DOCKET NO: UWY-CV 23-6072791S PREFIX: X10	:	SUPERIOR COURT
NATHANIEL GETZ, EXECUTOR OF THE ESTATE OF SUZANNE FOUNTAIN,	:	COMPLEX LITIGATION DOCKET AT WATERBURY
V.	:	
STURM, RUGER & COMPANY, INC.	:	JULY 19, 2024

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS BASED ON THE DOCTRINE OF FORUM NON CONVENIENS

Plaintiff Nathaniel Getz, Executor of the Estate of Suzanne Fountain ("Plaintiff"), respectfully submits this memorandum in opposition to Defendant Sturm, Ruger & Company, Inc.'s ("Defendant" or "Ruger") motion to dismiss Plaintiff's Amended Complaint based on the doctrine of *forum non conveniens* (the "Ruger Br.") (Entry Nos. 150.00, 151.00).

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PRELIMINARY STATEMENT

In its failed attempt to remove this case to federal court, Ruger described the parties' disagreement regarding the nature of the Ruger weapon at issue—was it a short-barreled rifle, as Plaintiff contends, or a pistol, as Ruger marketed it—as the "'central point of dispute.'" Notice of Removal ¶ 15 [Entry No. 142.00]. Plaintiff agrees: the crux of Plaintiff's claims is that the firearm used in the King Soopers mass shooting—which Ruger misleadingly called an "AR-556 Pistol"—was designed, made, and intended to be fired from the shoulder, and thus was not a pistol but a short-barreled rifle under federal firearms laws. Ruger's noncompliance with these federal laws regulating short-barreled rifles—which include heightened purchaser application requirements that would have delayed the shooter's acquisition of the weapon for months—was negligent, an unfair and deceptive business practice, and a proximate cause of the killing of Suzanne Fountain and many others. Evidence of Ruger's own conduct relating to the design, production, distribution, and marketing of the AR-556 will thus be the most important focus of discovery. Plaintiff alleges that much of Ruger's tortious conduct related to this key issue of whether the murder weapon was in fact a short-barreled rifle—including design, marketing, and regulatory compliance decision-making—occurred in Connecticut, where the company is headquartered and maintains two offices. Neither party contends that any of these critical decisions were made in Colorado.

Ruger, in service of its *forum non conveniens* motion, seeks to recenter the central issues of this case in Colorado, where the shooter purchased his weapon and perpetrated the shooting. While evidence related to these events in Colorado will certainly be relevant, it does not go to the core of the parties' central dispute about whether the murder weapon was unlawfully misclassified and marketed. Moreover, interstate discovery procedures pursuant to the Uniform Interstate Depositions and Discovery Act (UIDDA)—along with the ready availability of e-discovery—will

render evidence located in Colorado nearly as accessible, if not equally accessible, to the parties as evidence located in Connecticut. Likewise, to the extent that testimony from Colorado-based witnesses who cannot be compelled to travel to Connecticut is necessary, the parties' access to such testimony will be facilitated by the UIDDA along with the availability of video depositions and remote testimony technology. Furthermore, as detailed herein, extensive video footage of the shooting is expected to become public and accessible to the parties following the criminal trial of the shooter, which is scheduled to begin on August 26, 2024, significantly undermining Ruger's arguments that trial in Connecticut will impede its ability to put before a jury sufficient evidence of the central events surrounding this shooting. Nor does Ruger's focus on its purported need for testimony from the shooter and Colorado-based medical personnel regarding the shooter's state of mind advance its argument, as the relevance and admissibility of such testimony is uncertain at best. For these and other reasons further discussed below, Ruger has not met its burden to establish circumstances justifying the "drastic remedy" of *forum non conveniens* dismissal. *Durkin v. Intevac, Inc.*, 258 Conn. 454, 464, 782 A.2d 103 (2001).

The instant motion represents Ruger's third attempt to disrupt Plaintiff's pursuit of justice in his chosen forum. Plaintiff filed the initial complaint on March 14, 2023, and submitted a request to amend the complaint on August 8, 2023. Entry No. 120.00. Ruger objected to the amendment, Entry No. 129.00, and the Court overruled that objection on October 4, 2023. Entry No. 129.20. Ruger subsequently filed a Notice of Removal to the U.S. District Court for the District of Connecticut on October 13, 2023. Entry No. 142.00. The federal court granted Plaintiff's motion for remand on April 25, 2024. Entry No. 144.00. Now, Ruger seeks dismissal on *forum non conveniens* grounds. Plaintiff respectfully requests that the Court deny Ruger's motion.

BACKGROUND

A. The Key Dispute in this Case Concerns Ruger's Design, Production, Distribution, and Marketing of the Shooter's Unlawful Short-Barreled Rifle

Plaintiff is the son of Suzanne Fountain, one of the victims of the March 22, 2021, mass shooting at a King Soopers supermarket in Boulder, Colorado. As alleged in the Amended Complaint, a 21-year-old shooter killed Ms. Fountain and nine other people[1] in a matter of minutes with a short-barreled rifle unlawfully designed, manufactured, marketed, and sold by Connecticut-based Ruger. Amended Complaint [Entry No. 120.00] ("Am. Compl.") ¶¶ 18, 99, 106. The shooter purchased his Ruger weapon just six days before carrying out the shooting, on March 16, 2021. *See id.* ¶¶ 1, 19; *see also* Ex. A to Affidavit of James Vogts Affidavit [Entry No. 151.00] ("Vogts Aff."). Plaintiff's claims arise from Ruger's failure to comply with federal laws and regulations applicable to short-barreled rifles, failures which expedited the shooter's acquisition of his weapon of choice. Am Compl. ¶¶ 22, 93-109. Had Ruger properly registered, distributed, and marketed the shooter's "AR-556 Pistol"[2] as the short-barreled rifle it was, the shooter would have been subjected to heightened vetting and would not have been able to acquire his weapon in time to perpetrate the shooting that killed Suzanne Fountain. Am. Compl. ¶ 105.

The National Firearms Act ("NFA") and the Gun Control Act ("GCA") impose heightened regulation on manufacturers, sellers, and purchasers of short-barreled rifles, over and above the baseline federal regulation of all firearms. *See* Am. Compl. ¶¶ 39-53. The NFA and GCA define short-barreled rifles as firearms that, in relevant part: (a) have a rifled bore and discharge one round

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[1] Neven Stanišić, Kevin Mahoney, Tralona Bartkowiak, Rikki Olds, Denny Stong, Lynn Murray, Teri Leiker, Jody Waters, and Boulder Police Officer Eric Talley.

[2] For ease of reference, Plaintiff refers to the weapon at issue by the model name assigned to it by Ruger, "AR-556 Pistol." But as Plaintiff alleges, and as discussed herein, the weapon is in fact a short-barreled rifle.

of ammunition per trigger pull; (b) have a barrel length of less than 16 inches; and (c) are "designed . . . , made . . . , and intended to be fired from the shoulder." 26 U.S.C. § 5845(a)(3)-(4); 18 U.S.C. § 921(a)(7)-(8); Am Compl. ¶¶ 44-45. Manufacturers must register each short-barreled rifle in the National Firearms Registration and Transfer Record ("NFRTR") and obtain approval from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") prior to transferring the firearm. 26 U.S.C. §§ 5812, 5841; 27 C.F.R. §§ 479.101-479.103; Am. Compl. ¶¶ 47. Critically, the manufacturer's registration of a short-barreled rifle in the NFRTR at the point of production ensures that the gun is properly regulated as an NFA weapon through the chain of distribution. If a manufacturer fails to properly register and transfer a short-barreled rifle, it becomes subject to seizure and forfeiture; downstream distributors and dealers cannot cure a manufacturer's failure to register a short-barreled rifle. Am. Compl. ¶¶ 48, 95.

Civilians wishing to buy a short-barreled rifle must complete a multi-step application process, undergo a background check, receive affirmative approval from the ATF prior to completing the transaction, pay an additional tax, and register the weapon under their name in the NFRTR. *See* 26 U.S.C. § 5812; 27 C.F.R. §§ 479.84-479.86; Am Compl. ¶¶ 51-53. As of March 2021, the average processing time for a civilian's application to purchase an NFA-regulated firearm was seven months. Am. Compl. ¶ 52. This rigorous oversight is commensurate with the elevated danger presented by short-barreled rifles. The Ruger AR-556 Pistol at issue here, for instance, resembles full-length AR-15-style rifles in function and firepower, but offers greater concealability and maneuverability due to its shorter barrel. Am. Compl. ¶¶ 32–38, 43, 56; *see also* Ex. D to Vogts Aff. at 1 (warrant for the arrest of the shooter and supporting affidavit, stating that a responding officer "observed the suspect with an *assault rifle*" (emphasis added)).

Ruger's AR-556 Pistols meet the NFA and GCA definition of "short-barreled rifle." They feature rifled bores, discharge one round of ammunition per trigger pull, and have barrel lengths of 9.5 to 10.5 inches (depending on the specific model). Am. Compl. ¶ 71. And as Plaintiff alleges (and Ruger disputes), Ruger "designed," "made," and "intended" the AR-556 Pistols to be fired from the shoulder. *See id.* ¶ 21, 72-81, 107. In distributing the AR-556 Pistols, however, Ruger evaded the NFA process and failed to treat them as the short-barreled rifles they are; it did not register the AR-556 Pistols in the NFRTR or obtain ATF approval prior to transferring them. *Id*. ¶¶ 94-97. Plaintiff alleges that Ruger's goal was to circumvent its NFA-mandated obligations and to capitalize on the civilian consumer demand for short-barreled rifles available outside the onerous and time-consuming NFA process. Am. Compl. ¶ 64.

In order to maintain plausible deniability, Ruger packaged and distributed the AR-556 Pistols with SBA3 "stabilizing braces" in place of conventional shoulder stocks.[3] Am. Compl. ¶¶ 7-9, 13-15, 56, 63-64. The purported purpose of the SBA3 "stabilizing braces," which were supplied to Ruger by a nonparty company called SB Tactical, is to assist in one-handed firing of pistols. Am. Compl. ¶ 9. In practice, however, the SBA3 stabilizing brace attached to Ruger's AR-556 Pistol is a shoulder stock in design and function. *Id*.; *see also id.* 62-64. In furtherance of this scheme, Ruger also deceptively marketed and sold the AR-556 short-barreled rifles as "pistols." Am. Compl. ¶¶ 112.[4] Notably, Ruger did so despite also producing a line of "AR-556 MPR" rifles

[3] A shoulder stock, which is attached to the back of a rifle, allows a shooter to brace the rifle against their shoulder while firing, using two hands. Shoulder bracing enables a shooter to better direct the rifle's firepower and manage its recoil. Am. Compl. ¶ 37.

[4] At the same time, Plaintiff alleges, Ruger's direct and indirect marketing promoted assaultive uses of the AR-556 "Pistol" and its similarity to rifles. Am. Compl. ¶¶ 34, 112(e).

for law enforcement buyers, which are near-identical weapons to its AR-556 pistols—and yet, Ruger *did* properly classify the AR-556 MPR as a short-barreled rifle. Am. Compl. ¶¶ 79-81.

Ruger promotional image of an "AR-556 Pistol." Am. Compl. ¶ 6

Ruger promotional image of and an AR-556 MPR short-barreled rifle, available only to law enforcement. Am. Compl. ¶ 16.

As Plaintiff alleges, Ruger's conduct facilitated the shooter's accelerated purchase of an especially dangerous and lethal AR-556 Pistol and thereby proximately caused Suzanne Fountain's death and related injuries. Am. Compl. ¶¶ 109, 148-152.

B. Ruger's Alleged Connecticut-Based and Non-Colorado-Based Conduct

Ruger's own conduct, not the shooter's, is at the heart of each of Plaintiff's claims. *See* Am. Compl. ¶¶ 112, 123-24, 134, 138, 140. As Ruger asserted in the notice of its (ultimately unsuccessful) removal to federal court, the parties' "central point of dispute" here is whether Ruger's AR-556 Pistols were in fact short-barreled rifles. *See* Am. Compl. ¶¶ 54-82; Ruger Notice

of Removal ¶ 15. As noted above, the fact question at the core of this dispute is thus whether Ruger "designed," "made," and "intended" the AR-556 Pistols to be fired from the shoulder. 26 U.S.C. § 5845(a)(3)–(4), (c); 18 U.S.C. § 921(a)(7)–(8); Am. Compl. ¶¶ 71-82.

Evidence of Ruger's own conduct and intent will therefore comprise Plaintiff's central proof. This includes, as Plaintiff alleges in the Amended Complaint, evidence of the conduct and decision-making of Connecticut-based Ruger corporate management, legal, regulatory and compliance, and engineering employees. Am. Compl. ¶¶ 28-31, 65, 69, 70, 82, 89, 98. Ruger is headquartered in Southport and leases an additional facility in Enfield. Am. Compl. ¶ 27; *see also* Edited Tr. of Sturm Ruger Company Inc. at 7, attached to Form 8-K (May 2, 2012), https://ruger.com/corporate/PDF/8K-2012-05-02a.pdf ("We've got an engineering office in Enfield, Connecticut, corporate office in Southport, Connecticut."). In a recent SEC filing, Ruger described its Southport office as one of two "corporate" offices, with the other located in the neighboring state of New York. Form 10-K at 19 (2023), https://www.ruger.com/corporate/PDF/10K-2023.pdf. This indicates, as Plaintiff alleges, that Ruger employees based in Connecticut (and New York) include key executives and other employees involved in conducting or overseeing Ruger's weapons design, marketing, regulatory compliance, and partnerships. Am. Compl. ¶¶ 28-30; *see also* Ruger Proxy Statement at 26 (2024) (noting that "the Company has a robust process for creating, reviewing, and placing advertisements, which includes input from senior management, plus careful scrutiny by the engineering and legal teams."), https://www.ruger.com/corporate/PDF/Proxy-2024.pdf. In short, Ruger's conclusory statement that the "only connection this case has to Connecticut is that the Company maintains offices there" (Ruger Br. at 9) is unsupported by the record.

Ruger states summarily that the AR-556 Pistols were designed in North Carolina—but no

actual evidence, whether by attorney affidavit or otherwise, is offered to support that claim. Ruger Br. at 9.[5] Even if Ruger employees in North Carolina did participate in the design of the weapon, those witnesses are no more subject to compulsory process in Colorado than they are in Connecticut; moreover, that does not conflict with Plaintiff's allegations that Connecticut-based employees also did so, nor with Plaintiff's allegations that Connecticut-based employees engaged in other tortious conduct, such as decision-making and approvals related to the partnership with SB Tactical, the failure to register the AR-556 Pistols in the NFRTR or otherwise comply with the NFA process, and the marketing and distribution of the AR-556 Pistols. Am. Compl. ¶¶ 28-31, 65, 69, 70, 82, 89, 98.[6]

LEGAL STANDARD

The *forum non conveniens* doctrine is a "drastic remedy," which the trial court "must approach with caution and restraint." *Durkin v. Intevac, Inc.*, 258 Conn. 454, 464, 782 A.2d 103 (2001); *see also Betensky v. Opcon Assocs, Inc.*, 46 Conn. Supp. 110, 119, 738 A.2d 1171 (Conn. Super. Ct. 1999) ("Although the application of the [forum non conveniens] doctrine is, as mentioned, discretionary in theory, that application is not, at least in Connecticut, quite so discretionary in fact."). There is a presumption in favor of the plaintiff's chosen forum. *Id*. And while "the trial court must readjust the downward pressure of its thumb" when a plaintiff is foreign

[5] Ruger cites to the affidavit of its counsel, but that affidavit does not speak to where Ruger designed the AR-556 Pistols. *See* Vogts Aff. ¶ 5. Nor does it offer information or records from Ruger itself to support Ruger's conclusory statements in its brief.

[6] Likewise, Ruger's assertions that it used an Arizona-based distributor and that marketing activities occur in its New York office (Ruger Br. at 9) do not conflict with Plaintiff's allegations that Connecticut-based executives and employees participated in conduct and decision-making related to the weapon; nor does the location of witnesses in those two states—one neighboring Connecticut, the other neighboring Colorado—materially alter the balance of convenience to the point of compelling transfer to Colorado.

to his chosen forum, the court does not "remove it altogether from the plaintiff's side of the scale." *Id.* at 120. Importantly, a court "cannot exercise its discretion in order to level the playing field between the parties. The plaintiff's choice of forum, which may well have been chosen precisely because it provides the plaintiff with certain procedural or substantive advantages, should be respected unless equity weighs strongly in favor of the defendant." *Picketts v. Intern. Playtex, Inc.*, 215 Conn. 490, 501, 576 A.2d 518 (1990) (cleaned up). In other words, "'unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should *rarely* be disturbed.'" *Picketts v. Intern. Playtex, Inc.,* supra*,* 215 Conn. at 500 (emphasis added) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)).

To determine the applicability of *forum non conveniens*, courts analyze four considerations: (1) whether an "adequate alternative forum exists that possesses jurisdiction over the whole case;" (2) "all relevant private interest factors," with a presumption against disturbing plaintiff's initial choice of forum; (3) "if the balance of private interest factors is equal . . . whether any public interest factors tip the balance in favor of trying the case in the foreign forum"; and (4) if so, whether the plaintiff "can reinstate their [action] in the alternative forum without undue inconvenience or prejudice." *Durkin v. Intevac, Inc.*, supra, 258 Conn. 466 (citations and internal quotation marks omitted). However, if a court determines that the private interest factors do not favor transfer, the court need not consider factors three and four. *Everbank Com. Fin., Inc. v. Row Equip., Inc.*, No. CV166030117S, 2017 WL 3880504 (Conn. Super. Ct. July 20, 2017).

Ruger, a Connecticut domiciliary, bears the burden of demonstrating why Plaintiff's choice of forum is "inappropriate or unfair" under this standard. *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 501-502. For purposes of a *forum non conveniens* motion, courts assume the truth of the complaint's allegations. *Bos. Prop. Exch. Transfer Co. v. Merrill Lynch, Pierce, Fenner &*

Smith, Inc., No. X04HHDCV116026660S, 2012 WL 5476911, *1 (Conn. Super. Ct. October 16, 2012). Courts may also consider undisputed facts submitted via supporting affidavits. *S. Air, Inc. v. Clements*, No. CV095010079S, 2009 WL 5698247, *3 (Conn. Super. Ct. December 24, 2009). But, "'statements of counsel are not evidence.'" *Temlock v. Temlock*, 95 Conn. App. 505, 517, 898 A.2d 209 (2006).[7]

ARGUMENT

Plaintiff addresses three of the four *forum non conveniens* considerations in this Part: (1) the private interest factors; (2) the public interest factors, and (3) whether Plaintiff could reinstate this case in Colorado. *Durkin v. Intevac, Inc.*, supra, 258 Conn. 465.[8] The private and public interest factors weigh strongly against dismissal here; thus, the Court need not reach the question of reinstatement. The "overriding inquiry of a *forum non conveniens* motion is not whether some other forum might be a good one, or even a better one than the plaintiff's chosen forum. The question to be answered is whether [the] plaintiff's chosen forum is itself inappropriate or unfair because of the various private and public interest considerations involved." *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 501 (emphasis added) (internal quotations omitted). As discussed in this Part, Connecticut remains a fair and appropriate forum, and the *Durkin* considerations do not justify disturbing Plaintiff's choice of forum.

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[7] To the extent that the court's exercise of discretion in deciding a *forum non conveniens* motion depends on disputed issues of fact, "due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses." *Temlock v. Temlock*, 95 Conn. App. 505, 517, 898 A.2d 209 (2006)

On July 10, 2024, Ruger filed a motion to stay many of the discovery requests that Plaintiff served on Ruger on May 21, 2024. Entry No. 152.00. Plaintiff's opposition to this motion is forthcoming. Plaintiff respectfully requests that, should this Court determine that its *forum non conveniens* analysis will turn on disputed issues of material fact, the parties be provided the opportunity to engage in discovery and present evidence at an evidentiary hearing.

[8] Plaintiff does not dispute that Colorado provides an adequate alternative forum.

Before addressing these considerations individually, however, it is worth examining and contrasting the Connecticut Supreme Court's decisions in *Picketts* and *Durkin.* Plaintiff submits that this case falls clearly on the *Picketts* side of the line. The *Picketts* plaintiff, a widower in British Columbia, sued a parent company and subsidiary that designed, manufactured, and distributed a tampon that allegedly caused his wife's toxic shock syndrome. *Id.* 519-20. The parent company, which controlled and approved the design of the tampon, was headquartered in Connecticut. *Id*. 519-21. There, as here, the retail sale of the product at issue and the injury occurred outside Connecticut. *Id*. 520. There, as here, some of the defendants' tortious conduct occurred outside Connecticut; notably, the relevant tampon's design originated with the defendants' New Jersey-based research and development team, and the manufacture of the tampon occurred in British Columbia. *Id*. 520-21. The Connecticut Supreme Court nevertheless determined that the defendants did not offer a "firm evidentiary basis" to warrant *forum non conveniens* dismissal. *Id*. 528. The court emphasized that (1) "[t]he mere assertion that [witness] evidence is irretrievably located in Canada is [] not adequate to tip the scales in the defendants' favor," and (2) in dismissing the case, the lower court "improperly sought to level the playing field between the parties, instead of giving due weight to the plaintiffs' choice of forum." *Id*. 528.

Similarly, as detailed throughout this Part, Ruger has not offered a "firm evidentiary basis" to meet its high burden of justifying *forum non conveniens* dismissal. Here, although the shooter's weapon was manufactured and sold at retail outside Connecticut, Plaintiff alleges that significant tortious conduct by Ruger occurred in its Connecticut offices (and perhaps other locations outside Colorado). *See* supra, at 6–8. Moreover, as the *Picketts* court noted, "modern technological innovations" have reduced the burdens of interstate discovery. *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 511. This has become even more true in the 34 years since *Picketts*. As discussed

infra, at 14–15, tools such as e-discovery, videotaped depositions, and remote live testimony have rendered evidence outside Connecticut nearly as accessible, if not equally as accessible, as evidence located in Connecticut.

Ruger, for its part, relies heavily on *Durkin*. Ruger Br. at 6-10, 12. But Durkin diverges from the instant case in several important ways. The *Durkin* plaintiffs' claims arose from a helicopter crash during a military exercise in Australia. *Durkin v. Intevac, Inc.*, supra, 258 Conn. 456. The plaintiffs alleged that the crash was caused by defects in the helicopters and night vision goggles used in the exercise. *Id*. 460. An Australian military board conducted an "exhaustive" investigation, which directly considered the theory at the heart of the plaintiffs' claims and concluded that neither the design of the helicopters nor the night vision goggles caused the crash. *Id.* 458, 467-68. The military board's "unequivocal finding that the accident was caused by poor planning and implementation, and not by defective products" anchored the Supreme Court's finding that access to the board's investigative materials, and to the 144 witnesses that the board interviewed, were essential. *Id*. 469.

That is not this case. The core focus of the parties' dispute is Ruger's own conduct—specifically, whether Ruger designed, produced, marketed, and sold the shooter's weapon as an unlawful short-barreled rifle. *See* supra, at 3–6. Ruger is not a subject of the Colorado criminal investigation and prosecution. Thus, in contrast to *Durkin*, the Colorado criminal proceedings will not address the question at the heart of Plaintiff's claims. And, critically, the *Durkin* defendants sufficiently established that many of the key witnesses in the Australian investigation, who were mostly active military personnel on the other side of the world, would be completely unavailable if the case remained in Connecticut. *Durkin v. Intevac, Inc.*, supra, 258 Conn. 473-74. As detailed in this Part, Ruger has not made and cannot make a similar showing. Moreover, the *Durkin* court

noted that international discovery procedures pursuant to the Hague Convention provided Australia with discretion to block discovery requests if the case remained in Connecticut. *Id*. 470-71; *compare Ensign-Bickford Indus., Inc. v. Great Am. Ins. Co.*, No. X07CV010076590S, 2002 WL 1295138, at *3 (Conn. Super. Ct. May 16, 2002) ("Unlike the situation in *Durkin v. Intervac, Inc*., supra, where virtually all the essential fact witnesses were in Australia and unavailable even for depositions, here the testimony of the Utah residents is retrievable."); *see also DeCiccio v. Dynata, LLC,* No. X06UWYCV206052136S, 2022 WL 6389300 (Conn. Super. Ct. September 12, 2022), *aff'ed* 225 Conn. App. 725 (2024) (granting *forum non conveniens dismissal* where, *inter alia*, it would be "difficult to ensure" access to evidence in the Philippines, which is not a Hague Convention signatory, and where the distance to the Philippines would impose "extremely expensive" and time-consuming burdens). No such hurdle exists here, where both Connecticut and Colorado (and other states where Ruger says witnesses may be located) have adopted the UIDDA. *See* Conn. General Statutes § 52-655 *et seq.*; Colo. Rev. Stat. § 13-90.5-101 *et seq.*; *see also* N.C. Gen. Stat. § 1F-1 *et seq.*; N.Y. Civ. Prac. Law and Rules § 3119; Ariz. R. Civ. P. 45.1; infra at 14–15.

In short, this case falls on the *Picketts* side of the *Picketts*/*Durkin* divide.

I. No Private Interest Factor Justifies Disrupting Plaintiff's Choice of Forum

Under the private interest prong of the *forum non conveniens* standard, courts consider the following factors: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process for the attendance of unwilling witnesses, and the cost of obtaining attendance of willing witnesses; (3) the possibility of viewing the accident scene if such viewing is appropriate to the action; (4) the enforceability of a judgment; (5) the relative advantages and obstacles to a fair trial; and (6) all other practical problems that make the trial of a case easy, expeditious and

inexpensive." *Durkin v. Intevac, Inc.*, supra, 258 Conn. 467. Of these six factors, Ruger concedes that two—the enforceability of a judgment and the relative advantages and obstacles to a fair trial—do not weigh in favor of dismissal. *See* Ruger Br. at 11-12.[9] With regard to the remaining four factors, Ruger fails to meet its burden to show that Connecticut is an inappropriate or unfair forum. Plaintiff addresses each of those four remaining factors in turn.

A. Dismissal in Connecticut and Reinstatement in Colorado Will Not Improve Relative Ease of Access to Sources of Proof

The key disputed facts in this case center on Ruger's own conduct, including alleged conduct by Connecticut-based executives and employees. *See* supra, at 3–6. Though Plaintiff agrees with Ruger that evidence related to the shooter and the shooting will be relevant, the "mere assertion that such evidence is irretrievably located in [the forum sought by defendant] is. . . not adequate to tip the scales in the defendants' favor on a motion to dismiss for forum non conveniens." *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 510. The parties can request such evidence in the normal course of discovery pursuant to the UIDDA. *See* Colo. Rev. Stat. § 13-90.5-101 *et seq*. The parties may submit Connecticut subpoenas to the Colorado district court for the county in which the discovery is sought, and the clerk of such court "shall promptly issue a subpoena for service" upon the relevant recipient. Colo. Rev. Stat. § 13-90.5-103. This procedure, combined with electronic transmission of records and standard e-discovery practices, greatly reduces any burdens associated with interstate discovery.

Additionally, although the parties may dispute their legal import, the record does not suggest at this stage that the parties are likely to dispute many facts concerning the shooter's

[9] Ruger describes these two factors as "neutral" and makes no argument that they weigh against Connecticut as an appropriate forum.

purchase of his weapon, the shooting itself, or the law enforcement response. This in turn suggests that the volume of necessary discovery from Colorado sources will be quite manageable. *Cf. Tilcon, Inc. v. First Union Nat.'l Bank*, No. CV 98489997, 1999 WL 775755 (Conn. Super. Ct. September 13, 1999) ("Indeed, the court record to date indicates that the events surrounding the theft and negotiation of the checks are hardly in dispute. Thus, the testimony of the New Jersey witnesses does not appear to be 'key' to this case."). By contrast, the parties are clearly disputing Ruger's own conduct, which suggests that the volume of discovery necessary from sources in Connecticut—and perhaps New York and North Carolina (Ruger Br. at 9), both states closer to Connecticut than Colorado—will be even more significant.

Thus, Ruger has not demonstrated that dismissal in Connecticut and reinstatement in Colorado would increase the parties' relative ease to access sources of proof on the key contested issues in this case. At *most*, the record reflects that important sources of proof exist in both Connecticut and Colorado. This is not enough to justify disturbing Plaintiff's choice of forum, particularly given the convenience of the UIDDA and e-discovery.

B. Ruger Has Not Demonstrated Prejudicial Inconvenience to Material and Necessary Witnesses

"When a dismissal is premised on the convenience of witnesses, more than a mere allegation to that effect is required." *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 509-10. The moving defendant must identify, ***by name***, the key witnesses to be called and provide, with regard to each witness, (a) their ***location***, (b) "a ***general statement of what their testimony will cover***," (c) information sufficient to demonstrate that they "***need to be called*** and that their ***testimony is material***;" and (d) information establishing, "***with specificity, inconvenience to witnesses that is***

sufficiently prejudicial to justify dismissal." *Id.* 509-10 (emphasis added). Ruger falls far short here.

First, as a general matter, Ruger overstates the difficulty of accessing any necessary testimony from Colorado-based witnesses in the age of video depositions and remote trial testimony. Where a witness is located out of state or more than 30 miles from the place of trial, a videotaped deposition may be offered in lieu of the witness's live testimony. Practice Book § 13-31(a)(4)(B). "[T]he advent of the videotaped deposition greatly transformed the meaning of 'compulsory process' in a forum non conveniens calculus [and] . . . . frequently makes corporeal transportation of foreign witnesses unnecessary.'" *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 511. Likewise, "remote trial testimony [has] become far more common and accessible than was the case 20+ years ago," and that trend has accelerated in the wake of the Covid-19 pandemic. *Shipman Assocs. v. White & Case, LLP,* No. FSTCV206046192S, 2021 WL 838276, *12 (Conn. Super. Ct. February 5, 2021); *see also Baylis v. Cycling Sports Grp., Inc.*, No. FSTCV196044429S, 2021 WL 5112617, *5 (Conn. Super. Ct. October 13, 2021). Courts considering *forum non conveniens* motions have repeatedly determined that modern technology lowers the barriers to obtaining out-of-state testimony. *See, e.g.*, *Sea Greens Holdings, LLC v. Angera*, No. CV185041470S, 2018 WL 5115613, *6 (Conn. Super. Ct. October 1, 2018); *Jancaterino v. Karban*, No. KNLCV166028397S, 2017 WL 3481298, *3 (Conn. Super. Ct. July 7, 2017); *Mathis v. Marriott Intern., Inc.*, No. NNHCV146044292S, 2014 WL 5138023, *6 (Conn. Super. Ct. September 12, 2014). To the extent that testimony from Colorado-based witnesses is in fact material and necessary—and said witnesses are in fact unavailable to travel to Connecticut for

trial—the availability of such technology is sufficient to mitigate any burdens imposed by a trial in Connecticut.[10]

Second, Ruger's assertions regarding the purported inaccessibility of Colorado-based witnesses are deficient on their face. To begin, Ruger has failed to provide the names and locations of several of the potential witnesses it discusses. Ruger Br. at 2-4; Vogts Aff. ¶¶ 11-12 (referring to unidentified individuals, including medical personnel, first responders, and family members and employers of Suzanne Fountain). As to the named individuals that Ruger describes as King Soopers shoppers or employees, it does not establish that each of them is still located in Colorado. *See* Ruger Br. at 2-3; Vogts Aff. ¶ 13. Nor are there any specific assertions to establish the inconvenience or unwillingness of these witnesses vis-à-vis testifying in Connecticut. Courts met with a similar dearth of information have found it insufficient to satisfy the *forum non conveniens* standard. *See, e.g., Everbank Com. Fin., Inc. v. Row Equipment, Inc.*, 2017 WL 3880504, *7 (Conn. Super. Ct. July 20, 2017); *Mathis v. Marriott Intern., Inc.*, No. NNHCV146044292S, 2014 WL 5138023, *6 (Conn. Super. Ct. September 12, 2014); *Corriveau v. Corriveau*, No. CV075006980, 2009 WL 1874183, *4 (Conn. Super. Ct. June 12, 2009).

Even where Ruger provides names and locations for potential witnesses, it has not demonstrated that *each* of them have material and necessary testimony. For instance, Ruger contends that testimony from the shooter and Drs. Torres and Reis of the Colorado Mental Health Institute are germane to Plaintiff's marketing claim. Ruger Br. at 2-3. But the relevance and admissibility of such testimony is, at best, speculative. It is far from clear how evidence of the

[10] As detailed above, at 14–15, both Connecticut and Colorado have adopted the UIDDA. Thus, it is no longer necessary for a party to a case in Connecticut to seek a judicial commission in order to take the deposition of a Colorado-based witness. *Contra* Ruger Br. at 11.

shooter's state of mind would rebut Plaintiff's unfair and deceptive marketing claim, particularly insofar as it turns on Ruger's marketing of the AR-556 short-barreled rifle as a "pistol." Nor is it clear how evidence of the shooter's mindset would be admissible and not hearsay if offered by Ruger.

Similarly, even assuming that some testimony from shooting eyewitnesses will be necessary, it is not clear why the testimony each of the *seven* individuals named by Ruger in Attorney Vogts' affidavit would be material and necessary—particularly where there is almost certainly going to be extensive *video evidence* of the shooting that will be available. *See* Vogts Aff. ¶ 13 (identifying employees and shoppers who "may" have relevant information). Prior to the preliminary hearing in the case against the shooter, the Boulder District Court reviewed an eight-minute video showing the movements and actions of the shooter inside the grocery store during the shooting. The Boulder District Attorney has requested that the video be shielded from public access only until the conclusion of the prosecution of the case, in order to preserve the shooter's right to a fair trial and the privacy of the victims.[11] With proper authentication, such video footage will be admissible at trial and substantially reduces the argument that Ruger will need to call so many eyewitnesses. Ruger likewise discusses information that six law enforcement personnel

[11] Order, *People of the State of Colorado v. Ahmad Al Aliwi Alissa*, 2021CR491 (Colo. Dist. Ct. Boulder Cnty. Jul. 26, 2021), https://tinyurl.com/mr44ymde. Additionally, the district attorney's office has stated that the video will be played during the trial and/or the sentencing of the shooter. Shelly Bradbury, *Video to be kept secret in Boulder King Soopers mass shooting case*, The Denver Post (Aug. 30, 2021), https://www.denverpost.com/2021/08/22/boulder-king-soopers-shooting-ahmad-alissa-video-secret-court/; Paolo Zialcita, *Video Of King Soopers Shooting Won't Be Played In Open Court Ahead Of Trial*, CPR News (Aug. 23, 2021), https://www.cpr.org/2021/08/23/king-soopers-shooting-video-not-playing-before-trial/; Boulder Cnty. District Attorney's Office, *King Soopers Shooting Case with Press Releases and Information* (providing August and September 2024 trial dates), https://bouldercounty.gov/district-attorney/press-release-king-soopers-shooting/.

"may" or "would" or "likely" have (Ruger Br. at 2-3), but offers no specificity and does not establish that testimony from *each* of them is material and necessary.

Moreover, Ruger has not provided an evidentiary basis to establish that each of the potential witnesses it identifies would be *unavailable* to testify in Connecticut. "[M]ore than a mere allegation" of prejudicial inconvenience is required. *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 509; *see also Durkin v. Intevac, Inc.*, supra, 258 Conn. 474 (finding that key Australian witnesses would be unavailable and distinguishing *Picketts* on the grounds that the "defendants in *Picketts* did not present affidavits from [the relevant witnesses]. . . to show that they were unavailable to testify in Connecticut"). It is not sufficient to state summarily that Colorado-based witnesses are not subject to compulsory process or to point to the distance between Connecticut and Colorado. Ruger Br. at 10-11; *see Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 510-11 (reversing grant of motion to dismiss where the "defendants submitted no affidavits whatsoever regarding [Canadian medical witnesses'] unavailability despite the defendants' assertion that these medical witnesses could offer evidence material to… a defense"); *Mathis v. Marriott Intern., Inc.*, supra, 2014 WL 5138023, *6; *Proto v. Hamic*, No. FSTCV106005537S, 2011 WL 1992202, *15 (Conn. Super. Ct. May 10, 2011); *Corriveau v. Corriveau*, supra, 2009 WL 1874183, *4; *Schwartz v. Bitter End Yacht Club Intern., Inc.*, No. CV 97-0398306S, 1998 WL 294047 *3 (Conn. Super. Ct. May 18, 1998). For instance, even assuming that some testimony from Drs. Torres or Reis were material and necessary, Ruger makes no specific showing that either would be unavailable to testify in Connecticut. Nor does Ruger's unsupported speculation that Colorado-based witnesses are unlikely to testify willingly while the criminal case against the shooter is pending suffice. Ruger Br. at 11. The trial in the matter before this Court is not scheduled to begin until April 2026, more than 18 months after the scheduled August and September 2024 criminal trial of the shooter. *See*

Boulder Cnty. District Attorney's Office, *King Soopers Shooting Case with Press Releases and Information*, https://bouldercounty.gov/district-attorney/press-release-king-soopers-shooting/ (providing trial dates).

Finally, Ruger's assertions of inconvenience are undercut by its overstatement of the centrality of Colorado-based evidence to the parties' dispute. *See* supra, at 14–15. The nucleus of Plaintiff's claims concern Ruger's own conduct, including, as alleged in the Amended Complaint, conduct and decision-making by Ruger employees based in its Connecticut (and perhaps other non-Colorado-based) offices. Am. Compl. ¶¶ 30-31, 65, 69-70, 82, 89, 98.[12] Contrary to Ruger's suggestion (Ruger Br. at 10), Colorado is not the locale for the "majority" of likely trial witnesses—and certainly not the majority of witnesses on the key disputed issues. *Cf. Parker v. Avis Rent-A-Car Sys., Inc.*, No. 123310, 2002 WL 2031363, *5 (Conn. Super. Ct. July 30, 2002) (questioning the necessity of Alaska witnesses who would testify to the underlying accident where the record did not reflect that the parties disputed the facts of the accident); *Tilcon, Inc. v. First Union Nat.'l Bank*, No. CV 98489997, 1999 WL 775755 (Conn. Super. Ct. September 13, 1999) (New Jersey witnesses "do[] not appear to be 'key'" where events in New Jersey "are hardly in dispute"). Dismissal in Connecticut and refiling in Colorado "would merely trade one set of out-

[12] Ruger asserts that relevant Ruger witnesses are located in New York and North Carolina. Br. at 9. Assuming that necessary Ruger witnesses are in fact located in all three states—Connecticut, New York, and North Carolina—that fact would seem to militate further against dismissal. Connecticut will be a closer forum than Colorado for witnesses located in New York and North Carolina. *See Everett v. Everett*, No. FSTCV106004013S, 2010 WL 5573731 (Conn. Super. Ct. December 16, 2010) (denying *forum non conveniens* motion and noting that "there is no way for the court to weigh the inconvenience of California witnesses potentially having to travel to Connecticut versus the more certain inconvenience of having all the parties who reside in New York travel to California"); *Parker v. Avis Rent-A-Car Sys., Inc.*, supra, 2002 WL 2031363, *3 (denying motion to dismiss in case arising from vehicle accident in Alaska, and noting that Connecticut is equally or more convenient for key witnesses in Rhode Island and Washington).

of-state witnesses for another." *Ensign-Bickford Indus., Inc. v. Great Am. Ins. Co.*, No. X07CV010076590S, 2002 WL 1295138, at *3 (Conn. Super. Ct. May 16, 2002); *see also Baylis v. Cycling Sports Grp., Inc.*, supra, 2021 WL 5112617, *5 ("Whichever forum is utilized, there likely will be extensive reliance on [remote] methods of presentation and evidence.").

In short, Ruger has not provided a "proper evidentiary basis" to overcome the presumption in favor of Plaintiff's chosen forum. *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 511.

C. The Possibility of Viewing the Accident Scene Weighs Against Dismissal

Ruger concedes that "[i]t is presently unclear whether it will be necessary for the jury to view the scene of the crime," but nevertheless contends that this factor is "either neutral or weighs in favor of dismissal." Ruger Br. at 11. Ruger has not met, or even attempted to meet, its burden of persuasion here. *See, e.g.*, *Sea Greens Holdings v. Angera*, supra, 2018 WL 5115613, *6 (finding that "[t]his factor, to the extent that it is even applicable, does not weigh in favor of dismissing the case" where "[defendant] has not offered any testimony or exhibits suggesting that the parties would require access to any property or facility in Maine"); *Walsh v. City of Torrington*, No. HHDCV166067494S, 2016 WL 4745218, *5 (Conn. Super. Ct. August 10, 2016); *Mathis v. Marriott Intern., Inc.*, supra, 2014 WL 5138023, *7-8. Moreover, Connecticut courts have repeatedly found that evidence such as reports, photographs, and witness testimony render scenes viewings unnecessary—and here, as noted above, there is videotape evidence of the crime as it is being carried out. *See, e.g.*, *Baylis v. Cycling Sports Grp., Inc.,* supra, 2021 WL 5112617, *4; *Walsh v. City of Torrington*, supra, 2016 WL 4745218, *5; *Fudge v. Alliant Food Serv., Inc.,* No. CV010812056S, 2002 WL 1903095, *6 (Conn. Super. Ct. July 12, 2002). Finally, press reporting indicates that the relevant King Soopers store has been remodeled since the shooting. Paola Zialcita, *The Boulder King Soopers on Table Mesa reopens with memorial ceremony*, CPR News

(February 9, 2022), https://www.cpr.org/2022/02/09/the-boulder-king-soopers-on-table-mesa-reopens-today-with-memorial-ceremony/. Thus, this factor weighs against dismissal.

D. No Other Practical Problems Justify Dismissal

In support of the final private factor, Ruger repeats its arguments regarding the investigative evidence concerning the shooting being located in Colorado. Ruger Br. at 12-13. Ruger relies on *Durkin*, but, for the reasons outlined supra, at 12–13, this case is readily distinguishable from *Durkin*, including because the Australian military investigation there directly addressed the theory at the core of the plaintiffs' claims; here, the Colorado law enforcement investigation did not examine Ruger's culpability in any respect. *See Durkin v. Intevac, Inc.*, supra, 258 Conn. 469.

Ruger's arguments regarding forum shopping, Ruger Br. at 13-14, are likewise unavailing. Plaintiffs routinely select forums that may offer favorable law; where the plaintiff's forum choice is otherwise valid, this is not grounds for dismissal on *forum non conveniens*: "The plaintiff's choice of forum, which may well have been chosen precisely because it provides the plaintiff with certain procedural or substantive advantages, should be respected unless equity weighs strongly in favor of the defendant." *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 501; *see also Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 250, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981) ("[M]any plaintiffs are able to choose from among several forums. Ordinarily, these plaintiffs will select that forum whose choice-of-law rules are most advantageous.").

Moreover, to the extent that the Court here is inclined to consider Plaintiff's reasons for selecting Connecticut as a forum, it should also consider Ruger's likely motives for seeking to move this case to Colorado. Ruger has clearly signaled its intent to invoke a Colorado law statutory defense that, until its recent repeal, protected gun industry defendants from many tort claims. *See*

Colo. Rev. Stat. § 13-21-501 *et seq.*; *see also* Answer & Special Defenses to Pls. Initial Compl. at 7-8 [Entry No. 116.00] (asserting that Plaintiff's claim would be barred "in whole or in part" by Colo. Rev. Stat. § 13-21-501). Plaintiff does not suggest that this statutory defense does, in fact, protect Ruger. On the contrary, the defense is inapplicable here for multiple reasons, including (but not limited to): (a) Connecticut, and not Colorado law, will likely govern this case, regardless of the forum;[13] (b) even if Colorado law were to apply, the Colorado legislature has repealed the relevant statute, *see* Colo. Session Laws 2023, Ch. 122 (S.B. 23-168), § 1, eff. Oct. 1, 2023; and (c) even if the repealed Colorado statute were applicable to this case, Plaintiff's claims would fit within the statute's exception for claims against industry defendants for conduct that violates state or federal statutes. Nevertheless, Ruger's stated intent to invoke this Colorado statute is relevant here insofar as courts deciding *forum non conveniens* motions are to avoid "'implicitly sanctioning forum-shopping by either litigant at the expense of the other.'" *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 501 (quoting *Pain v. United Tech. Corp.*, 637 F.2d 775, 784 (D.C. Cir. 1980)).

II. The Public Interest Factors Favor Connecticut

As described supra, the private interest factors weigh heavily against application of the *forum non conveniens* doctrine; thus, Ruger has not met its burden of overcoming the presumption in favor of Plaintiff's choice of forum. Therefore, this Court need not consider the public interest factors. Even if it does so, Connecticut's interest in trying this case favors denial of Ruger's motion. *Durkin v. Intevac, Inc.*, supra, 258 Conn. 465 ("Connecticut continues to have a responsibility to those foreign plaintiffs who properly invoke the jurisdiction of this forum

[13] Though the parties will likely engage in a choice of law dispute, choice of law questions are not dispositive to *forum non conveniens* motions and the Court need not engage in the choice of law analysis at this stage. *See* infra, at 25–26. Indeed, the choice of law standard requires a fact-intensive inquiry that is not ripe for consideration at this early stage of the case. *Id.*

especially in the somewhat unusual [situation wherein] it is the forum resident who seeks dismissal.") (emphasis added) (internal citations omitted); *cf. Fine Homebuilders, Inc. v. Perrone*, 98 Conn. App. 852, 860, 911 A.2d 1149 (2006) (Connecticut has a strong "policy preference to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his or her day in court."). The four public interest factors are "(1) administrative difficulties for the courts, *i.e*., court congestion and the court's familiarity with the applicable law; (2) imposing the burden of jury duty on the people of a community with no relation to the litigation; (3) holding trial in the view of interested persons; and (4) having matters decided in their local forum." *Durkin v. Intevac, Inc.,* supra, 258 Conn. 462. Taken together, these factors weigh against dismissal of Plaintiff's claims.

Ruger relies on *Seiff v. Rizing, LLC*, No. FSTCV216053482S, 2022 WL 4102995, *5 (Conn. Super. Ct. September 7, 2022), for the proposition that public interest factors "inherently are skewed in favor of a determination that the location of the loss or injury (generally, the location of the injured party) is to be preferred." (Ruger Br. at 15.) However, as the court in *Seiff* explained, the public interest factors "must be put into context" and cannot "wholly negate the presumption that a plaintiff's choice of forum is entitled to at least some level of favored status." *Seiff v. Rizing,* supra, 2022 WL 4102995, *5. Moreover, "some forms of litigation have at least some public interest value in Connecticut," such as litigation, like this action, "relating to investments and business practices," which serve to "establish or reinforce benchmarks for local enterprises." *Id.* The court ultimately dismissed the case in part because it did not offer any "incidental benefit at the local level." *Id.* That is not the case here. As described in further detail below, this action furthers several of Connecticut's local interests, including access to its courts and regulating local businesses.

A. There Are No Administrative Difficulties to Adjudication in Connecticut

Ruger argues that this action will impose administrative difficulties on the Court because a trial "will be both lengthy and complex," the case "involves multiple Plaintiffs," and the case "may require analysis of complex federal statutory and regulatory schemes governing firearms." Ruger Br. at 15. But Ruger does not explain why this Court is unequipped to handle this dispute; nor does it offer any reason why a Colorado state court would be better positioned to do so. Connecticut courts routinely resolve complex and challenging cases, including those that involve multiple parties and complex statutory and regulatory schemes. *See, e.g.*, *Soto v. Bushmaster Firearms Intern., LLC*, 331 Conn. 53, 202 A.3d 262 (2019). In fact, by virtue of having been transferred to the Connecticut complex litigation docket, this case is uniquely positioned to be resolved fairly and efficiently. *See Doe v. Yale Univ.*, 47 Conn. Supp. 329, 333–34, 791 A.2d 727 (Super. Ct. 2000) ("the central purpose of the Complex Litigation Docket is to assist the Civil Division as a whole to handle its caseload fairly and efficiently.").

At bottom, Ruger advances nothing more than an empty argument that the Court's caseload would be lighter if it were to dismiss this case. But, as Ruger's own authority makes clear, this is not a basis for dismissal. *See Everbank Com. Fin., Inc. v. Row Equip., Inc.*, No. CV166030117S, 2017 WL 3880504, *7 (Conn. Super. Ct. July 20, 2017) ("while a new case will doubtless add to the congestion of the courts . . . the burden of hearing one more case is not a sufficiently persuasive reason to forestall the plaintiff from pursuing the action in the forum of their choice").

B. The Applicable Law Does Not Warrant Dismissal

A court's familiarity with applicable law is one consideration in a *forum non conveniens* analysis, but "considerations arising out of conflicts of law are not dispositive." *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 512. A conflicts of law analysis calls for a "searching case-by-case

contextual inquiry into the significance of the interests that the law of competing jurisdictions may assert in particular controversies." *O'Connor v. O'Connor*, 201 Conn. 632, 658, 519 A.2d 13 (1986). A conflicts of law question is not ripe for decision prior to development of the factual record, and Ruger devotes only one sentence to the potential conflicts of law issues in this case, claiming that "it is ***likely*** that Colorado law will apply to both Plaintiffs' liability and wrongful death damages claims." Ruger Br. at 16 (emphasis added). This is insufficient to support a finding that this Court is unfamiliar with the applicable law in this case. While Plaintiff disputes that Colorado law applies to its claims, even if it did, that would not necessitate dismissal. *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 512 ("[T]he mere fact that the court is called upon to determine and apply foreign law does not present a legal problem of the sort which would justify the dismissal of a case otherwise properly before [it].") (quoting *Hoffman v. Goberman*, 420 F.2d 423, 427 (3d Cir.1970)). In fact, "Connecticut courts are quite capable of applying foreign law when required to do so." *Id.*

C. Local Interests Support Adjudication in Connecticut

Ruger argues that "Colorado has a significantly greater interest in this litigation than Connecticut," (Ruger Br. at 16), but understates Connecticut's interest in this litigation. Connecticut's Constitution establishes a strong policy favoring open access to Connecticut's courts. *See* Conn. Const. art. I, § 10 (Connecticut "courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."). Indeed, the court in *Baylis v. Cycling Sports Grp., Inc.* acknowledged this policy, stating that Connecticut's "constitutional imperative relating to open courts and access to the judicial system" acts as a "counterbalance"

weighing against dismissal of an action brought by "a non-resident injured in an out-of-state accident." No. FSTCV196044429S, 2021 WL 5112617, *6 (Conn. Super. Ct. October 13, 2021). Ruger also fails to acknowledge Connecticut's policy interest in regulating businesses that are headquartered in Connecticut. Plaintiff alleges that Ruger engaged in unfair and deceptive trade practices ***in Connecticut*** that resulted in the death of Suzanne Fountain and seeks to hold Ruger accountable for this misconduct under the Connecticut Unfair Trade Practices Act ("CUTPA"). Am. Compl. ¶¶ 110–118. The fact that Ms. Fountain's death occurred in Colorado does not undermine Connecticut's interest in ensuring that the doors to Connecticut courts remain available to regulate Connecticut businesses pursuant to Connecticut laws. *See Country Club Assocs. v. Shaw's Supermarkets, Inc.*, 643 F. Supp. 2d 243, 253 (D. Conn. 2009) ("Connecticut has an interest in regulating unfair trade practices undertaken from the state by a business domiciled in the state, even where the effects of those practices may have their primary impact out of state."). In fact, the Connecticut Supreme Court has made clear that "Connecticut continues to have a responsibility to those foreign plaintiffs who properly invoke the jurisdiction of this forum, especially in the somewhat unusual situation where it is the forum resident who seeks dismissal." *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 502 (cleaned up). Thus, Connecticut jurors cannot be said to have "no relation" to a case involving a Connecticut business that engages in misconduct in Connecticut. "Holding a trial in view" of such interested Connecticut residents and deciding the dispute locally are important policy considerations, which the Court should not ignore. *See Durkin v. Intevac, Inc.*, supra, 258 Conn. 462.[14]

[14] The cases relied on by Ruger are distinguishable. *Melgares v. Sikorsky Aircraft Corp*., 613 F. Supp. 2d 231 (D. Conn. 2009); *DeCicco v. Dynata*, *LLC*, No. X06-UWY-CV-20-6052136-S, 2022 WL 6389300 (Conn. Super. Ct. September 12, 2022), *aff'd* 225 Conn. App. 725 (2024). In both cases, unlike here, the alternative forum was a foreign country (Spain and the Philippines,

III. The Court Need Not Consider Whether Plaintiff's Claims, If Dismissed, Can Be Reinstated in Colorado

As set forth above, deference to Plaintiff's choice of forum as well as the private and public interests weigh against dismissal on the basis of *forum non conveniens*. Thus, this Court need not reach the question of whether Plaintiff will be unduly prejudiced by reinstatement in Colorado. *See Durkin v. Intevac, Inc.*, supra, 258 Conn. 466 (courts only reach this factor "***if*** the [other] public factors tip the balance in favor of trying the case in the foreign forum") (emphasis added); *see also Head USA, Inc. v. Am. Sports Winter & Outdoor Am.*, No. FSTCV126015337S, 2013 WL 1493032, *6 (Conn. Super. Ct. March 22, 2013) (further consideration of *Durkin* factors foreclosed by presumption in favor of plaintiff's initial choice of forum and defendant's failure to satisfy second *Durkin* factor).

Should the court undertake this analysis, Plaintiff agrees with Ruger that it must "accept service of process in Colorado," "stipulate, for purpose of this case, that it is subject to personal jurisdiction in Colorado," and "stipulate that it will not assert statute of limitations defenses in Colorado that are not available to Ruger in Connecticut." Ruger Br at 18. *See, e.g.*, *Piper Aircraft Co. v. Reyno*, supra, 454 U.S. 242 (defendants agreed "to waive any statute of limitations defense that might be available"); *DeCicco v. Dynata*, *LLC*, supra, 2022 WL 6389300, *4 ("defendants have agreed to waive any statute of limitations defense allowed by the Philippines"); *Vargas v. Gen. Elec. Co.*, No. X08CV085007137S, 2010 WL 2196666, *30 (Conn. Super. Ct. April 30, 2010) (ordering that defendant "waive any statute of limitations or laches defense that may arise").

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respectively), from which it would have been much more difficult and time consuming to obtain evidence and testimony than another U.S. state, like Colorado. Moreover, unlike those cases, Plaintiff's claims are centered on Ruger's wrongful conduct in Connecticut—and the United States broadly—not Colorado specifically, which is only the location of the Plaintiff's injury.

Plaintiff further submits that this proposed waiver of statute of limitations defenses must include those that have already been necessarily rejected by this Court. Specifically, Ruger objected to Plaintiff's Amended Complaint on the sole ground that it raised new causes of action that do not relate back and are thus time-barred. *See* Ruger Obj. to Am. Compl. [Entry No. 129.00] at 6–12. This Court overruled Ruger's objection, thereby necessarily deciding that the Amended Complaint relates back to the Initial Complaint and is not time-barred. *See* Entry No. 129.20; *Briere v. Greater Hartford Orthopedic Group, P.C.*, 325 Conn. 198, 206 n.8, 157 A.3d 70 (2017) ("If the statute of limitations has expired and an amended pleading does not relate back to the earlier pleading, then the trial court has no discretion to allow an amendment."). Thus, Ruger can no longer assert a statute of limitations defense based on the relation back doctrine in Connecticut. In this event this case is reinstated in Colorado, Ruger should not be permitted to do so in that forum either. Finally, in the event this Court grants Ruger's motion, it should include a "return jurisdiction" provision to ensure that Plaintiff can "return to this [C]ourt and reactivate this case if the alternate forum" finds "that it does not have jurisdiction." *Vargas v. General Electric Co.*, 2010 WL 2196666, *29.

CONCLUSION

Ruger has not come even close to meeting the high burden of showing "the balance is strongly in favor of the defendant." *Picketts v. Intern. Playtex, Inc.*, supra, 215 Conn. 500. Accordingly, and for the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant's motion to dismiss based on *forum non conveniens*.

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CERTIFICATION

I certify that a copy of the above document was mailed or delivered electronically or non-electronically on the 19th day of July, 2024, to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

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