something is or is regarded as divided and which together constitute the whole,' or '***an essential portion or integral element***.'" 341 F. Supp. 3d 1175, 1188 (D. Nev. 2018). The Court contrasted that with the definition of accessory, meaning "'a thing of secondary or subordinate importance,' or 'an object or device that is not essential in itself but adding to the beauty, convenience, or effectiveness of something else.'" *Id.* Under the most basic canons of statutory interpretation, that a "component part" is only an essential or integral element of a firearm must be given plain effect. *See* McKinney's Statutes § 94 (plain language of the statute evinces the Legislative intent); *Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 N.Y.2d 577, 583 (1998) ("[a]s the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof."); *Russo v. Valentine*, 294 N.Y. 338, 342 (1945).

An MA Lock is neither "essential" nor "integral" to a firearm's operation and therefore is not a "qualified product." A Bushmaster XM15-E2S rifle like the one used at Tops continues to function as intended without an MA Lock. Indeed, the market for the MA Lock is limited to states like New York with certain gun violence prevention laws. Compl. ¶¶ 506, 508–09. In states without such laws, individuals routinely operate firearms without MA Locks (or any locks). Were an MA Lock (or any competitor's lock) "essential" to the operation of a rifle, this would not be the case.

Mean's product design—making the MA Lock easily removable—further renders the lock a firearm "accessory," not a "component part." As alleged in numerous places in the Complaint, the MA Lock can be removed using "simple tools" and done "quickly and without any damage to your rifle" in "about 10 minutes." Compl. ¶ 517. *See also* Rome Aff. ¶ 8. Surely if a rifle will work with no harm done to it after the MA Lock is removed, it is not something "which together constitute[s] the whole" like a component; rather, the MA Lock is an accessory of "subordinate importance." *Prescott*, 341 F. Supp. 3d at 1188.

Mean argues that without its lock or a similar product "the rifle will not function as intended . . . because the magazine would fall out and there would be no 'next round' to be automatically chambered." Def's Br. at 10. But these assertions, besides being sophistic, contradict the Complaint. Mean cites nothing to support this factual assertion about the operation of semi-automatic rifles. That alone is sufficient to reject this argument—based on assertions outside of the Complaint—on a motion to dismiss. Moreover, Mean concedes that even without the MA Lock or a "magazine release button" installed on a rifle to hold a magazine (temporarily or not), an AR-15 rifle will nevertheless fire a single chambered round. Def's Br. at 10 (there would be "no 'next round' to be chambered"). The MA Lock is therefore not "essential" or "integral" to the AR-15 rifle firing, another reason it is not a "component" but an "accessory."

More broadly, this factual dispute between parties about whether Mean's MA Lock fits within PLCAA should not be resolved on a motion to dismiss. *See King*, 187 A.D.3d at 1615 (accepting as true plaintiffs' allegation that ammunition used in fatal shooting was handgun ammunition sold illegally and refusing to take judicial notice of defendant's "purported fact" to the contrary).

Mean relies heavily on the *Prescott* Court's conclusion that a bump stock was a "component part" of a firearm for PLCAA purposes. But Mean overlooks key differences between its product and the issues in *Prescott*. First, the parties in *Prescott* agreed that a rifle's *stock* was a "component part," merely arguing about whether a *bump stock* was a component part. *Id.* at 1189 ("the parties do not dispute, that a 'stock' is a component part . . ."). The Court ruled that a bump stock "replaces a rifle's existing stock," finding "significant the fact that bump stocks replace existing stocks rendering them component parts …". *Id.* at 1189–90. Here, Plaintiffs argue that magazine locks are *not* component parts.

Second, the *Prescott* Court relied on ATF guidance and court decisions classifying "bump stocks" as component parts. *See, e.g., id.* at 1188–89. No ATF guidance or court has classified a

lock as a component part. And at least one appellate court has held that a cable lock[5] was a firearms accessory, *not* a component. *Sambrano*, 338 P. 3d at 103. In *Sambrano*, the Court held that the rifle was a qualified product, but the lock was an accessory—and PLCCA therefore did not preclude a claim against the lock distributor. *Id*. at 105–07 ("The lock is not a qualified product.").

Nor can Mean find support in a decision finding a firearm magazine to be a "qualified product." *In re Acad., Ltd.,* 625 S.W.3d 19 (Tex. 2021). A magazine and the MA Lock are dissimilar. A magazine is a device for feeding ammunition into a firearm, and a firearm cannot fire without ammunition.[6] As explained, *supra*, assault weapons like the one used at Tops function as designed without MA Locks or any locks, and in fact functioned here without one.

Mean's other cited cases similarly fail. Mean cites *Auto-Ordnance Corp. v. United States* for the proposition that the MA Lock is a "part" because it is "dedicated irrevocably for use' with the article, and once installed, the article cannot be used without it." Def's Br. n.9; 822 F.2d 1566, 1570 (Fed. Cir. 1878). But a rifle from which an MA Lock has been removed can be used—which Mean's own marketing materials tout, and the Tops shooter's actions confirm. Thus, the definition of "accessory" in *Auto-Ordnance* far better encompasses Mean's product. *See id.* at 1569–70 ("equipment, usually demountable and replaceable,' that is added "for convenience, comfort, safety or completeness."). Mean's "demountable" lock is not a "component part" of a rifle. PLCAA thus does not apply.

B. This Lawsuit Is Not a Qualified Civil Liability Action Because Plaintiffs' Injuries Did Not Result From the Criminal or Unlawful Use of the MA Lock.

PLCAA does not apply for another reason. It only prohibits suits against manufacturers or sellers where a third party "used a qualified product . . . as the instrument to commit the crime that resulted in the harm to Plaintiffs." *Sambrano*, 338 P.3d at 105. The parties agree that the Tops shooter removed the MA Lock prior to committing the massacre. The MA Lock was thus not "the

[5] Cable locks are attachable cords that secure firearms so bullets cannot fire. MA Locks are also attachable mechanisms. Though designed for different functions, these products are both described as "locks" by their manufacturers, and both are accessories for the same reason: neither are necessary to a firearm's functionality.
[6] Notably, Mean does not contend that a rifle cannot fire a round when the MA Lock is removed. *See* Def.'s Br. at 10. To the extent factual questions exist regarding the functioning of rifles with or without MA Locks, discovery is warranted.

instrument" used "to commit the crime that resulted in the harm to Plaintiffs" as it had already been removed from the rifle.

Plaintiffs allege that Mean's violations of New York law injured them through its false, deceptive, reckless, and negligent marketing and advertising of the MA Lock, which was a substantial factor in the Tops shooter's ability to acquire and use an AR-15 with detachable magazines. Compl. ¶¶ 682–84, 691–93. Plaintiffs do not allege that the Tops shooter criminally or unlawfully misused the MA Lock itself in his attack (given that he'd removed it before the shooting); instead, he criminally and unlawfully misused the Bushmaster with no lock. Plaintiffs' claim against Mean therefore cannot be a "qualified civil liability action" under 15 U.S.C. § 7903(5)(A).

Mean asserts that the Tops shooter modified the rifle and "then used his now illegal rifle," describing Plaintiffs' injuries as resulting from the "criminal use (the illegal modification of the rifle [in the murders])." Def's Br. at 11. But the rifle was illegal under New York law even with the lock affixed—because it was not a permanent lock, but instead was easily removable, and because the weapon therefore still "ha[d] an ability to accept a detachable magazine." N.Y. Penal Law § 265.00(22)(a); Compl. ¶¶ 503–04. *See also* Gun Owners Guidance. The removal of the lock simply modified an illegal weapon under New York law with the "ability" to accept removable magazines into an illegal weapon under New York law that functioned with removable magazines. Finally, even assuming, *arguendo*, that the rifle could be found to have been illegally modified by the Tops shooter removing the lock, whether that alleged "use" of the lock caused Plaintiffs' harm is a question of fact that cannot be resolved on a motion to dismiss. *See Heikkila v. Kahr Firearms Grp.*, No. 1:20-CV-02707-MDB, 2022 WL 17960555 (D. Colo. Dec. 27, 2022) (subsequent history omitted) (deciding whether plaintiff's claim resulted from his illegal concealed carry of a pistol "turned on unresolved issues of fact").

III. *Even If PLCAA Applied to the Manufacturer of an Easily Removable, Optional Lock, Plaintiffs' Lawsuit Is Permitted Under PLCAA's Predicate Exception.*

Even assuming *arguendo* that PLCAA applies to a lock manufacturer like Mean, PLCAA's "predicate exception" permits this lawsuit to proceed. The predicate exception provides that

PLCAA grants no immunity to a defendant who has knowingly violated a "State or Federal statute applicable to the sale or marketing" of a qualified product and that violation is "a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). Here, as alleged, Mean has violated state statutes "applicable to the sale or marketing" of firearm products, and its violations proximately caused Plaintiffs' injuries.

Plaintiffs allege that Mean violated statutes including G.B.L § 349 (deceptive practices) and § 350 (false advertising). Mean argues that G.B.L. §§ 349 and 359 are insufficient predicate-exception statutes because they are "generalized consumer protection statutes." Def's Br. at 13. Yet PLCAA does not say that consumer-protection statutes may not qualify as predicate exceptions, nor does it say the predicate exception is limited to statutes that specifically reference firearms. Instead, it refers to any statute that is "applicable to" the sale or marketing of a qualified product. 15 U.S.C. § 7903(5)(A)(iii); *see* McKinney's Statutes § 94. Indeed, Mean conveniently ignores the leading predicate-exception case. Nowhere in its brief does it acknowledge the Connecticut Supreme Court's opinion denying a motion to dismiss a lawsuit against firearms manufacturers on the grounds that the predicate exception applied when Plaintiffs had alleged violations of a consumer-protection statute.

In *Soto v. Bushmaster Firearms*, a lawsuit brought by family-victims of another horrific mass shooting that occurred at Sandy Hook Elementary School, the Connecticut Supreme Court considered whether the Connecticut Unfair Trade Practices Act ("CUTPA") constituted a predicate statute under PLCAA. 331 Conn. 53 (Conn. 2019) (subsequent history omitted).

The *Soto* Court first analyzed the statutory phrase "applicable to," which is undefined in PLCAA. The Court noted that "[w]hen construing a federal law in which key terms are undefined, we begin with the ordinary, dictionary meaning of the statutory language." *Id.* at 119. The Court determined that "the principal definition of 'applicable' is simply 'capable of being applied.'" *Id.* at 119. The Court noted: "If Congress had intended to create an exception to PLCAA for actions alleging a violation of any law that is capable of being applied to the sale and marketing of firearms, then there is little doubt that state consumer protection statutes such as CUTPA would qualify as predicate statutes." *Id.* at 119. The *Soto* Court also noted that "[t]he only state appellate

court to have reviewed the predicate exception construed it in this manner." *Id.* at 119 (citing *Smith & Wesson Corp. v. Gary*, 875 N.E.2d 422, 431, 434–35 and n.12 (Ind. App. 2007)).

The *Soto* Court rejected the same arguments Mean makes here: "If Congress had intended to limit the scope of the predicate exception to violations of statutes that are *directly*, *expressly*, or *exclusively* applicable to firearms . . . it easily could have used such language, as it has on other occasions. The fact that the drafters opted instead to only use the term 'applicable,' which is susceptible to a broad reading, further supports the plaintiffs' interpretation." *Id.* at 120. The Court acknowledged that "at the time PLCAA was enacted, no federal statutes directly or specifically regulated the marketing or advertising of firearms. . . . It would have made little sense for the drafters of the legislation to carve out an exception for violations of laws applicable to the marketing of firearms if no such laws existed." *Id.* at 121–22.

The *Soto* Court's ruling was "consistent" with the Second Circuit. *Id.* at 124. The Second Circuit, in *City of New York v. Beretta U.S.A. Corp.*, rejected the argument that "the predicate exception recognizes only firearms-specific statutes." 524 F.3d 384, 396 (2d Cir. 2008) (subsequent history omitted) ("[we] do not construe the PLCAA as foreclosing the possibility that predicate statutes can exist by virtue of interpretations by state courts."). The Second Circuit found "nothing in [PLCAA] that requires any express language regarding firearms to be included in a statute in order for that statute to fall within the predicate exception." *Id.* at 399; *see also id.* at 403–04.[7]

Soto held that CUTPA constituted an applicable predicate statute under 15 U.S.C. 7903(5)(A)(iii). *Id.* at 129.[8] This Court should adopt the same well-reasoned analysis and reject

[7] Mean's assertions about *Ileto v. Glock*, moreover, are misleading. In *Ileto*, plaintiffs asserted that California's tort statute constituted a PLCAA predicate-exception statute. 565 F.3d at 1133. The Court's decision concerned "classic negligence and nuisance" torts, unlike Plaintiffs' allegations, which do not concern common law codified by statute. As was the case in *Beretta*, the Ninth Circuit rejected the defendant's argument that for the predicate exception to apply, the statute needed to pertain exclusively to firearms. *Id.* at 1135–36. Other courts within that circuit have concurred. *See Prescott v. Slide Fire Sols.*, 410 F. Supp. 3d 1123, 1137–39 (D. Nev. 2019) (holding Nevada's consumer-protection law qualified as predicate statute). *Soto* concluded that its holding was consistent with *Ileto*. 331 Conn. at 129 n.53.

[8] The *Soto* Court stated that "[s]tatutes such as the FTC Act and state analogues that prohibit the wrongful marketing of dangerous consuming products such as firearms represent precisely the types of statutes that implicate and have been applied to the sale and marketing of firearms." 33l Conn. at 126. Plaintiffs note that G.B.L. §§ 349 and 350

Mean's assertions, nearly identical to those disposed of in *Soto*. Just as the parents of Sandy Hook victims were permitted to proceed with their lawsuit over a motion to dismiss, so too should family members of the victims of the Tops massacre.

Moreover, while G.B.L. §§ 349 and 350 constitute predicate statutes sufficient to allow Plaintiffs' claims to proceed even if the MA Lock were a "qualified product" under PLCAA—and Plaintiffs reiterate that it is *not*—Plaintiffs also invoke another statute in the alternative that clearly falls under the predicate exception: G.B.L. §§ 898-a through 898-e ("Accountability Statute"). Compl. ¶¶ 666, 672; *see also Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 149–50 (4th Dep't 2012) (granting motion to dismiss on PLCAA grounds is improper even when "the complaint does not specify the statutes allegedly violated[,]" if plaintiff "sufficiently alleges facts supporting a finding that defendants knowingly violated federal gun laws."). The Accountability Statute squarely qualifies as a PLCAA predicate exception.[9] Thus, *even if* the Court were to find that PLCAA is applicable to Mean's MA Lock (it is not), and *even if* the Court were to find that G.B.L. §§ 349 and 350 do not qualify as PLCAA predicate-exception statutes (they do), Plaintiffs' claims should still proceed.

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have been termed a "mini-FTC act." *Matter of People of the State of New York, by Eliot Spitzer, as Attorney Gen. v. Applied Card Sys., Inc*., 863 N.Y.S.2d 615, 624 (2008).

[9] The Accountability Statute was enacted in July 2021 to hold gun-industry members accountable for harms they have caused in New York. *See Nat'l Shooting Sports Found., Inc. v. James*, 604 F. Supp. 3d 48, 55 (N.D.N.Y. 2022). Section 898-b(1) imposes civil liability on gun-industry members who "knowingly or recklessly create, maintain or contribute to a condition in New York state that endangers the safety or health of the public through the sale, manufacturing, importing or marketing of a qualified product." Section 898-b(2) further requires that "[a]ll gun industry members who manufacture, market, import or offer for wholesale or retail sale any qualified product in New York state shall establish and utilize reasonable controls and procedures to prevent its qualified products from being possessed, used, marketed or sold unlawfully in New York state." This language undoubtedly qualifies as a "statute applicable to the sale or marketing" of a qualified product—including under Mean's own improperly narrowed definition. *See id*. at 59 ("No reasonable interpretation of 'applicable to' can exclude a statute which imposes liability exclusively on gun manufacturers for the manner in which [their products] are manufactured, marketed, and sold."). While Plaintiffs neither believe nor concede that Mean's MA Lock is a "qualified product" under the Accountability Statute for the same reasons the lock is not a "qualified product" under PLCAA, Plaintiffs invoke § 898-e in the event the Court disagrees with them and in the event the Court disagrees that G.B.L. §§ 349 and 350 constitute PLCAA predicate-exception statutes. *See* G.B.L. § 898-a(6) (defining "[q]ualified product" to "have the same meaning as defined in 15 U.S.C. section 7903(4)"); G.B.L. § 898-e (granting private right of action to "any person . . . that has been damaged"). In the event the Court agrees that the MA Lock is *not* a qualified product, Plaintiffs would not pursue Accountability Statute claims against Mean. Plaintiffs are aware of a pending facial challenge to the statute, currently on appeal to the U.S. Court of Appeals for the Second Circuit. *See Nat'l Shooting Sports Found.*, 604 F. Supp. 3d at 69 (N.D.N.Y.) (granting State's motion to dismiss and upholding Accountability Statute in its entirety), *appeal filed June 28, 2022* (2nd Cir. case no. 22-1374). Plaintiffs will notify the Court if a decision issues in that case that might affect their potential claims.

IV. *Plaintiffs Have Alleged Facts Showing Mean's Conduct Proximately Caused Their Injuries.*

Mean further argues that Plaintiffs have not demonstrated that Mean's actions were the proximate cause of Plaintiffs' injuries. Def's Br. at 19. Yet as Mean's cited cases hold, "[t]ypically, the question of whether a particular act of negligence is a substantial cause of the plaintiff's injuries is one to be made by the factfinder." *Hain v. Jamison*, 28 N.Y.3d 524, 529 (2016). *Hain* emphasizes that "foreseeability and proximate cause are generally questions for the fact finder," "[p]roximate cause is, at its core, a uniquely fact-specific determination," and it is "the rare cases in which it can be determined as a matter of law." *Id.* at 529–30.

Derdiarian v. Felix Contracting Corporation, 51 N.Y.2d 308 (1980), is illustrative. In that case, a driver who failed to take his epilepsy medicine suffered a seizure and crashed through a construction-site barricade, propelling a construction worker into the air who landed in boiling liquid splattered from a kettle also hit by the car. *Id.* at 312. Defendant construction company argued that "plaintiff was injured in a freakish accident, brought about solely by [the driver's] negligence, and therefore there was no causal link, as a matter of law, between [the worksite conditions] and plaintiff's injuries." *Id.* at 314. Here, Mean similarly argues that it bears no responsibility for the Tops shooter's actions because his actions "break the chain of causation." Def's Br. at 20. Yet, the *Derdiarian* Court ruled that "[w]here the acts of a third person intervene between the defendant's conduct and the plaintiff's injury, the casual connection is not automatically severed." 51 N.Y.2d at 315. The Court elaborated, "we cannot say as a matter of law that [the driver's] negligence was a superseding cause which interrupted the link between [construction site's] negligence and plaintiff's injuries." *Id.* at 316. The Court recognized that "a prime hazard" associated with the construction company's "dereliction" is the possibility that a driver's negligence could injure someone. *Id.* So too here. Mean's "dereliction" in providing an intentionally removeable lock to the New York market created "a prime hazard" that someone would follow Mean's instructions to remove the lock and insert detachable magazines, thereby perpetrating a deadlier attack. There is nothing "extraordinary" or "unforeseeable" to Mean about the Tops shooter's removal of the lock where Mean instructed customers how to remove it. *Id.*

Contrary to Defendant's contention, Mean's conduct *permitted* the shooting to occur, which is far removed from an "independent" and "unforeseen" third party criminal conduct necessary to break the causal connection—particularly as a matter of law at the pre-answer stage. *Id.*

Furthermore, where Mean does not assent to Plaintiffs' alleged facts, and puts forth its own purported description of its product, Mean can hardly now claim "only one conclusion may be drawn from the established facts" on a superseding, intervening affirmative defense. *Hain*, 28 N.Y.3d at 530; *see, supra*, Section I. Mean took every opportunity—from its packaging, to its website, to social media—to tell customers that the MA Lock was easily removable. It cannot now claim that it did not "'put in motion' or significantly contribute to" Plaintiffs' harms, which were intensified and magnified by the Tops shooter's easy removal of the MA lock. Def's Br. at 20 (citing *Hain*, 28 N.Y.3d at 531–32).

V. *Plaintiffs Have Stated Claims for Relief Under G.B.L. §§ 349 and 350.*

Courts have articulated three elements for establishing claims for deceptive practices and false advertising under G.B.L. §§ 349 and 350. Def's Br. at 23. To make out a claim under either, a plaintiff must establish that (1) a defendant engaged in conduct that was materially misleading; (2) such conduct was consumer-oriented; and (3) the plaintiff suffered harm as a result of the allegedly deceptive act or practice. *See, e.g.*, *Koch v. Acker, Merrall & Condit Co*., 18 N.Y.3d 940 (2012). Plaintiffs have alleged facts sufficient to support each element.

First, Plaintiffs have alleged that Mean materially misled consumers by marketing its MA Lock as a "true solution to fixed magazine laws" like New York's and advertising that, once installed, the lock "cannot be removed with a tool, which satisfies CA and NY state law." Compl. ¶¶ 506, 510, 680. The alleged facts show that Mean knew those statements were false. Compl. ¶¶ 511–518. As noted *supra*, Plaintiffs allege that Mean simultaneously taught consumers how to remove its lock easily, with simple tools, in approximately 10 minutes. Compl. ¶¶ 516-518, 521.

The alleged facts also show that Mean's deceptive statements were material, or "important to consumers and, hence, likely to affect their choice of, or conduct regarding, [Mean's] product." *Bildstein v. MasterCard Intern. Inc.*, 329 F.Supp.2d 410, 414 (S.D.N.Y. 2004). *See* Compl. ¶¶

520–525 (alleging consumer-shooter specifically sought out firearm with an MA Lock); ¶ 491 (shooter's statement that firearm with MA Lock "will do very nicely" for maximum killing); ¶ 493 (shooter's statement that firearm with MA Lock "will be VERY effective"); ¶ 523 (consumer-proprietor of Vintage Firearms's suggesting that the MA Lock provides plausible deniability to sell firearms with "safety features").

Second, the allegations make clear that Mean's misleading statements were consumer-oriented—they appeared on Mean's website and elsewhere as part of Mean's efforts to sell MA Locks to as many customers as possible. Compl. ¶¶ 506, 510, 516–518. *See*, *e.g.*, *Casper Sleep, Inc. v. Mitcham*, 204 F. Supp. 3d 632, 644 (S.D.N.Y. 2016) (company's website statements are consumer-oriented).

Finally, Plaintiffs have alleged facts sufficient to show a causal connection between their injuries and Mean's deceptive marketing practices. Mean's practices led New York consumers to believe that the MA Lock is a permanent fixture that brings otherwise prohibited weapons into compliance with state law. Compl. ¶ 510. That deception caused consumer-dealers in New York like co-defendant Vintage Firearms to hide behind a veneer of legality to purchase and sell weapons equipped with MA Locks that were easily convertible into illegal, functioning, assault weapons. Compl. ¶ 523. This allegation is substantiated by Attorney General James's lawsuit, *People v. Mean L.L.C.* Compl. ¶ 527; Rome Aff. Ex. A, ¶ 2 ("the MA Lock did not effectively impede the ability of the Bushmaster XM-15 used by the Buffalo shooter to accept a detachable magazine. Using basic tools in his family's home and following easily available instructions, within a matter of minutes, the Buffalo shooter simply removed the MA Lock."). The lawsuit details how "Mean Arms is well aware that the MA Lock is simple to remove" and that it is "designed to be removed quickly, easily, and without damaging the semiautomatic rifle, with Mean Arms even providing removal instructions on the product label." Rome Aff. Ex. A, ¶¶ 54–55. Plaintiffs agree and have pled facts sufficiently showing that "Mean Arms' conduct has resulted in people in New York possessing semiautomatic rifles with MA Locks." Rome Aff. Ex. A, ¶ 70. The Tops shooter's AR-15 was one such illegal weapon that would not have been available in New

York without Mean's unlawful conduct. Compl. ¶¶ 527–528; Rome Aff. Ex. A. Accordingly, Plaintiffs have alleged facts sufficient to survive Mean's motion to dismiss.

Despite the foregoing allegations, Mean argues that Plaintiffs have not stated claims for relief under G.B.L. §§ 349 and 350. Def's Br. at 23–25. Mean does not meaningfully contest that its statements were materially misleading or consumer-oriented, but disputes causation.[10] Def's Br. at 22–23. As discussed, Plaintiffs have alleged facts sufficiently showing that Mean's practices led to the harms they have suffered, and Mean's motion should be denied on that basis alone. Setting that aside, if the Court could consider the facts set forth in Mean's motion and supporting affirmation (which it cannot), it would have to conclude that too many disputed facts go to the issue of causation. *See, supra*, Section I. It would be improper to dismiss Plaintiffs' §§ 349 and 350 claims now, without further factual development. *See Guggenheimer*, 43 N.Y.2d at 275 ("unless it can be said that no significant dispute exists regarding [a material fact claimed by the pleader], dismissal should not eventuate").

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

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

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

Mean mischaracterizes New York's consumer-protection law when it argues that only direct "consumers of Mean's products" and "direct competitors of Mean" have standing to sue the

[10] Mean spends three sentences asserting that its practices were not misleading or consumer-oriented because the Tops shooter thought that removing the MA Lock would make his firearm illegal. Def's Br. at 24–25. But whatever the Tops shooter's personal knowledge was, it does not negate Mean's own knowledge of its false statements. Mean's business practices *relied on* claiming one thing to the general public and another to customers: Mean claimed online that the MA Lock "cannot be removed with a tool, which satisfies CA and NY state law" in order to sell in New York (Compl. ¶ 510); at the same time, Mean's representatives were assuring potential customers that the MA Lock could be removed using "simple tools," "without any damage to your rifle," in "about 10 minutes." Compl. ¶¶ 516, 518. Mean cannot claim that its patently false statements were not deceptive because the company provided a subset of its consumers with the truth. *See Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Co., Inc.*, 150 N.Y.S.3d 79, 85 (N.Y. 2021) (a qualifying deceptive practice "need not be directed to *all* members of the public").

company for §§ 349 and 350 violations. Def's Br. at 22. On the contrary, "[t]he critical question" under §§ 349 and 350 "is whether the matter affects the public interest in New York, not whether the suit is brought by a consumer or a competitor." *Securitron Magnalock Corp. v. Schnabolk*, 65 F.3d 256, 264 (2d Cir. 1995). Correspondingly, the law broadly authorizes "***any person*** who has been injured by reason of ***any violation*** of this section" to file suit for injunctive and/or monetary relief. G.B.L. § 349(h) (emphasis added). *See* McKinney's Statutes § 94; *Majewski*, 91 N.Y.2d at 583.

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

B. Plaintiffs Have Suffered Direct, Non-Derivative Harms.

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

As noted *supra*, Section III, the Connecticut Supreme Court allowed plaintiff-victims of the 2012 Sandy Hook mass shooting to proceed with wrongful-advertising claims against gun manufacturers. *Soto*, 331 Conn. at 98–99. Rejecting the manufacturers' argument that the harm suffered by the victims was derivative of the manufacturers' consumers, the Court held that when

"it is the direct victims of gun violence who are challenging the defendants' conduct[,] no private party is better situated . . . to bring the action." *Id.*

In New York, the Suffolk County Supreme Court denied a motion to dismiss § 349 claims against opioid manufacturers brought by New York counties, even though the counties were neither direct opioid consumers nor competitors, because the counties had alleged their own pecuniary harms that were not derivative of the harms suffered by opioid consumers. *In re Opioid Litig.*, 2018 N.Y. Slip Op. 31229 at *19–20; *see also M.V.B. Collision, Inc. v Allstate Ins. Co.*, 728 F. Supp. 2d 205, 217–18 (E.D.N.Y. 2010) (allowing auto-repair shop to sue insurance company for deceptive statements made to consumer-insureds); *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 497 F. Supp. 3d 552, 667–69 (N.D. Cal. 2020) (allowing school districts to pursue deceptive-marketing claims against vaping company because districts' harms were distinct from harms to consumer-youths' health).

Here, Plaintiffs have alleged facts showing that they are "the part[ies] actually injured" by Mean's conduct and thus proper plaintiffs to hold Mean accountable. *Blue Cross*, 3 N.Y.3d at 208. Plaintiffs have suffered specific physical and emotional harms, *see, e.g.*, Compl. ¶¶ 17–22, which are wholly distinct and independent from any harm a purchaser of Mean's MA Lock could claim to suffer as a result of the company's deceptive marketing practices (i.e., that relying on those practices led them to purchase or possess an illegal assault weapon).[11] Like the Sandy Hook families, the Buffalo families are the "direct victims of gun violence" challenging Mean's conduct and "no private party is better situated to bring this action." *Soto*, 331 Conn. at 99.

C. Mean's Deceptive Practices Harm the Public Interest.

The harm Mean's marketing practices have caused to New York's public interest is manifest—shootings rendered deadlier. Mean's false and deceptive representations concerning

[11] Mean cites four distinguishable cases in support of its argument that Plaintiffs' injuries are somehow derivative of harm to Mean's direct consumers. Two cases involved a special legal relationship between consumers and non-consumer plaintiffs not present here (insurer-insured; landlord-tenant). The third dismissed an animal-rights advocacy organization's suit against a foie-gras seller, and the fourth dismissed water districts' claims against oil companies for selling gasoline with a banned chemical. Def's Br. at 22–23. In those cases, direct consumers were the "part[ies] actually injured" but non-consumers sought relief; here, the "part[ies] actually injured" seek relief. *Blue Cross*, 3 N.Y.3d at 208.

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

This case exemplifies why it makes no sense to limit standing to direct consumers instead of those who have suffered direct harm. Mean's representations concerning the supposedly permanent nature of its MA Lock gave cover to New York consumers—including dealers like Vintage Firearms and purchasers like the Tops shooter—to buy and sell firearms that could be easily converted into functional, illegal assault weapons. Some if not many of those same consumers, including the Tops shooter, simultaneously sought out or were provided with instructions for removing the MA Lock from Mean. Compl. ¶¶ 512–518. That is, New York customers sought out firearms fitted with MA Locks *specifically because the locks are removable and not permanent*. Compl. ¶¶ 512–525, 491 (shooter stating firearm with MA Lock "will do very nicely" for his massacre). Yet they could only purchase such products in New York because Mean lied to New York regulators about its lock being permanent. Rome Aff. Ex. A. Bad customers do not and should not let Mean escape liability for its deceptions, especially here, where Mean has marketed its product to those customers, and where the most directly foreseeable harm is not to those customers but to other members of the New York public.[12] *Cf. In re of Brooklyn Navy Yard Asbestos Litig.*, 971 F.2d 831, 838–39 (2d Cir. 1992) ("there is nothing unjust in holding defendants liable for their own negligence, notwithstanding the [employer's] additional lapse."). No, here, the "most directly foreseeable harm associated with [Mean's practices] is that innocent

[12] It defies logic to think that a consumer like the shooter who sought to commit mass murder would attempt to hold Mean accountable for its deceptive practices through litigation. Yet Mean somehow argues that the shooter is the only proper plaintiff. Def's Br. at 22.

third parties could be shot" with a firearm modified to accept a more deadly, detachable magazine. *Soto*, 331 Conn. at 99. Plaintiffs are innocent third parties who were shot with a firearm containing a more deadly, detachable magazine. They should accordingly be allowed to proceed with their §§ 349 and 350 claims, particularly at this preliminary stage without the benefit of discovery.

VII. *This Court Has Jurisdiction Because Mean Specifically Manufactures a Product for the New York Market, and that Product Was Sold, Bought, and Used in New York.*

Mean has purposefully availed itself of New York law by creating and selling a product only to be purchased in states like New York, and Plaintiffs' claims arise from Mean's product that was sold, purchased, and used in New York. This satisfies New York's jurisdictional statutes.

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

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

It cannot be disputed that the MA Lock at issue was sold, bought, and removed in this State. That, alone, suffices for specific jurisdiction. And, Mean engaged in "sustained and substantial transaction of business" within New York at the time of the Tops shooting, regularly doing business here. *Fischbarg*, 9 N.Y.3d at 382. Mean acknowledges that its webpage referenced the "NY Safe Act" and "shipping to customers in . . . NY.". Def's Br. at 28; Compl. n.225. On or before May 10, 2023, however, Mean changed its website to state that it would no longer ship the MA Lock to New York. Compl. ¶ 526. This change is an acknowledgement that Mean *did* target New York consumers and disproves Mean's protestations to the contrary. Def's Br. at 27–28.

Furthermore, gun owners in states that do not have restrictions similar to New York's have no need for Mean's MA Lock. Mean's website describes the product as "for states with intrusive" and "anti-firearm laws." Compl. ¶¶ 506, 508–09. Thus, the market for the MA Lock is restricted to states like New York, as Mean acknowledges. *See* Compl. ¶ 510. Mean targeted New York by designing a product for use specifically in this State, and conducts substantial business within New York. Plaintiffs' claims stem from the company's contacts with New York—Mean does not dispute that its product was installed on the rifle that the Tops shooter purchased in New York to use as his murder weapon. Plaintiffs' claims arise from that purchase and subsequent removal.

Similarly, in *LaMarca*—which Mean cites—the Court of Appeals ruled that dismissal of a case for lack of personal jurisdiction was improper where defendant knew its product would be used in New York, purposely pursued business ties with New York, and was motivated by a desire to sell in New York. Those same facts hold true here. Mean knew its MA Lock would be used in New York and therefore "had reason to expect that any defects would have direct consequences in this State." *LaMarca*, 95 N.Y.2d at 215. Mean "forged the ties with New York. It took purposeful action, motivated by the entirely understandable wish to sell its products here." *Id.* at 217. Thus, like the *LaMarca* Court, this Court should have "no difficulty in concluding" that C.P.L.R. 302(a)(3) is satisfied. *Id.* at 215.

Lastly, as the U.S. Supreme Court's due-process precedents provide, "[s]o long as a party avails itself of the benefits of the forum, has sufficient minimum contacts with it, and should reasonably expect to defend its actions there, due process is not offended if that party is subject to

jurisdiction even if not present in that state." *Fischbarg*, 9 N.Y.3d at 384–85. The Court of Appeals has indicated that in only extremely rare circumstances will exercising jurisdiction under C.P.L.R. 302 not comport with federal due process. *Al Rushaid*, 28 N.Y.3d at 331. Holding Mean accountable for designing and selling a product in New York comports with traditional notions of fair play and substantial justice.

CONCLUSION

Accordingly, Plaintiffs respectfully request that this Court deny Mean's motion in its entirety.

Dated: New York, New York
October 13, 2023

Respectfully submitted,

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

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.

CERTIFICATION PURSUANT TO 22 N.Y.C.R.R. 202.8-b(c)

Index No.: 805896/2023

I hereby certify pursuant to 22 N.Y.C.R.R. 202.8-b(c) that the word count of the attached memorandum of law is 9,991 words, exclusive of the material omitted under 22 N.Y.C.R.R. 202.8-b(b), in compliance with the word-count limit set forth in the agreement between counsel memorialized via e-mail on September 1, 2023.

DATED: October 13, 2023

/s/ Leigh Rome
LEIGH ROME, ESQ.