

To be argued by  
ERIC TIRSCHWELL  
Time Requested: 15 Minutes

Erie County Supreme Court Index Nos. 805896/23, 808604/23, 810316/23, 810317/23

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# NEW YORK SUPREME COURT

APPELLATE DIVISION—FOURTH DEPARTMENT

**Index No. 805896/23**

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,

**DOCKET Nos.:**

**CA 24-00450**

**CA 24-00514**

**CA 24-01334**

**CA 24-01335**

—against—

*Plaintiffs-Respondents,*

MEAN L.L.C.,

*Defendant-Appellant,*

*(Caption continued on inside covers)*

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**BRIEF FOR PLAINTIFFS-RESPONDENTS JONES (CA 24-01334, Action No. 3) AND HARRIS STANFIELD, ET AL. (CA 24-01335, Action No. 4)**

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(CA-24-01334) and Harris Stanfield,  
et al. (CA 24-01335)*

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

*Defendants.*

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**Index No. 808604/23**

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

*Plaintiffs-Respondents,*

—against—

MEAN ARMS LLC d/b/a MEAN ARMS,

*Defendants-Appellants,*

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

*Defendants.*

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**Index No. 810316/23**

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

*Plaintiff-Respondent,*

—against—

MEAN LLC,

*Defendant-Appellant,*

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

*Defendants.*

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**Index No. 810317/23**

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

—against—

*Plaintiffs-Respondents,*

MEAN LLC,

*Defendant-Appellant,*

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

*Defendants.*

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## PRELIMINARY STATEMENT

This case arises from a horrific tragedy. On May 14, 2022, a young man motivated by racist hatred carried out a mass shooting at a grocery store in Buffalo, killing ten Black people, wounding three, and injuring and severely traumatizing dozens more caught in the line of fire. The scale of this tragedy was a direct result of the Shooter’s weapon of choice—an AR-15-style rifle equipped with detachable 30-round magazines. And the Shooter was able to obtain this weapon, which is an illegal assault weapon under New York law, because of the wrongful conduct of Defendant-Appellant MEAN LLC (“Mean”).

New York’s Secure Ammunition and Firearms Enforcement Act of 2013 (“SAFE Act”), seeks to prevent mass shootings by banning the possession and sale of assault weapons and large capacity magazines in this State. Yet Mean—a manufacturer of firearm-related products, makes and sells workarounds to the SAFE Act and other laws of what it calls “non-free states”—marketed and distributed a magazine “lock”—the MA Lock—which it claimed would “permanently” lock a fixed magazine in place on an AR-15-style rifle. Mean represented that, “once installed,” the MA Lock “cannot be removed with a tool, which satisfies CA and NY state law.” With this marketing, Mean assured the public and regulators that a rifle with the MA Lock attached complies with the SAFE Act.

But Mean’s claims about the MA Lock and compliance with New York law were demonstrably false—as Mean’s own statements reveal. The MA Lock was in no sense

a “permanent” change, and they told users—including on the back of the package in which the product was sold—how the lock could be removed in minutes with simple tools, directly contradicting their own false marketing to the contrary. Mean’s message was clear: This product gives your rifle the appearance of compliance with New York law while retaining its ability to function as an illegal assault weapon.

Mean could have foreseen that the MA Lock would aid lawbreakers intending to acquire an assault weapon in circumvention of New York’s ban; indeed, circumvention of the SAFE Act was the very purpose of its false marketing campaign. Here, the Shooter sought an AR-15 capable of accepting detachable magazines to use in a mass shooting and learned that the MA Lock could be easily removed from a rifle, though it gave a rifle the veneer of compliance with the SAFE Act. The Shooter then sought out and found a Bushmaster XM-15 rifle with a MA Lock at a local New York gun dealer. He purchased it, quickly and easily removed the lock with a drill, and equipped the rifle to use detachable magazines in preparation for his attack.

Plaintiff-Respondent Wayne Jones lost his mother, Celestine Chaney, in that attack, while the 24 Plaintiffs-Respondents in the *Harris Stanfield* case survived the attack with emotional and physical injuries, (collectively, “Plaintiffs”). Mean claims that it is protected from Plaintiffs’ suits by the federal Protection of Lawful Commerce in Arms Act (“PLCAA”), which shields certain gun industry members from certain types of lawsuits. But that law provides no protection to Mean here for a number of reasons, including because the MA Lock is not a “component part of a firearm” and because

Mean is not a protected “manufacturer” under the statute. Moreover, Mean’s criminal facilitation of SAFE Act violations and its deceptive and false marketing in violation of Gen. Bus. Law §§ 349 and 350 (“GBL §§ and 350”) take this case outside of PLCAA protection.

The Trial Court correctly allowed Plaintiffs’ claims against Mean to proceed, and this Court should affirm.

## QUESTIONS PRESENTED

1. Does PLCAA apply to Plaintiffs' claims? The Trial Court correctly ruled that Plaintiffs' suits are not subject to PLCAA.
2. If PLCAA applies, may Plaintiffs' claims proceed pursuant to one or more of PLCAA's exceptions? The Trial Court did not reach this issue.
3. Did Plaintiffs state cognizable claims for violations of GBL §§ 349 and 350? The Trial Court correctly answered in the affirmative.
4. Was the Shooter's criminal act a superseding intervening act that negates proximate cause as a matter of law? The Trial Court correctly ruled that proximate cause was not superseded as a matter of law.
5. Did Plaintiffs state cognizable claims for negligence and public nuisance? The Trial Court correctly answered in the affirmative with regard to public nuisance, but the issue was not raised before the Trial Court with regard to negligence.
6. Does New York have personal jurisdiction over Mean? The Trial Court correctly answered in the affirmative.

## BACKGROUND

### I. Factual Background

New York's SAFE Act prohibits the possession, manufacture, transport, or disposal of an assault weapon. L. 2013, ch. 1; Penal Law § 265.02(7) (possession); *id.* § 265.10 (manufacture, transport, disposal). As the Bill Jacket for the SAFE Act made clear, “[s]ome weapons are so dangerous and some ammunition devices so lethal that we simply cannot afford to continue selling them in our state.” *State Senate Introducer’s Mem. in Support*, Bill Jacket, L. 2013, ch. 1, at 13.

An assault weapon is “a semiautomatic rifle that has an ability to accept a detachable magazine” and at least one of a list of statutorily enumerated characteristics, including “a pistol grip that protrudes conspicuously beneath the action of the weapon,” Penal Law § 265.00 (22)(a), which is a handle similar to that on a handgun. R.1338 (¶8); R.1875 (¶8). To avoid being an assault weapon, an AR-15-style rifle such as the Bushmaster rifle used in Buffalo must have a fixed magazine capable of holding no more than ten rounds because the SAFE Act also prohibits large capacity magazines. Penal Law §§ 265.00(23), 265.02(8); R.1336-37 (¶6); 1873-74 (¶6). As Mean acknowledges, Mean Br. at 9, a fixed magazine must be *permanently* installed: at all relevant times, guidance from a New York State website stated that any modification to a weapon to render it compliant with the SAFE Act “must be permanent” and must not be “revers[ible] through reasonable means.” R.1029-30 (¶122); R.1335-36 (¶5); R.1548 (¶206); R.1872-73 (¶5); *see also* R.1267; R.1804.

The MA Lock is a device that attaches a magazine to an AR-15-style rifle. It replaces the magazine release button, a part that allows for the insertion and release of detachable magazines on an assault weapon. Recognizing what was required under New York law to make an illegal assault rifle legal, Mean’s marketing claimed that the MA Lock would “permanently” fix a magazine to a rifle. R.1031 (¶127); R.1550 (¶211). Mean’s website stated that the MA Lock “provides a true solution to fixed magazine laws,” including New York’s. R.1030-31 (¶¶125-26); R.1549 (¶¶209-10). Mean’s website emphasized the legal compliance aspect of the MA Lock: “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.” R.1030 (¶125); R.1549 (¶209) (emphasis added). Through its marketing, Mean expressly told New York consumers that installing the MA Lock on an AR-15-style rifle would bring such a rifle into compliance with the SAFE Act. R.1035-36 (¶¶139-40); R.1554-55 (¶¶223-24).

Mean’s representations were false and misleading. The MA Lock did not permanently install a fixed magazine because the MA Lock could easily be removed. R.1031-32 (¶¶128-29); R.1550 (¶¶212-213). Even as it falsely represented that the MA Lock permanently fixed a magazine to a rifle and “cannot be removed with a tool,” Mean told social media users that the MA Lock could be removed “quickly” using “simple tools.” R.1031-32 (¶¶126-27, 129); R.1549-50 (¶¶210-11, 213). It announced on Facebook that “the MA Lock is completely reversible (with NO permanent changes required . . .).” R.1031-32 (¶129); R.1550 (¶213). Mean even provided instructions for

removing the MA Lock on the product's packaging, explaining that removal of the MA Lock could be accomplished using a drill with "any brand of screw extractor from your local hardware store." R.1032-33 (¶¶131); R.1551-52 (¶¶215). By falsely marketing the MA Lock as a "permanent[ ]" modification that "cannot be removed with a tool," Mean thereby "knowingly created the mere illusion of compliance and offered New Yorkers a way to circumvent the [assault weapons] law." R.1013, 1030-31 (¶¶63, 125-26); R.1534, 1549 (¶¶153, 209-10).

Mean's deceptive and false marketing of the MA Lock facilitated an illegal secondary market in assault weapons in New York. R.1034 (¶¶136); R.1553 (¶¶220). The Shooter took advantage of these circumstances by purchasing in New York a rifle equipped with the MA Lock, which he then easily removed, leaving him without the restrictions associated with a fixed magazine. R.1036 (¶¶141-42); R.1555 (¶¶225-26).

Mean's deceptive and false marketing played a substantial role in the Shooter's purchase of the Bushmaster XM-15 that he used in the shooting. R.1036 (¶¶140-41); R.1554-55 (¶¶224-25). Starting in 2021, the Shooter documented his plans to acquire the gear that would enable him to commit mass murder of non-white people. R.1019-20 (¶¶80-83); R.1538 (¶¶164-67). He specifically sought an assault weapon that could "hold many rounds of ammunition without reloading" in order to maximize casualties and he learned that the MA Lock allowed for circumvention of New York's assault weapons law. *Id.* The Shooter realized that if he acquired an AR-15 with an MA Lock, he could easily remove the lock and then use detachable large-capacity magazines with

the rifle instead of a fixed magazine. R.1020 (¶86); R.1540 (¶170).

Sure enough, the Shooter found a Bushmaster XM-15 rifle with a pistol grip and a 10-round magazine held in place by an MA Lock at a local gun dealer, Vintage Firearms. R.1021 (¶90); R.1541 (¶174); R.1338 (¶8); R.1875 (¶8). Concluding that the “bushmaster at Vintage Firearms will do very nicely” due to the presence of “the mean arms fixed mag release,” the Shooter purchased the rifle and quickly and easily removed the MA Lock the same day. R.1021-22 (¶¶90-94); R.1541-42 (¶¶174-78). He knew both that the MA Lock gave the Bushmaster XM-15 the appearance of compliance with New York law and that he could easily remove the lock so that he could use large-capacity magazines in his planned massacre. R.1023 (¶95); R.1542 (¶179).

On May 14, 2022, armed with the Bushmaster XM-15 and multiple detachable large-capacity magazines, the Shooter attacked innocent members of the Buffalo community at a grocery store. He started in the parking lot, shooting and killing three individuals, before firing several shots through the store window and entering the store. R.1028 (¶116); R.1547 (¶200). Once inside, the Shooter shot two shoppers, including Celestine Chaney, before his first detachable magazine ran out of ammunition. R.1004, 1028 (¶¶13, 116); R.1547 (¶200). But because he had been able to remove the MA Lock, he quickly and easily reloaded his rifle by inserting a second detachable magazine. R.1004, 1028, 1036-37 (¶¶13, 116, 143-47); R.1547, 1555-56 (¶¶200, 227-31). Had the MA Lock in fact been permanent, the shooting could not have unfolded in this way. R.1036-37, 1088-89 (¶¶143-46, 337); R.1555-56, 1605-07 (¶¶227-30, 426, 437). The

Shooter then shot Ms. Chaney again and continued his killing rampage. R.1028, 1036-37 (¶¶116, 143-47); R.1547, 1555-56 (¶¶200, 227-31). He used at least two large-capacity magazines during the attack, firing about 60 rounds. R.1037 (¶147); R.1556 (¶231).

## **II. Procedural History**

Plaintiffs filed two separately docketed cases in the Erie County Supreme Court: *Jones* and *Harris-Stanfield*. Plaintiff Wayne Jones is the son and administrator of the estate of Celestine Chaney. Mr. Jones has claims against Mean for negligence, negligence per se, public nuisance, and violations of GBL §§ 349 and 350. The *Harris Stanfield* Plaintiffs are 24 employees and patrons of the Tops Friendly Markets store who survived the shooting with emotional and physical injuries. They brought the same five claims against Mean, as well as claims for negligent infliction of emotional distress.

Mean moved to dismiss both cases under CPLR § 3211 (a)(3), (7), and (8). The Trial Court denied Mean's motions in their entirety. R.46-56; R.66-76. In substantially identical opinions, the Trial Court found that PLCAA did not bar Plaintiffs' suits because the MA Lock was not a "qualified product" within the statute's meaning. R.50; R.70. The Trial Court also determined that Plaintiffs had adequately pled claims under GBL §§ 349 and 350 and for public nuisance. R.55; R.75. In addition, the Trial Court rejected Mean's arguments that Plaintiffs' claims should be dismissed for a lack of proximate cause, finding it "far too early" to decide that issue. R.53; R.73. Finally, the Trial Court rejected Mean's argument that that it lacked personal jurisdiction over Mean. R.51-52; R.71-73.

Mean filed notices of appeal. Plaintiffs then filed amended complaints that added claims against other defendants. R.997-1125 (*Jones Amended Complaint*); R.1494-1647 (*Harris Stanfield Second Amended Complaint*). Mean and Plaintiffs briefed motions to dismiss that were substantively identical to the previously filed motions. R.1353; R.1887. The Trial Court then denied Mean's motions to dismiss for the reasons set forth in its initial February 22, 2024, decision. R.44-45; R.64-65. Mean again filed notices of appeal.

### **STANDARD OF REVIEW**

The Court reviews the denial of a motion to dismiss de novo. *Consol. Rest. Operations v. Westport Ins. Corp.*, 205 A.D.3d 76, 81 (1st Dep't 2022). At this stage, the Court must accept the complaint's allegations as true, liberally construe those allegations, and draw all reasonable inferences in the plaintiff's favor. *JF Capital Advisors, LLC v. Lightstone Group, LLC*, 25 N.Y.3d 759, 764 (2015). Dismissal is warranted only if the complaint fails to allege facts that fit within any cognizable legal theory. *Lawrence v. Miller*, 11 N.Y.3d 588, 595 (2008). Indeed, the court need only find that the plaintiff *has* a cause of action, not whether one has been stated. *Wiener v. Lazard Freres & Co.*, 241 A.D.2d 114, 120 (1st Dep't 1998).

In addition, the truth of the plaintiff's allegations is assumed, and contrary facts in a defendant's affidavits or other evidentiary materials "will almost never warrant dismissal under CPLR 3211" unless they conclusively establish that the plaintiff has no claim or cause of action. *Lawrence*, 11 N.Y.3d at 595.

## ARGUMENT

### I. Under its plain terms, PLCAA is inapplicable to Plaintiffs' claims.

PLCAA, 15 U.S.C. §§ 7901-03, shields certain gun industry members from liability in certain civil actions, subject to a number of exceptions, including where the gun industry member violated a law applicable to the “sale or marketing” of firearms. *See id.* § 7903(5)(A)(iii). A civil claim against a gun industry defendant is barred by PLCAA only if it meets the statute’s definition of a “qualified civil liability action.” *Id.* § 7902(a).

As relevant to this case, a “qualified civil liability action” is defined as an action brought “against a manufacturer or seller of a qualified product” and arising “from the criminal or unlawful misuse” of the defendant’s “qualified product.” *Id.* § 7903(5)(A). The term “manufacturer” is defined in the statute to include anyone “who is engaged in the business of manufacturing the [qualified] product . . . and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18.” *Id.* § 7903(2).<sup>1</sup> Additionally, the term “qualified product” is defined to include “a firearm . . . , or ammunition . . . , or a component part of a firearm or ammunition.” *Id.* § 7903(4).

None of Plaintiffs’ claims against Mean fall within the definition of a “qualified civil liability action,” for multiple reasons, as discussed below.

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<sup>1</sup> The term “seller” is defined analogously, *see id.* § 7903(6), though Mean expressly denies that it is a seller within the meaning of PLCAA. *See Mean Br.* at 4.

**A. PLCAA does not shield Mean because the MA Lock is not a “qualified product.”**

The Trial Court correctly concluded that PLCAA does not bar this case because the MA Lock is not a “component part of a firearm” and thus is not a “qualified product.” R.50; R.70. PLCAA’s plain text and the provisions of the federal Gun Control Act that PLCAA incorporates show that the MA Lock is not a “qualified product.” Simply put, the MA Lock is not a “component part of a firearm” because it is not essential—a firearm can fire a shot without the MA Lock or a replacement part installed. Mean’s inapposite authorities cannot overcome this plain reading.

PLCAA defines “qualified product” in relevant part with reference to terms in the federal Gun Control Act of 1968, 18 U.S.C. § 921 *et seq.*:

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

15 U.S.C. § 7903(4). Neither PLCAA nor the Gun Control Act independently defines “component part of a firearm,” so the definition of “firearm” in 18 U.S.C. § 921(a)(3)(A)-(B) controls. That provision defines “firearm” in relevant part as a weapon capable of firing a single shot. *See id.* § 921(a)(3) (“The term ‘firearm’ means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted *to expel a projectile* by the action of an explosive . . .”) (emphasis added). Therefore, the phrase “component part of *a firearm*” must be understood to mean a “component part” of a weapon capable of expelling a projectile, *i.e.*, firing a single shot.

Because PLCAA does not define the term “component part of a firearm,” this Court should look to those words’ ordinary meaning when interpreting the statute. *See, e.g., United States v. Bedi*, 15 F.4th 222, 226-27 (2d Cir. 2021). As Mean appears to concede, the dictionary definitions of “component” and “part” instruct that “component” means “an essential part” and “part” means “an essential portion or integral element.” *Prescott v. Slide Fire Solutions, LP*, 341 F. Supp. 3d 1175, 1188 (D. Nev. 2018) (citing Merriam-Webster’s Collegiate Dictionary 255, 267, 902-03 (11th ed. 2003)); *accord* Mean Br. at 17 (“A ‘component part’ of a firearm is one that is integral to its proper function.”). Therefore, combining these dictionary definitions with the legal definition of “firearm” from the Gun Control Act, a firearm-related product is not a PLCAA-protected “component part of a firearm” unless the product is integral to the operation of the firearm—that is, to its ability to fire a shot.<sup>2</sup>

On this reasoning, a Nevada court determined that a large-capacity magazine was not a “component part of a firearm” where the manufacturer admitted that the firearm at issue could fire without a magazine. *Green v. Kyung Chang Ind. USA, Inc.*, No. A-21-838762-C, 2022 WL 987555, at \*1 (Nev. 8th Jud. Dist. Clark County Mar. 23, 2022), *mandamus denied*, *Kyung Chang Ind. USA, Inc. v. Dist. Ct. (Jones)*, No. 84844 (Nev. Mar. 14, 2023), *cert. denied*, No. 22-1206 (U.S. Oct. 2, 2023) (R.1341-43). The court found that

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<sup>2</sup> PLCAA’s definition of “qualified product” omits subparagraph (C) of section 921(a)(3), which refers to “any firearm muffler or firearm silencer.” This omission supports the conclusion that a “component part” must be one essential to firing a shot, as mufflers and silencers are not necessary for doing so.

“the 100 round gun magazine . . . is not a ‘component part’ within [ ] PLCAA because it is not required for the subject gun to operate and fire projectiles, the subject firearm is capable of firing without any magazine inserted, and the 100-round magazine was not included with the firearm by the manufacturer.” *Id.*

The same is true here because the MA Lock is not essential to a firearm’s capacity to fire a shot. As alleged, the MA Lock “fixe[s] a 10-round magazine to the gun,” and “is an easily removable, non-permanent lock.” R.1020, 1023, 1031 (¶¶86, 95, 129); R.1540, 1542, 1550 (¶¶170, 179, 213). Mean argues that without the MA Lock or a replacement device in place, a rifle cannot accept a detachable magazine. Mean Br. at 19. But it is well-known that a firearm can fire a shot without a magazine installed, *see, e.g., Ocean State Tactical, LLC v. Rhode Island*, 646 F. Supp. 3d 368, 386 (D.R.I. 2022) (“a firearm can fire bullets without a detachable magazine”), as Mean conceded below, (R.1309; R.1846), (“[T]he rifle simply becomes a single-shot rifle” without the MA Lock or some other item to affix the magazine.).

Mean’s arguments sidestep the implications of PLCAA’s plain text. First, Mean focuses on whether the MA Lock “materially affects” an AR-15-style rifle’s operational “function” by allowing the rifle to fire with a fixed magazine instead of a detachable magazine. Mean Br. at 19. This point only underscores the fact that the rifle can fire with or without the MA Lock and is a “firearm” either way. Second, Mean asserts that the MA Lock “materially changes” a rifle’s legal “function” by converting “an illegal rifle into one that is legal in certain states with ‘assault weapons’ restrictions.” Mean Br.

at 19. Even if that were true (and Plaintiffs allege that it is not), whether a rifle is compliant with New York’s assault weapons law is irrelevant to whether the rifle can fire a shot—and therefore to whether that rifle is a “firearm” under federal law.

In short, because the presence or absence of the MA Lock does not affect whether the rifle functions as a “firearm” as defined by PLCAA, the MA Lock is in no sense essential or integral and is thus not a “component part of a firearm” under PLCAA. The Trial Court correctly determined that the MA Lock is not a qualified product because the “the lock could be and was removed and the firearm was still able to function.” R.50; R.70. That holding should be affirmed.

Mean identifies no contrary authority on point. To press its preferred construction of “qualified product,” Mean points to *Prescott*, Mean Br. at 17, but in that case the parties *agreed* that a rifle’s stock is a “component part,” disputing only whether a bump stock, which replaces a rifle stock and “allows a user to discharge ammunition rounds in rapid succession,” constituted a “component part.” 341 F. Supp. 3d at 1189. Because a bump stock simply replaced what the parties agreed was a component part, the court concluded that a bump stock must likewise be a component part. *Id.* Similarly, in *In re Academy, Ltd.*, 625 S.W.3d 19 (Tex. 2021), the parties did not dispute, and the court was not asked to decide, whether the magazine at issue was a component part under PLCAA. *Id.* at 26.

Another case cited by Mean, *Lowy v. Daniel Defense, LLC*, No. 23-CV-1338, 2024 WL 3521508, at \*3 (E.D. Va. July 24, 2024), *appeal docketed*, No. 24-1822 (4th Cir. Aug.

28, 2024), followed *Prescott's* reasoning, finding that replacement parts, including a magazine, were “qualified products.” But the *Lony* decision’s cursory reasoning skipped any assessment of whether those parts were necessary for the rifle’s ability to fire a shot. And that analysis is what is required to differentiate a “component part of a firearm” from any other firearm-related product, like silencers, sights, or compensators. *Cf.* R.50; R.70 (Trial Court noting that a “court found that ‘sights and compensators’ are accessories because ‘the carbine will fire without the sights or compensator’” (quoting *Auto-Ordnance Corp. v. United States*, 822 F.2d 1566, 1570-72 (Fed. Cir. 1987))). Because the MA Lock is not essential for a “firearm” to fire a shot, the Trial Court aptly compared the MA Lock to an “accessory,” which is not a “qualified product” but is rather defined as “an object or device that is not essential in itself but adds to the beauty, convenience or effectiveness of something else.” R.49; R.69; *see also Sambrano v. Savage Arms, Inc.*, 338 P.3d 103, 105 (N.M. Ct. App. 2014) (where parties on appeal agreed that a rifle lock was an accessory, PLCAA did not bar claims against the lock distributor).

Finally, to the extent that this Court concludes that whether the MA Lock is a “component part” under PLCAA involves questions of fact, Plaintiffs’ well-pleaded allegations that the MA Lock is not essential to the operation of a “firearm” make it premature at this stage to dismiss their claims. *Cf. King v Klocek*, 187 A.D.3d 1614, 1615-16 (4th Dep’t 2020) (declining to dismiss on PLCAA grounds where defendant ammunition seller disputed plaintiffs’ allegation that the ammunition used in a shooting

was “handgun ammunition” sold to a 20-year-old in violation of state and federal statutes).

**B. PLCAA does not provide blanket protection to defendants who did not manufacture or sell the “qualified product” at issue.**

Mean also argues that, regardless of whether the MA Lock is a qualified product, and regardless of whether Mean manufactured any “qualified product” at issue in these cases, it enjoys blanket protection under PLCAA in any suit arising out of the misuse of any firearm simply because it has a federal license to manufacture firearms. Mean Br. at 15-16. The Trial Court correctly declined to award Mean such “broad immunity,” which would shield Mean from liability “even though [it] did not manufacture the [Bushmaster rifle] used in this shooting.” R.50; R.70. As the Trial Court put it, “Mean may not step into Bushmaster’s shoes for purposes of PLCAA.” *Id.*

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

Here, the Shooter harmed Plaintiffs using a rifle manufactured by an entity other than Mean. This case is thus like *Ileto*, in which a defendant argued that it should enjoy PLCAA protection because it was a seller of ammunition, despite the fact that the case

did not involve ammunition sold by that defendant. *See id.* at 1145. That argument was properly rejected there, and it should fare no better here. The Trial Court’s determination that “[t]he protection of PLCAA is not transferrable among manufacturers” is sound and should stand. *See* R.50; R.70.

Mean argues that the Trial Court’s decision cannot be right because PLCAA also protects trade associations, which, Mean posits, “do not manufacture or sell any qualified products.” Mean Br. at 16 (emphasis omitted). To state the obvious, this case involves a private company, not a trade association. And Mean ignores that PLCAA protects trade associations only if they have “2 or more members [who] are manufacturers or sellers.” 15 U.S.C. § 7903(8)(C). Under the logic of *Ileto*, a trade association presumably may not invoke PLCAA unless the product at issue was manufactured or sold by one of its members. That PLCAA protection may exist in such a case does not imply that Mean can claim PLCAA protection for products manufactured and sold by another gun industry actor.

Contra Mean’s argument, *Sambrano* supports the proposition that PLCAA protection is lacking when a different gun company’s firearm was used to harm the plaintiff, as is the case here. *See* Mean Br. at 21-23. The *Sambrano* court presumed that a firearm manufacturer enjoys PLCAA protection only for its own products: “One purpose of the PLCAA is to prevent handgun manufacturers from defending against negligence claims based on the criminal misuse of *their* firearms.” 338 P.3d at 105 (emphasis added). Indeed, while the *Sambrano* court concluded that PLCAA protected

the manufacturer of the rifle used in a shooting, it allowed claims to proceed against the distributor of a cable lock sold with the rifle. *Id. Sambrano* does not support granting blanket PLCAA protection to Mean.

**C. Mean is not a protected “manufacturer” under PLCAA.**

Mean argues that its “status as a federally licensed ‘manufacturer’” entitles it to PLCAA protection because PLCAA applies to *any* firearms manufacturer whenever *any* qualified product is used. Mean Br. at 15-16.<sup>3</sup> But the statute’s plain text reveals that Mean is not a “manufacturer” as PLCAA defines the term.

PLCAA defines “manufacturer” to mean, “with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce *and* who is licensed to engage in business as such a manufacturer under chapter 44 of title 18.” 15 U.S.C. § 7903(2) (emphasis added). This is a two-prong test. Under PLCAA, a “manufacturer” is both (i) “engaged in the business” of manufacturing the qualified product and (ii) “licensed to engage” in that business. *Id.*

Taking the second prong first, Mean is not federally licensed to engage in the firearms-adjacent business it conducts. Mean’s business of manufacturing the MA Lock does not make it a “manufacturer” under PLCAA because Mean is not federally

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<sup>3</sup> Mean clarifies earlier in its brief that it is “a federally licensed *firearms* manufacturer.” Mean Br. at 11 (emphasis added).

licensed to engage in that business. *See id.* Indeed, there is no relevant federal license for manufacturing custom products relating to firearms such as the MA Lock.<sup>4</sup>

Mean fails the first prong as well. Merely holding a license for manufacturing firearms—which Mean contends it does—is not sufficient. PLCAA protection is for manufacturers actually engaged in the business of manufacturing firearms. Nothing in the record or the briefing in this case shows that Mean actually made firearms for sale. Rather, as Plaintiffs allege, Mean “is a manufacturer of custom products relating to firearms.” R.1005 (¶16); R.1523 (¶93). Because there is no basis to conclude that Mean is a “manufacturer” of firearms within the meaning of PLCAA, its argument for PLCAA protection on the basis of that status necessarily fails.

**D. Plaintiffs’ injuries did not result from the “criminal or unlawful misuse” of the MA Lock.**

Mean is not protected by PLCAA for the additional reason that Plaintiffs’ claims are not “qualified civil liability actions” because they do not seek “relief[] resulting from the criminal or unlawful misuse of a qualified product by . . . a . . . third party . . .” 15 U.S.C. § 7903(5)(A). To be sure, Plaintiffs allege that the Shooter criminally misused the

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<sup>4</sup> PLCAA’s definition of “engaged in the business” is defined with a cross-reference to the Gun Control Act. *See id.* § 7903(1) (defining “engaged in the business,” other than with respect to a seller of ammunition, as having “the meaning given that term in section 921(a)(21) of title 18”). The Gun Control Act is explicit that the term “engaged in the business” *can only be applied* to (1) firearm manufacturers, (2) ammunition manufacturers, (3) firearm dealers, (4) firearm importers, and (5) ammunition importers. *See* 18 U.S.C. § 921(a)(21). Mean’s business—the manufacture of firearm-related products *but not firearms themselves*—is outside PLCAA’s scope.

Bushmaster XM-15 in the shooting, but Plaintiffs also allege that the Shooter had removed the MA Lock from the rifle beforehand. R.1036 (¶142); R.1555 (¶226). The act of removing the MA Lock was not itself “criminal or unlawful misuse,” because even with the MA Lock installed, the AR-15 still “ha[d] an ability to accept a detachable magazine,” in violation of the SAFE Act. R.1029, 1031, 1033-34 (¶¶121, 128, 132-36); R.1548, 1550, 1552-53 (¶¶205, 212, 216-20). Moreover, the MA Lock’s easy removal—with directions on the back of the product packaging—was certainly its intended “use” rather than a “misuse.” R.1031-33 (¶¶ 129-31); R.1550-52 (¶¶ 213-15). Because the Shooter’s use of the MA Lock does not fit the definition of “qualified civil liability action,” Mean is not entitled to PLCAA protection.

## **II. Even if PLCAA applied, Plaintiffs’ claims could proceed under PLCAA’s exceptions.**

Even if this Court concludes that Plaintiffs’ claims fit the definition of a “qualified civil liability action,” PLCAA protection nevertheless gives way if any of six exceptions apply, including exceptions for negligence per se and actions that fall within what is commonly referred to as the “predicate exception.” 15 U.S.C. § 7903(5)(A)(i)-(vi). Here, Plaintiffs’ claims against Mean meet both exceptions. Moreover, so long as one of Plaintiffs’ claims falls within the predicate exception, all of Plaintiffs’ claims against Mean can proceed without a claim-by-claim analysis. *Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 151 (4th Dep’t 2012), *opinion amended on reargument*, 103 A.D.3d 1191

(4th Dep't 2013); *Chiapperini v. Gander Mountain Co., Inc.*, 48 Misc. 3d 865, 876 (Monroe County Sup. Ct. 2014).

**A. Plaintiffs' claims may proceed under the predicate exception.**

The predicate exception excludes from the definition of “qualified civil liability action,” and thus permits a plaintiff to pursue, “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 . . . .” 15 U.S.C. § 7903(5)(A)(iii) (emphasis added).

Here, Plaintiffs allege that Mean violated the SAFE Act’s prohibition on the possession of assault weapons through the criminal facilitation and aiding and abetting of the Shooter’s illegal possession of one (*see* Penal Law § 265.02(7); *see also id.* §§ 115.00(1), 20.00)), and that Mean violated GBL §§ 349 and 350’s prohibitions on deceptive trade practices and false advertising. These statutory violations meet the requirements of the predicate exception: (1) the predicate state statutes are “*applicable to*” the sale or marketing of the MA Lock; (2) Mean “*knowingly*” violated these statutes; and (3) the violations were a “*proximate cause*” of Plaintiffs’ harms.

**1. Mean violated statutes “applicable to” the sale or marketing of the MA Lock.**

Mean insists that the phrase “applicable to the sale or marketing of [the product]” restricts the predicate exception to violations of “firearms-specific” laws. Mean Br. at 25. But Mean did violate a firearms-specific statute, the SAFE Act, as Plaintiffs allege.

And in any event, Mean's narrow construction contradicts PLCAA's plain text and statutory context, and persuasive authority holds that the predicate exception also encompasses consumer protection laws such as GBL §§ 349 and 350.

**i. Mean's criminal facilitation and aiding of a SAFE Act violation satisfies the predicate exception.**

The Shooter violated the SAFE Act by possessing an illegal assault weapon. *See* Penal Law § 265.02(7). Mean enabled that offense by falsely marketing the MA Lock as “permanently” installing a fixed magazine in compliance with the SAFE Act, while also providing instructions for the lock's easy removal. R.1031, 1034 (¶¶126, 135); R.1549-50, 1553 (¶¶210, 219). Mean's conduct accorded a “vener of compliance” to the rifle that the Shooter purchased at Vintage Firearms. R.1023, 1088 (¶¶95, 334); R.1542, 1606 (¶¶179, 435). That veneer gave cover for Vintage Firearms to make the rifle available for sale, but, as demonstrated by the Shooter's immediate removal of the MA Lock, (R.1036 (¶¶141-41); R.1555 (¶¶225-26)), the rifle still had “an ability to accept a detachable magazine” and was therefore an assault weapon under Penal Law § 265.00(22)(a).

Plaintiffs allege that Mean itself violated the SAFE Act by facilitating and intentionally aiding the Shooter's violation. R.1088 (¶336); R.1604 (¶423); *see also* Penal Law §§ 115.00(1), 20.00. Under Penal Law § 115.00(1), a person is guilty of criminal facilitation when “he engages in conduct which provides [another] person with means or opportunity for the commission [of a crime] and which in fact aids such person to

commit a felony” while “believing it probable that he is rendering aid . . . to [the] person who intends to commit [the] crime.” And under Penal Law § 20.00, a person is criminally liable for another person’s criminal offense when “he solicits, requests, commands, importunes, or intentionally aids” the other person to engage in the offense, and when the aider does so “with the mental culpability required for the commission” of that offense.

Mean’s criminal facilitation and its aiding of SAFE Act violations are violations of “firearms-specific” laws. That is because, when criminal facilitation or aiding and abetting violations are alleged, it is the underlying statute—the offense being facilitated—that is relevant when analyzing whether the violation is “applicable to” the sale or marketing of firearms within the meaning of PLCAA’s predicate exception. *See Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422, 432-33 (Ind. Ct. App. 2007) (holding that the predicate exception was met as to firearm manufacturers alleged to have been knowing accomplices in facilitating violations of firearms laws). Indeed, the text of the predicate exception itself contemplates that aiding and abetting can constitute a predicate offense. *See* 15 U.S.C. § 7903(5)(A)(iii)(II) (including as example of predicate offense “any case in which the manufacturer or seller aided, abetted, or conspired with any other person” to violate certain provisions of the Gun Control Act).

Plaintiffs allege that Mean aided the Shooter’s unlawful possession of an assault weapon because Mean’s deceptive and false marketing created an illegal secondary market in assault weapons and the Shooter availed himself of that market to obtain the

illegal rifle he sought. R.1034 (¶136); R.1553 (¶220). Mean “knowingly created the mere illusion of compliance and offered New Yorkers a way to circumvent the [assault weapon] law.” R.1013 (¶63); R.1534 (¶153). Mean provided the means or opportunity for New Yorkers to violate the SAFE Act when it “marketed and sold its products . . . to customers in New York,” “targeted New York customers” with marketing materials, and “regularly shipped the [MA Lock] to purchasers in New York.” R.1005 (¶17); R.1523 (¶94). The Shooter was one of those New Yorkers whose illegal possession of an assault weapon Mean facilitated. R.1036 (¶¶140-42); R.1554-55 (¶¶224-26). These allegations are sufficient to state a claim, including to establish that Mean believed it was probable that it was helping New Yorkers violate the SAFE Act and thus violated section 115.00 of the Penal Law.

Moreover, Plaintiffs have sufficiently alleged that Mean violated the SAFE Act in that its marketing importuned or intentionally aided the Shooter’s unlawful possession of an assault weapon. *See* Penal Law § 20.00. Mean accomplished that by marketing and distributing a product that superficially appeared to bring AR-15-style rifles into compliance with the law, thereby making assault weapons available in New York. R.1013, 1034 (¶¶63, 136); R.1534, 1553 (¶¶153, 220). Mean’s intent is apparent through its own statements: Mean’s social media posts—such as one promoting the MA Lock to “AR fans languishing in non-free states”—demonstrate Mean’s disdain for gun safety laws and its intention to help New Yorkers like the Shooter possess illegal assault weapons. *See* R.1031, 1034-35 (¶¶127, 137); R.1550, 1553-54 (¶¶211, 221).

These allegations suffice at the pleadings stage. *See Williams*, 100 A.D.3d at 150 (determining that complaint sufficiently alleged that gun manufacturer and dealer were accomplices to Gun Control Act violations); *Chiapperini*, 48 Misc. 3d at 876 (finding that, where plaintiff alleged that a gun dealer aided and abetted a gun buyer's false statements, the gun dealer's "denial of any aid and assistance simply creates an issue of fact worthy of discovery").

Mean offers no case law and little analysis to assert that the level of intent needed to plead violations of §§ 115.00 and 20.00 and is "legally insurmountable" here. Mean Br. at 30-31. Mean protests that an AR-15 with the MA Lock installed does not violate the SAFE Act and that no violation of the SAFE Act occurred until the Shooter removed the MA Lock from his rifle. Mean Br. at 31. Plaintiffs allege the opposite, including that the MA Lock did not in fact permanently change an AR-15 rifle's "ability to accept" a detachable magazine, as was required to make assault weapons compliant with New York law. R.1029, 1031, 1034 (¶¶121-22, 128, 135); R.1548, 1550, 1553 (¶¶205-06, 213, 219). For purposes of this appeal, it would be premature to conclusively decide, before facts are gathered in discovery, the application of the SAFE Act to the Shooter's MA Lock-equipped Bushmaster XM-15. *See, e.g., King*, 187 A.D.3d at 1615-16; *cf. People v. Perkins*, 58 Misc. 3d 171, 175-77 (Monroe County Ct. 2017) (finding that factual question was presented as to whether a semiautomatic rifle was an illegal assault weapon where the parties contested evidence as to whether installing a kit converted the rifle's detachable magazine to a fixed magazine).

**ii. Mean’s violations of GBL §§ 349 and 350 also satisfy the predicate exception.**

Mean’s narrow construction of the term “applicable to” in PLCAA’s predicate exception—which would limit predicate statutes to only those that specifically pertain to firearms—is wrong as a matter of statutory interpretation. The leading case on the predicate exception in the context of consumer protection statutes like GBL §§ 349 and 350, *Soto v. Bushmaster Firearms Int’l, LLC*, 331 Conn. 53, 119-20 (2019), persuasively rejected that narrow construction in a thorough analysis of PLCAA’s text and statutory context. The use of “applicable to” signals a choice *not* to restrict the predicate exception to firearms-specific laws: “If Congress had intended to limit the scope of the predicate exception to violations of statutes that are *directly, expressly, or exclusively* applicable to firearms . . . it easily could have used such language, as it has on other occasions.” *Soto*, 331 Conn. at 120 (emphasis in original).

Under the broader “applicable to” wording that Congress did choose, “there is little doubt that state consumer protection statutes” such as the Connecticut Unfair Trade Practices Act (as in *Soto*) or GBL §§ 349 and 350 (as here) “would qualify as predicate statutes.” *Id.* at 119. This straightforwardly flows from the “ordinary, dictionary meaning” of “applicable to,” a term which means “capable of being applied.” *Id.* at 119 (quoting *Applicable*, Black’s Law Dictionary (10th ed. 2014)). Moreover, this conclusion—that state consumer protection laws are “applicable” to the sale and marketing of firearms—comports with how “[t]he only state appellate court to have

reviewed the predicate exception construed it.” *Id.* (citing *City of Gary*, 875 N.E.2d at 431, 434-35 & n.12).

PLCAA’s statutory framework also supports reading the predicate exception to encompass consumer protection laws. As the *Soto* court observed, when Congress enacted PLCAA it must have been aware that, at the time, “no federal statutes directly or specifically regulated the marketing or advertising of firearms,” though a few state laws regulated advertising with respect to certain categories of firearms or the location of the advertising. *Id.* at 121-22 & 122 n.43. So, “[i]t would have made little sense for the drafters of the legislation to carve out an exception for violations of laws applicable to the marketing of firearms if no such laws existed.” *Id.* at 122.

*City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008), is consistent with and reinforces the interpretation adopted by *Soto*. In *Beretta*, the Second Circuit concluded that “a statute of general applicability” can “qualify as a predicate statute,” finding “nothing in [PLCAA] that requires any express language regarding firearms to be included in a statute in order for that statute to fall within the predicate exception.” *Id.* at 399-400. *Beretta* concluded that the exception “encompasses” laws that “do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms,” as well as statutes “that courts have applied to the sale and marketing of firearms.” *Id.* at 404. Indeed, the *Soto* court found the Second Circuit’s reasoning in *Beretta* consistent with its own. *Soto*, 331 Conn. at 124-25.

Mean, by contrast, urges this Court to read PLCAA’s exceptions narrowly. Mean Br. at 27. But principles of statutory construction do not support that approach. In fact, “modern courts are more likely to interpret both exceptions and provisos in terms of legislative intent or statutory meaning, and not presume that qualifying language should be strictly construed.” 2A Sutherland Statutory Construction § 47:11 (7th ed. 2024). Rather, “statutory exceptions are to be read fairly, not narrowly, for they ‘are no less part of Congress’s work than its rules and standards—and all are worthy of a court’s respect.’” *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass’n*, 594 U.S. 382, 396 (2021) (quoting *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1539 (2021)).<sup>5</sup>

Nor does PLCAA’s inclusion of two non-exhaustive examples of predicate violations support restricting the predicate exception to similar violations under the canon of *noscitur a sociis*, as Mean asserts. Mean Br. at 25. *Noscitur a sociis* is not useful in understanding the term “applicable to” because that canon is properly used to interpret a word that appears “as a string of statutory terms” or as “items in a list.” See *Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 288-89 (2010); see

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

also *United States v. Williams*, 553 U.S. 285, 294-95 (2008) (interpreting the terms “promotes” and “presents” in light of their inclusion in “the statute’s string of operative verbs—‘advertises, promotes, presents, distributes, or solicits’”), *cited in* Mean Br. at 25. Indeed, *Soto* rejected this very argument, concluding that the two examples were added to PLCAA “not to define or clarify the narrow scope of the exception” but instead to ensure that the predicate exception would be viable in particular cases. 331 Conn. at 141-43.

Mean’s alternative construction of the predicate exception requires overriding the established ordinary meaning of “applicable to” by inserting restrictive language such as “directly, expressly, or exclusively” ahead of “applicable to,” a reading that *Soto* rejected. *See id.* at 120. This Court should decline Mean’s invitation to construe the predicate exception contrary to its plain text.

With this understanding of the predicate exception’s scope, Mean’s deceptive marketing and false advertising violations of GBL §§ 349 and 350 plainly fall within it. As *Soto* held, consumer protection laws “such as the [Federal Trade Commission] Act and state analogues that prohibit the wrongful marketing of dangerous consumer products such as firearms represent precisely the types of statutes that implicate and have been applied to the sale and marketing of firearms.” *Id.* at 126-27 (finding that the Connecticut Unfair Trade Practices Act satisfies predicate exception). Other courts have followed suit, finding that various state consumer protection laws can serve as predicate statutes. *See Prescott v. Slide Fire Solutions, LP*, 410 F. Supp. 3d 1123, 1138-39

(D. Nev. 2019) (concluding that the Nevada Deceptive Trade Practices Act qualifies as predicate statute); *Doyle v. Combined Sys., Inc.*, No. 22-CV-1536, 2023 WL 5945857, at \*11 (N.D. Tex. Sept. 11, 2023) (holding “that prohibitions on unfair or deceptive trade practices are exempt from the PLCAA under the predicate exception”); *Goldstein v. Earnest*, No. 37-2020-00016638, 2021 WL 12321922, at \*5 (Cal. Super. Ct. July 2, 2021) (“[T]he Court finds that [California’s Unfair Competition Law] qualifies as a ‘predicate statute.’”). Here, GBL §§ 349 and 350 are materially indistinguishable from other states’ consumer protection laws that have served as predicate statutes; they serve as “mini-FTC” statutes and are used to address deceptive and misleading conduct in various industries. *See People ex rel. Spitzer v. Applied Card Sys., Inc.*, 11 N.Y.3d 105, 120 (2008).<sup>6</sup>

*Soto*’s analysis also shows why Mean’s invocation of *Ileto* does not support Mean’s construction of the predicate exception. *See* Mean Br. at 26. In *Ileto*, the Ninth Circuit rejected the argument that the predicate exception requires a “violation of a statute that pertained *exclusively* to the sale and marketing of firearms.” 565 F.3d at 1134-35. Instead, as *Soto* noted, *Ileto* recognized that PLCAA allows firearm manufacturers and sellers to be liable for violations of sales and marketing regulations. *Soto*, 331 Conn. at 129 n.53, 152 (citing *Ileto*, 565 F.3d at 1134, 1137); *see also Prescott*, 410 F. Supp. 3d at 1138-39

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<sup>6</sup> Consumer protections laws like GBL §§ 349 and 350 “clearly can be said to implicate the purchase and sale of firearms.” *Beretta*, 524 F.3d at 404. Indeed, they have been applied to the sale and marketing of firearms. The New York Attorney General recently sued Mean for violating GBL §§ 349 and 350 and has issued cease-and-desist letters to firearms website operators in reliance on GBL §§ 349 and 350. R.1335, 1337-38 (¶¶4, 7); R.1872, 1874-75 (¶¶4, 7).

(“*Ileto* does not foreclose the [Nevada Deceptive Trade Practices Act] from serving as a predicate statute, and instead appears to permit it.”). *Ileto*’s holding that PLCAA forecloses reliance on “general tort theories of liability” that have been codified as statutes, 565 F.3d at 1135-36, simply has no application here because GBL §§ 349 and 350 are consumer protection laws, not a codification of the common law or a general theory of tort liability.

GBL §§ 349 and 350 are applicable to the sale and marketing of firearms, and Plaintiffs have more than adequately alleged that Mean violated those statutes. *See infra* Part III.A.

## **2. Mean’s statutory violations were knowing.**

Plaintiffs sufficiently allege that Mean “knowingly violated” the SAFE Act and GBL §§ 349 and 350 because Mean knew the facts and circumstances that made its conduct unlawful. As discussed above, Plaintiffs allege: (i) that Mean knowingly marketed the MA Lock as a way to create the “vener of compliance” with New York’s fixed magazine laws; (ii) that Mean knew that a permanent change was required for compliance with the SAFE Act and also that its marketing claims regarding the permanence of the MA Lock were false; and (iii) that Mean simultaneously promoted the easy removability of the MA Lock (including by providing removal instructions). R.1013, 1030-33 (¶¶63, 123-27, 129, 131); R.1534, 1548-52 (¶¶153, 207-11, 213, 215). Mean thereby knowingly enabled the acquisition of illegal assault weapons that could

use detachable magazines in violation of the SAFE Act. R.1034 (§§135-36); R.1553 (§219-20).

Plaintiffs’ “knowingly” allegations are sufficient to satisfy the predicate exception. Under New York or federal law, a person “knowingly” violates a law where they have “knowledge of facts and attendant circumstances that comprise the violation of [a] statute, not specific knowledge that one’s conduct is illegal.” *United States v. Weintraub*, 273 F.3d 139, 147 (2d Cir. 2001); *see also Bryan v. United States*, 524 U.S. 184, 193 (1998); *People v. D. H. Abrend Co.*, 308 N.Y. 112, 113 (1954) (“‘Knowingly’ . . . means merely a knowledge of the existence of the facts constituting the crime.”). In *Williams*, this Court determined that a complaint “sufficiently allege[d] facts supporting a finding that defendants knowingly violated federal gun laws” where the defendant “knew or should have known” that purchased guns were for “trafficking in the criminal market” based on the attendant facts and circumstances. 100 A.D.3d at 149-50.

Mean argues that it could not have knowingly violated any law because it did not know that semiautomatic rifles with the MA Lock installed, like the Bushmaster XM-15 the Shooter purchased, met New York’s statutory definition of assault weapon. Mean Br. at 27-28. That argument confounds the distinction between knowledge of law and knowledge of facts. Plaintiffs need not allege that Mean correctly understood the legal definition of an assault weapon under New York law; it is enough that Plaintiffs allege (i) that Mean knew that it was falsely marketing the MA Lock as a “fixed magazine solution” and a “permanent[ ]” change while knowing it was not permanent and also

promoting the lock’s removability, and (ii) that Mean knew that the MA Lock would be installed on rifles in New York. R.1030-31, 1034 (¶¶125-26, 135-36); R.1549, 1553 (¶¶209-10, 219-20); *see also People v. Steinmetz*, 177 A.D.3d 1292, 1293 (4th Dep’t 2019) (criminal possession of an assault weapon did not require prosecutors “to establish that defendant knew the rifles met the statutory criteria of an assault weapon but, rather, only that he knowingly possessed the rifles”). At the pleading stage, it is immaterial to Mean’s alleged knowing violations whether Mean knew that an AR-15-style rifle with a pistol grip and the MA Lock installed was still an illegal assault weapon under New York law because the lock could easily be removed. And even if such a showing was required, Plaintiffs have alleged Mean used the term “permanently” in its marketing, (R.1031 (¶¶126-27); R.1549-50 ¶¶210-11)), reflecting that it did know what New York law required and also knew its product was not compliant.

Mean also argues that the lack of enforcement regarding the MA Lock demonstrates that its use complies with the SAFE Act. *See* Mean Br. at 28. This argument is puzzling, given that the New York Attorney General has sued Mean for deceptively and falsely representing that installing the MA Lock makes a semiautomatic rifle legal. R.1335 (¶4); R.1872 (¶4). In any event, an absence of criminal cases against individuals and dealers that possessed or sold AR-15-style rifles equipped with MA Locks is of little consequence because prosecutors weigh distinct considerations in deciding whether to bring charges. *Cf. United States v. Batchelder*, 442 U.S. 114, 124 (1979) (“Whether to prosecute and what charge to file or bring . . . are decisions that generally

rest in the prosecutor’s discretion.”). Even an acquittal on criminal charges does not preclude a defendant’s civil liability for the same underlying conduct. *Kalra v. Kalra*, 149 A.D.2d 409, 410-11 (2d Dep’t 1989).

### **3. Mean’s violations proximately caused Plaintiffs’ harms.**

Plaintiffs’ allegations easily suffice to show that Mean’s violations of New York law were a proximate cause of Plaintiffs’ harm. That issue is discussed, and relevant New York law is analyzed, in Part IV.<sup>7</sup> In this section, Plaintiffs address Mean’s argument that proximate cause is lacking for purposes of PLCAA’s predicate exception.

The predicate exception requires that “the violation”—meaning the statutory violation alleged as the predicate offense—“was a proximate cause of the harm for which relief is sought.” 15 U.S.C. § 7903(5)(A)(iii). Mean argues that this language imposes a “freestanding” federal proximate cause requirement that Plaintiffs fail to meet. Mean Br. at 29. That is wrong. Nothing in PLCAA suggests that this language imposes an amorphous federal law standard. Instead, the applicable *state law* proximate cause requirements must be satisfied.

Courts, including in New York, have applied the state law of proximate cause to predicate violations. *See, e.g., Chiapperini*, 48 Misc. 3d at 875. It makes particular sense to do so where, as here, both the predicate statutes and the causes of action are based on state laws. *See Brady v. Walmart Inc.*, No. 21-CV-1412, 2022 WL 2987078, at \*8, \*13 (D.

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<sup>7</sup> Mean’s related argument that Plaintiffs fail to sufficiently allege proximate cause under GBL §§ 349 and 350 is addressed at Part III.A.

Md. July 28, 2022) (applying state law of proximate cause where a gun dealer allegedly aided and abetted a violation of state law). Moreover, applying state law of proximate cause to state law violations is consistent with *Bank of America Corp. v. City of Miami, Fla.*, 581 U.S. 189 (2017)—the case that Mean relies on, Mean Br. at 29—in which the Supreme Court recognized that “[p]roximate-cause analysis is controlled by the nature of the statutory cause of action.” *Bank of America* at 201-03 (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2017)). In *Bank of America*, the Supreme Court explained that its holding was specifically based on “the context of the FHA [Fair Housing Act].” *Id.* at 202. Applying the standard from that case to the very different context of Plaintiffs’ claims here would make little sense, particularly because PLCAA, unlike the FHA, expressly does not create a cause of action. *See* 15 U.S.C. § 7903(5)(C) (“[N]o provision of this chapter shall be construed to create a public or private cause of action or remedy.”). Contrary to Mean’s argument, New York’s law of proximate cause applies to Mean’s violations, not federal common law.

In any event, Mean fails to satisfactorily explain how a federal proximate cause standard differs from New York’s or why Plaintiffs’ claims are deficient under either. Mean insists that federal law requires a “close connection” between the harm and the prohibited conduct, Mean Br. at 29, but even if that were the right standard to apply, Plaintiffs’ allegations meet this test. Mean’s deceptive statements regarding the MA Lock led directly and are closely connected to Plaintiffs’ injuries, since they enabled the Shooter to obtain an illegal assault weapon that would accept detachable magazines,

which he then used to inflict harm. *See infra* at 40-41; *Lexmark Int'l*, 572 U.S. at 133 (finding that the defendant’s false advertising had “sufficiently close connection” to the plaintiff’s commercial harms despite the “intervening step of consumer deception”).

Moreover, whether federal or state law supplies the standard, “[p]roximate cause is normally a question of fact for a jury.” *Chiapperini*, 48 Misc. 3d at 875 (holding that whether a gun dealer’s violations of federal laws proximately caused a gunman’s attack could not be determined “without the benefit of discovery”); *see also Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 840-41 (1996) (“The issues of proximate causation and superseding cause involve application of law to fact, which is left to the factfinder, subject to limited review.”).

**B. Plaintiffs’ negligence per se claims fall within PLCAA’s negligence per se exception.**

Negligence per se claims are specifically exempted from PLCAA protection under a separate exception. *See* 15 U.S.C. § 7903(5)(A)(ii); *Chiapperini*, 48 Misc. 3d at 874 (finding, on a motion to dismiss, that a negligence per se claim against a gun dealer was “not preempted by the clear language of [PLCAA]”).

Mean argues that PLCAA’s negligence per se exception does not apply because the exception uses the term “seller,” and Mean is a manufacturer, not a seller or dealer. Mean Br. at 31-32.<sup>8</sup> That distinction is irrelevant here, first because licensed

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<sup>8</sup> “Seller” is synonymous with “dealer” for purposes of PLCAA. Mean uses those terms interchangeably. Mean Br. at 31-32 (“a ‘seller’ is a firearms ‘dealer’”).

manufacturers *are* licensed to operate as dealers/sellers under the federal regulations that implement the licensing provisions of the Gun Control Act. *See* 27 C.F.R. § 478.41(b). Second, Mean did in fact operate as a seller of firearms-related products, including the MA Lock, and it shipped those products directly to customers. R.1005 (¶17); R.1523 (¶94). Accordingly, to the extent that this Court concludes that Mean is a “manufacturer” under PLCAA, *see supra* Part I.C., so too should it be considered a “seller” for purposes of the negligence per se exception.

Moreover, as discussed below, Plaintiffs have made out violations of GBL §§ 349 and 350. Those violations support Plaintiffs’ negligence per se claims because those statutes “set[] a standard of care by prohibiting specific practices . . . and provide[] a private right of action to injured parties.” *Sanchez v. Ehrlich*, No. 16-CV-8677, 2018 WL 2084147, at \*7 (S.D.N.Y. Mar. 29, 2018); *see also IGT v. High 5 Games, LLC*, No. 17-CV-9792, 2019 WL 1651608, at \*6 (S.D.N.Y. Mar. 29, 2019) (finding that GBL §§ 349 and 350 claims “have the same elements”); *Elliott v. City of New York*, 95 N.Y.2d 730, 734 (2001) (“As a rule, violation of a State statute that imposes a specific duty constitutes negligence per se.”).

### **III. Plaintiffs state cognizable claims under GBL §§ 349 and 350.**

#### **A. Mean violated GBL §§ 349 and 350.**

To make out a claim under GBL §§ 349 or 350, 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. *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (2012). As the Trial Court correctly held below, Plaintiffs allege facts sufficient to support each element. R.54-55; R.74-75.

*First*, Plaintiffs allege that Mean materially misled consumers by marketing its MA Lock as “permanently” installing a fixed magazine and providing a “true solution to fixed magazine laws” like New York’s and advertising that, once installed, the lock “cannot be removed with a tool, which satisfies CA and NY state law.” R.1030-31 (¶¶125-26); R.1549 (¶¶209-10). Mean knew those statements were false: Mean itself taught consumers that its lock could be removed easily with simple tools. R.1031-33 (¶¶129-31); R.1550-52 (¶¶213-15).

But Mean failed to advise consumers that the MA Lock was not a permanent fix and therefore did not bring an assault weapon into compliance with New York law. R.1035-36 (¶¶139-40); R.1554-55 (¶¶223-24). Mean’s deceptive statements were material, or “important to consumers and, hence, likely to affect their choice of, or conduct regarding, [Mean’s] product.” *Colpitts v. Blue Diamond Growers*, 527 F. Supp. 3d 562, 583-84 (S.D.N.Y. 2021) (quotation marks omitted). *See* R.1020-22 (¶¶86-92); R.1540-41 (¶¶170-76) (Shooter sought a firearm with an MA Lock installed); R.1036 (¶¶140-41) R.1554-55 (¶¶224-25) (Mean’s deceptive claims led Vintage Firearms to make the Bushmaster XM-15 available for purchase by the Shooter).

Mean’s contention that its marketing was not misleading because the Shooter knew that removing the MA Lock would render the firearm illegal does not undermine

Plaintiffs’ allegations. *See* Mean Br. at 38. The test is whether the statements were “likely to mislead a reasonable consumer”—not what the Shooter knew. *Gaidon v. Guardian Life Ins. Co. of America*, 94 N.Y.2d 330, 344 (1999). Plaintiffs’ allegations demonstrate that a reasonable consumer would likely have been misled and suffice to show that Mean’s conduct was materially misleading, an issue which is “usually . . . a question of fact.” *Goldemberg v. Johnson & Johnson Consumer Cos., Inc.*, 8 F. Supp. 3d 467, 478 (S.D.N.Y. 2014).

*Second*, Plaintiffs’ 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 consumers in New York. R.1030-31 (¶¶124-27); R.1549-50 (¶¶208-11). *See Casper Sleep, Inc. v. Mitcham*, 204 F. Supp. 3d 632, 644 (S.D.N.Y. 2016) (finding that a company’s website statements were consumer-oriented). Mean also assured social media users of the MA Lock’s removability and promised to post an instructional video on YouTube demonstrating how to remove the MA Lock, and its packaging described how to do so with ease. R.1031-33 (¶¶129-31); R.1550-52 (¶¶213-15).

*Third*, Plaintiffs allege facts sufficient to show a causal connection between their injuries and Mean’s deceptive marketing practices. Mean’s false and deceptive claims facilitated the availability of illegal assault weapons in New York, including at the dealer from which the Shooter bought his AR-15 rifle. R.1034, 1036 (¶¶136, 140-41); R.1553-55 (¶¶220, 224-25). Knowing that a rifle with the MA Lock could be acquired in New York because the lock gave the rifle a false “vener of compliance with New York law,”

R.1023 (¶¶95); R.1542 (¶179), and that the MA Lock was easy to remove with a drill, the Shooter sought and obtained a rifle with the MA Lock to later use with detachable magazines when carrying out the attack at the Tops store. R.1020-22 (¶¶86-91); R.1540-41 (¶¶170-75). The MA Lock allowed the Shooter to obtain his “weapon of choice”—a rifle that would accept removable large-capacity magazines to allow him to fire more rounds more quickly without having to pause to reload a fixed magazine. R.1023 (¶¶95-96); R.1542 (¶¶179-80). Plaintiffs were injured as a result. R.1028, 1037 (¶¶116, 144-47); R.1547, 1555-56 (¶¶200, 228-31) (alleging that the Shooter’s ability to use removable magazines allowed him to quickly reload his rifle inside the store and inflict far more damage than would have been possible with a rifle with a fixed magazine).

Mean argues that Plaintiffs fail to adequately allege that Mean’s GBL §§ 349 and 350 violations proximately caused their harm, because “Plaintiffs are not the consuming public of the MA Lock.” Mean Br. at 28-29. To be sure, as Mean argues, and as the two cases it cites show, a violation of these statutes requires marketing directed at the consuming public, as opposed to “[p]rivate contract disputes, unique to the parties,” *Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Co.*, 37 N.Y.3d 169, 177 (2021) (quotation marks omitted), or “deceptive conduct . . . directed solely at persons interested in obtaining licenses for the operation of taxicabs, not taxi consumers.” *Singh v. City of New York*, 40 N.Y.3d 138, 148 (2023). But as described above, the consumer-oriented-conduct element is easily met here, and that conduct

plainly caused Plaintiffs' injuries. *See supra* at 40-41. Moreover, as explained below in Part III.B., it is clear that non-consumers can bring GBL §§ 349 and 350 claims.

Last, Mean challenges Plaintiffs' consumer-protection-related causation allegations by positing a hypothetical scenario—that the Shooter “could have purchased the same rifle in New York . . . simply missing the other features that have no effect on the rifle’s function.” Mean Br. at 37. But those hypothetical facts are not present in this case. Here, the Shooter obtained an illegal assault weapon because of the MA Lock—plain and simple. R.1036 (¶¶140-42); R.1554-55 (¶¶224-26). And, in any event, Mean’s marketing touted the MA Lock as providing the best way to comply with New York’s SAFE Act because, with the MA Lock installed, “any ‘evil’ features you put on your rifle become a moot point.” R.1030 (¶125); R.1549 (¶209). The Shooter’s effort to find an MA Lock-equipped rifle (R.1020-21 (¶¶86-90); R.1540-41 (¶¶170-74)) likewise belies Mean’s hypothetical and unsupported assertion that the Shooter would have carried out the Tops shooting in some other way even if he was not able to purchase a rifle with the MA Lock. Mean’s counterfactual assertions should not be credited. *See Lawrence*, 11 N.Y.3d at 595. It would be improper to dismiss Plaintiffs’ GBL §§ 349 and 350 claims without further factual development. *See Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977).

**B. Plaintiffs have standing to bring GBL §§ 349 and 350 claims.**

Plaintiffs have standing to bring claims under GBL §§ 349 and 350 because they were directly injured by Mean’s marketing and this matter affects the public interest in

New York. Contrary to Mean’s contention, Plaintiffs are not required to be “consumers of Mean’s products” or “direct competitors of Mean” to have standing. Mean Br. at 34-35. GBL § 349(h) broadly authorizes a claim by “any person who has been injured by reason of any violation of this section.” “The critical question . . . 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).

Here, Plaintiffs allege that they have been injured as a result of Mean’s violations of GBL §§ 349 and 350. *See, e.g.*, R.1028, 1037, 1093-95 (¶¶116, 144-46, 363, 371); R.1547, 1555-56, 1608-10 (¶¶200, 228-30, 445, 453). And they also allege that Mean’s conduct had a significant effect on the public interest in New York: Mean’s false representations regarding the “permanen[ce]” of the MA Lock allowed the product to be marketed, sold, and used in New York, permitted the continued circulation of non-compliant AR-15 rifles within the state, and provided the Shooter with the weapon he sought and used to carry out his deadly attack. R.1034, 1036 (¶¶ 136, 140-41); R.1553, 1555 (¶¶ 220, 224-25). That is clearly sufficient.

Mean argues that Plaintiffs’ claims are not actionable because they are “derivative of other consumers’ exposure to the alleged misleading statements.” Mean Br. at 35. The Trial Court correctly rejected this argument. R.54-55; R.74-75. It distinguished a leading case on derivative injuries, *Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris USA Inc.*, 3 N.Y.3d 200 (2004), which held that plaintiffs may not bring § 349 claims if their harm is too indirect or derivative of the harm suffered by others—*i.e.*, if their

injury “arises solely as a result of injuries sustained by another party.” *Id.* at 207. Notably, the court explained that it was not barring actions by non-consumers but merely attempting to ensure that “the party actually injured be the one to bring suit.” *Id.* at 208. Here, it cannot seriously be argued that Plaintiffs’ injuries—being shot at, killed, and traumatized by rapid fire from an illegal assault weapon—arose “solely as a result of injuries sustained by” anyone else. *Id.* at 207. Rather, Plaintiffs are “the part[ies] actually injured.” *Id.* at 208.<sup>9</sup>

The case law is clear that non-consumers can bring claims under GBL §§ 349 and 350 for harms independent of those suffered by direct consumers. For example, New York counties who incurred financial losses in addressing the opioid crisis could proceed with a GBL § 349 claim against an opioid manufacturer for its deceptive practices in promoting a drug’s off-label use that misled consumers and doctors about the drug’s benefits and addictiveness. *In re Opioid Litig.*, 2018 WL 3115100, 2018 N.Y. Slip Op. 31229, at \*7 (Suffolk County Sup. Ct. Jun. 18, 2018). In another case, individuals formerly in corrections custody who were harmed when they were disciplined as a result of false positive drug tests could proceed with GBL § 349 claims against urinalysis companies for misleading corrections personnel about the tests’ accuracy. *Steele-Warrick v. Microgenics Corp.*, No. 19-CV-6558, 2024 WL 245301, at \*4

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<sup>9</sup> In two cases Mean cites, Mean Br. at 35, the plaintiffs failed to show that the defendants had even made misleading statements that could cause injury. *See Voters for Animal Rights v. D’Artagnan, Inc.*, No. 19-CV-6158, 2021 WL 1138017, at \*8 (E.D.N.Y. Mar. 25, 2021); *Frintzilas v. DirecTV, LLC*, 731 F. App’x 71 (2d Cir. 2018). Not so here.

(E.D.N.Y. Jan. 23, 2024); *see also In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 497 F. Supp. 3d 552, 668-69 (N.D. Cal. 2020) (refusing to dismiss a New York school district’s GBL § 349 claim against an e-cigarette manufacturer and stating that “[t]he deception of the students is a harm that occurred independent of the harm suffered by [the school district]”); *M.V.B. Collision, Inc. v. Allstate Ins. Co.*, 728 F. Supp. 2d 205, 218-19 (E.D.N.Y. 2010) (allowing auto-repair shop to sue insurance company for deceptive statements made to consumer-insureds).

Here, Plaintiffs’ injuries are independent of harms suffered by consumers who purchased the MA Lock based on the mistaken belief or hope that it made firearms equipped with the device SAFE Act-compliant. As with the family members of the victims of the Sandy Hook tragedy, Plaintiffs are the “direct victims of gun violence,” and “no private party is better situated to bring this action.” *Soto*, 331 Conn. at 98-99.

#### **IV. Mean’s conduct proximately caused Plaintiffs’ harms.**

Proximate cause exists because Mean’s tortious conduct facilitated the possession of illegal assault weapons in New York, including by the Shooter, who used one to injure Plaintiffs. R.1034, 1036-37 (¶¶136, 140-45); R.1553-56 (¶¶220, 224-29).

The Trial Court correctly rejected Mean’s argument that the Shooter’s intentional criminal act is an intervening act that severs proximate cause. R.52-53; R.73. An intervening act cuts off proximate cause as a matter of law only if the act “is of such an extraordinary nature or so attenuates defendants’ negligence from the ultimate injury that responsibility for the injury may not be reasonably attributed to the defendant.”

*In re September 11 Litig.*, 280 F. Supp. 2d 279, 301 (S.D.N.Y. 2003) (quoting *Kush v. City of Buffalo*, 59 N.Y.2d 26, 33 (1983)).<sup>10</sup> An intervening criminal act does not sever proximate cause where the act was a “natural and foreseeable consequence of a circumstance created by defendant.” *Hain v. Jamison*, 28 N.Y.3d 524, 529 (2016) (quoting *Kush*, 59 N.Y.2d at 33); see also *Derdiarian v. Felix Contracting Corp.*, 51 N.Y.2d 308, 316-17 (1980) (“That defendant could not anticipate the precise manner of the accident or the exact extent of injuries, however, does not preclude liability as a matter of law where the general risk and character of injuries are foreseeable.”).

Here, Mean created a foreseeable risk that an illegal assault weapon would be possessed and misused in New York—and that is exactly what happened. The SAFE Act was passed to guard against the risk that assault weapons pose, recognizing that “[s]ome weapons are so dangerous and some ammunition devices so lethal that we simply cannot afford to continue selling them in our state.” *State Senate Introducer’s Mem. in Support*, Bill Jacket, L. 2013, ch. 1, at 13. Yet Mean marketed the MA Lock as a “permanent[ ]” solution to the SAFE Act, while also providing instructions on how to

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<sup>10</sup> In *In re September 11 Litigation*, the court found that the September 11 terrorist attacks, though “certainly horrific,” could not as a matter of law excuse the owners and operators of the World Trade Center buildings of all liability based on the plaintiffs’ allegations that they were negligent in failing to provide adequate fireproofing and evacuation procedures that may have saved lives. 280 F. Supp. 2d at 302; see also *Turturro v. City of New York*, 28 N.Y.3d 469, 484-85 (2016) (upholding jury verdict because the jury could have reasonably concluded that the “reckless and criminal speeding” of a driver who struck and injured the plaintiff was not an intervening act that negated city’s negligent failure to implement measures to deter speeding), *cited in* Mean Br. at 33.

remove the lock, creating a condition that allowed assault weapons to be acquired in violation of the law. R.1030-34 (§§125-26, 129-31, 136); R.1549-53 (§§209-10, 213-15, 220). The Shooter exploited this condition by purchasing an assault weapon from which he easily removed the MA Lock. R.1036 (§§141-42); R.1555 (§§225-26). With an assault weapon and large-capacity detachable magazines at hand, the Shooter was emboldened to undertake the attack at Tops, and he ultimately caused more death and trauma as a result of his increased firepower and ease of reloading. R.1037 (§§144-46); R.1555-56 (§§228-30).

The harms—death and injury from an illegal assault weapon—flow from Mean’s conduct in facilitating the Shooter’s access to one. By contrast, cases where an intervening act severs proximate cause “generally involve independent intervening acts which operate upon but do not flow from the original negligence.” *Derdiarian*, 51 N.Y.2d at 315. The criminal misuse of a weapon is a foreseeable occurrence where a defendant facilitates access to a dangerous, restricted firearm. *See Parsons v. Colt’s Mfg. Co.*, No. 19-CV-1189, 2020 WL 1821306, at \*6 (D. Nev. Apr. 10, 2020) (finding, in action against entities that manufactured and sold AR-15s used in Las Vegas mass shooting, that “a reasonable fact finder could conclude that the shooter’s use of an AR-15 modified to shoot automatically in a mass shooting was reasonably foreseeable”), *modified on reconsideration*, 2020 WL 2309259 (D. Nev. May 8, 2020); *see also People v. Crumbley*, 11 N.W.3d 576, 593-95 (Mich. Ct. App. 2023) (refusing to find that mass

shooting was a superseding cause that severed proximate causation), *appeal denied*, 513 Mich. 854 (2023).

Mean protests that it is no more connected to the Shooter's attack than whoever sold him a car or the gas he used to drive to Tops. These inapt comparisons do not obscure the natural and logical link between Mean's unlawful marketing of a product that facilitates the possession of illegal assault weapons and the Shooter's possession and misuse of one. The clear connection between Mean's unlawful conduct and the ultimate harm to Plaintiffs is nothing like the "mere conjecture" that failed to connect the defendant's allegation to his injury in *Radlin v. Brenner*, 286 A.D.2d 881 (4th Dep't 2001), a case Mean analogizes to this one. Mean Br. at 34. In *Radlin*, where the plaintiff alleged that the defendant caused her boyfriend to assault the plaintiff, the claim failed because the defendant submitted proof that she did not encourage or aid the assault. *Id.* Other cases Mean cites as support for the proposition that criminal intervening acts negate proximate cause likewise involve summary judgment decisions presenting circumstances that are a far cry from the allegations at issue here.

As the Trial Court cautioned, at this stage, "it is far too early to rule as a matter of law that intervening actions require dismissal on proximate cause." R.52-53; R.73. Proximate cause is "a uniquely fact-specific determination" that is typically for the factfinder. *Hain*, 28 N.Y.3d at 530. Plaintiffs have sufficiently alleged that Mean's violations were a "substantial cause of the events which produced [their] injur[ies.]"

*Scurry v. New York City Hous. Auth.*, 39 N.Y.3d 443, 453 (2023) (quotation marks omitted).

**V. Plaintiffs state claims for negligence and public nuisance.**

Mean argues that Plaintiffs’ negligence and public nuisance claims should be “independently dismissed.” Mean Br. at 38. Mean’s insubstantial arguments do not call into question the Trial Court’s decision to allow those claims to proceed.

As to Plaintiffs’ negligence claims, Mean’s argument consists of a single sentence that rehashes its proximate cause arguments and fails for the same reason. *See id.*; *see also supra* Part IV. Moreover, Plaintiffs meet the duty and breach elements of negligence. Companies like Mean have a duty “to exercise reasonable care in the marketing and sales of their product[s],” which encompasses avoiding “marketing and distribution practices [that] result in guns moving more readily into the illegal market.” *Johnson v. Bryco Arms*, 304 F. Supp. 2d 383, 399-400 (E.D.N.Y. 2004). Here, Mean’s duty of reasonable care obligated it to avoid unreasonable conduct that created a market in illegal assault weapons. *Compare In re JUUL Labs*, 497 F.Supp.3d at 657-58 (finding that e-cigarette manufacturer had duty under New York law where plaintiff school districts alleged that manufacturer’s “lack of reasonable care in the marketing and sales of [vapes] created an illicit youth market”), *with* R.1034, 1087-88 (¶¶136, 332-33); R.1553, 1603-04 (¶¶220, 419-20) (alleging Mean created a secondary market in illegal assault weapons).

Plaintiffs have also stated claims for public nuisance, which requires “a substantial interference with a public right.” *Johnson*, 304 F. Supp. 2d at 390. A private

plaintiff must show that the defendant created, contributed to, or maintained a public nuisance and the plaintiff suffered harm “different in kind from that suffered by the community at large.” *Id.* Here, Mean created a public nuisance by deceptively marketing and distributing the MA Lock in New York, even though Mean knew or should have known that its conduct facilitated the possession of illegal assault weapons, a condition that endangers the safety and health of the people of New York. R.1091-92 (¶¶351-54); R.1612 (¶¶465-68). Plaintiffs meet the injury requirement because they incurred special injuries from the shooting that are different in kind from the injury to the general public. R.1092-93 (¶¶354-57); R.1612-13 (¶¶468-70.) As the Trial Court recognized, similar allegations by a victim of gun violence were sufficient to state a cause of action for public nuisance in *Williams v. Beemiller, Inc.*, 103 A.D.3d 1191, 1192 (4th Dep’t 2013). *See* R.55; R.75.

*Monaghan v. Roman Catholic Diocese of Rockville Centre*, 165 A.D.3d 650 (2d Dep’t 2018), does not support Mean’s argument that no interference with a public right is at stake in this case. *See* Mean Br. at 38-39. There, the court found no “right common to all members of the general public” because the defendant Catholic diocese was not alleged to have violated any law in failing to disclose the names of priests accused of child molestation. *Monaghan*, 165 A.D.3d at 653. Here, Mean is alleged to have violated GBL §§ 349 and 350 and to have criminally facilitated violations of the SAFE Act, a law passed to protect the general public. R.1088, 1091-92 (¶¶335-36, 351-54); R.1604, 1612 (¶¶422-423, 465-68). The victims and survivors of the Tops shooting are members

of the general public who suffered special injuries. They are not akin to the plaintiffs in *Golden v. Diocese of Buffalo, NY*, 184 A.D.3d 1176 (4th Dep’t 2020), who constituted only a “subset of the community”—namely, parishioners in the area of a particular diocese whose children were allegedly specifically at risk of being victimized by a priest with a history of sexual abuse. *Id.* at 1176-77.<sup>11</sup>

The other cases Mean cites do not support a general rule foreclosing public nuisance claims in this context. *See* Mean Br. at 40. In *N.A.A.C.P. v. AcuSport, Inc.*, 271 F.Supp.2d 435 (E.D.N.Y. 2003), the court found that the plaintiffs had demonstrated that the defendants created, contributed to, or maintained a public nuisance. *Id.* at 449. Their public nuisance claim failed only because the plaintiffs failed to show by clear and convincing evidence that its members suffered special injuries. *Id.* at 451. That is not the case here. And in *People ex rel. Spitzer v. Sturm, Ruger & Co.*, 309 A.D.2d 91 (1st Dep’t 2003), the Attorney General’s public nuisance claim against gun manufacturers failed because the claim would have held the defendants liable for lawful distribution of non-defective products. *Id.* at 102. Here, by contrast, Plaintiffs allege that Mean’s statutory violations (*i.e.*, unlawful conduct), including its deceptive marketing, created a public nuisance.

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<sup>11</sup> Some of the quoted language Mean attributes to *Monaghan* is from *Golden*. *See* Mean Br. at 39.

## **VI. Mean is subject to personal jurisdiction in New York.**

Mean developed, marketed, and sold the MA Lock specifically for use in New York and one of those MA Locks proximately caused injury in New York. R.1005, 1036 (¶¶17, 140-43); R.1523, 1554-55 (¶¶94, 224-227). That is enough for personal jurisdiction no matter where the MA Lock that was affixed to the Shooter’s rifle was originally sold. It is enough for due process. *See Archer-Vail v. LHV Precast Inc.*, 209 A.D.3d 1226, 1229 (3d Dep’t 2022) (“[W]hen a corporation cultivates a market for its product in a state and that product [causes harm] there, jurisdiction is appropriate regardless of where the product was sold, designed or manufactured.”). And it is enough to satisfy either CPLR § 302(a)(1) or (a)(3). *See id.* at 1227-28 (finding CPLR § 302(a)(3)(ii) satisfied even though defendant initially sold product in another state); *Aybar v. US Tires & Wheels of Queens, LLC*, 211 A.D.3d 40, 49-50 (2d Dep’t 2022) (finding CPLR § 302(a)(1) satisfied even though defendant initially sold product in another state). Mean’s arguments to the contrary are wrong. *See* Mean Br. at 41-42.

The Trial Court correctly found that Mean is subject to personal jurisdiction under CPLR § 302(a)(3). R.52; R.72-73. Plaintiffs’ allegations clearly meet § 302(a)(3)’s requirements. *See LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 214 (2000). Mean’s tortious conduct in marketing and distributing the MA Lock caused Plaintiffs’ injuries in New York. R.1036 (¶¶140-43); R.1554-55 (¶¶224-227). Mean either did foresee or should have foreseen that its marketing of the MA Lock as a “solution” to New York’s assault weapons law would cause AR-15s with the MA Lock installed to be bought and

sold in New York. R.1005, 1031, 1034 (¶¶17, 126, 134-36); R.1523, 1549, 153 (¶¶94, 210, 218-20). Mean's interstate sales of products directed at customers outside Georgia, including in New York, (R.1005 (¶17); R.1523 (¶94)), demonstrate that its business operations were not exclusively "of a local character." *See LaMarca*, 95 N.Y.2d at 215.

Plaintiffs' allegations show that jurisdiction is also proper under CPLR § 302(a)(1) based on Mean's transaction of business within New York and the connection between Plaintiffs' claims and that activity. *See, e.g., Rushaid v. Pictet & Cie*, 28 N.Y.3d 316, 323 (2016); *Halas v. Dick's Sporting Goods*, 105 A.D.3d 1411, 1412 (4th Dep't 2013). Mean "marketed and sold its products . . . to customers in New York" through its website, "targeted New York consumers" with marketing materials, "regularly shipped the [MA Lock] to purchasers in New York," and the Shooter sought and purchased a rifle with the MA Lock attached so that he could remove the lock and use the rifle with detachable magazines in criminal activity in New York. R.1005, 1020-23, 1036 (¶¶17-20, 86-96, 141-43); R.1523, 1539-42, 1555 (¶¶94-98, 170-80, 225-27). Plaintiffs' claims are, at the very least, "in some way arguably connected" to Mean's transaction of business in New York, which is all that is required. *See Rushaid*, 28 N.Y.3d at 329.

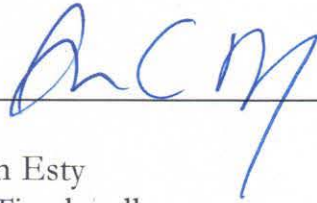
## CONCLUSION

For all these reasons, the Court should affirm the Trial Court's rulings that denied Mean's motions to dismiss in *Jones* and *Harris Stanfield* in full.

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