

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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FRAGRANCE HARRIS STANFIELD; YAHNIA BROWN-MCREYNOLDS; TIARA JOHNSON; SHONNELL HARRIS-TEAGUE; ROSE MARIE WYSOCKI; CURT BAKER; DENNISJANEE BROWN; DANA MOORE; SCHACANA GETER; SHAMIKA MCCOY; RAZZ'ANI MILES; PATRICK PATTERSON; MERCEDES WRIGHT; QUANDRELL PATTERSON; VON HARMON; 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,

Plaintiffs,

-against-

MEAN LLC; VINTAGE FIREARMS, LLC; RMA ARMAMENT, INC.; ALPHABET, INC.; GOOGLE, LLC; YOUTUBE, LLC; REDDIT, LLC; PAUL GENDRON; and PAMELA GENDRON,

Defendants.
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Index No.: 810317/2023

Hon. Paula L. Feroletto

Oral Argument Requested

**AFFIRMATION OF
PETER V. MALFA IN SUPPORT
OF DEFENDANT MEAN L.L.C.'S
MOTION TO DISMISS THE
COMPLAINT PURSUANT TO
THE PROTECTION OF LAWFUL
COMMERCE IN ARMS ACT AND
C.P.L.R. §§ 3211(a)(3), 3211(a)(7) &
3211(a)(8)**

Peter V. Malfa, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true to the best of his knowledge under penalties of perjury:

1. I am a partner at Renzulli Law Firm, LLP, attorneys for defendant MEAN L.L.C. (“Mean” or “Defendant”), and I am familiar with the facts and circumstances of this matter based upon a review of the file maintained by this office.

2. I respectfully submit this Affirmation in support of Mean’s Motion to Dismiss Plaintiffs’ Amended Complaint Pursuant to the Protection of Lawful Commerce in Arms Act, 15

U.S.C. §§ 7901-7903 (“PLCAA”) and C.P.L.R. §§ 3211(a)(3), 3211(a)(7), and 3211(a)(8).

3. This action was commenced on August 15, 2023, by the filing of a Summons and Complaint (NYSCEF Doc. ## 1 and 2). Thereafter, on September 14, 2023, plaintiffs filed an Amended Complaint (NYSCEF Doc. # 3). A true and correct copy of the Amended Complaint is attached as **Exhibit 1**.

4. Issue was joined by defendants Paul Gendron and Pamela Gendron (collectively referred to as the “Gendrons”) on October 18, 2023, by the filing of an Answer in which they raised cross-claims against co-defendants for contribution (NYSCEF Doc. # 29). A true and correct copy of the Gendrons’ Answer is attached as **Exhibit 2**.

5. Issue was joined by defendant RMA Armament, Inc. on November 8, 2023, by the filing of an Answer in which it raised cross-claims against co-defendants for contribution and indemnification (NYSCEF Doc. # 33). A true and correct copy of the RMA Armament’s Answer is attached as **Exhibit 3**.

6. No other defendants have joined issue through an answer.

Relevant Factual Background

7. On May 14, 2022, ten people were murdered and others wounded through the intentional and criminal acts of an 18-year-old (“shooter”).¹ *See* Ex. 1, Compl. ¶¶ 1, 2, 196-99.

8. The shooter carried out this heinous act with a semiautomatic rifle, designated as a Bushmaster XM15. *See id.* at ¶¶ 163-64, 194.

9. Defendant Mean is a federally licensed firearms manufacturer of custom products

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

relating to firearms based in Georgia. *See id.* ¶¶ 93-94; *see also* the ATF’s FFLeZCheck² result for MEAN L.L.C. A true and correct copy of the ATF’s FFLeZCheck result for MEAN L.L.C., dated August 4, 2023, is attached as **Exhibit 4**.

10. Many modern firearms – including handguns, rifles, carbines, shotguns, etc. – include a magazine for storing ammunition. Magazines may be integral/fixed to the firearm or may be detachable.

11. Mean manufactures and sells a component part for semiautomatic AR-type³ rifles called the “MA Lock.” The MA Lock is designed to bring firearms into compliance with states that have certain laws related to rifle and magazine features. *See Ex. 1, Compl.* ¶¶ 94, 145.

12. This modification would typically be done to comply with certain states’ so-called “assault weapons” laws restricting certain characteristics on semiautomatic rifles with the ability to accept detachable magazines. *See id.*

13. A “magazine release button” for an AR-type rifle is a push button device that temporarily holds an ammunition magazine in the magazine well of the rifle’s lower receiver.

14. The MA Lock permanently replaces the magazine release button in the rifle. *See id.* ¶¶ 166-67, 204, 187(2), 191(2)⁴ (including footnotes); *see also* Mean’s MA Lock Installation Instructions, a true and correct copy of which is attached as **Exhibit 5**.

15. When the MA Lock is installed replacing the magazine release button, it permanently fixes the magazine to the rifle and prevents it from being removed during normal

² <https://fflezcheck.atf.gov/FFLEzCheck/>

³ “AR” stands for “ArmaLite rifle.” ArmaLite was the company that originally developed the rifle in the 1950s. *See, e.g.,* <https://www.cga.ct.gov/asafcrconnecticut/tmy/0128/Brian%20Harte%201.pdf>.

⁴ Starting on Page 48 of the Amended Complaint, the numbered paragraphs jump from 206 to 187. Thus, when the same paragraph number appears twice in the Amended Complaint, “(2)” will follow the paragraph number to designate it as the second time the same number is used.

operation and use. *See id.*; *see also* Ex. 5, MA Lock Installation Instructions.

16. The MA Lock is installed by removing all components of the magazine release button except the magazine catch, and replacing it with the MA Sleeve. *See* Ex. 5, Installation Instructions. Then, after engaging the magazine in place in the magazine well, the installer continues to turn the head of the lock until it shears off, leaving the lock permanently installed. *Id.* Once installed, the MA Lock can be removed only by disassembling the rifle and drilling out and destroying the bolt shaft that holds the MA Lock assembly together. *Id.*

17. The MA Lock cannot be removed from the rifle without the use of specialized tools, and the MA Lock is destroyed during the removal process and cannot be reused. *See* Ex. 1, Compl. ¶¶ 190(2)-191(2); *see also* Ex. 5, MA Lock Installation Instructions.

18. Mean does not provide any tools or other devices with the MA Lock for installation or removal. *Id.*

19. NY Penal Code § 265.00(22)(a) defines an “assault weapon” as a semi-automatic rifle that has both: “an ability to accept a detachable magazine”; and at least one of the following characteristics:

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

20. A semiautomatic rifle with the ability to accept a detachable magazine is legal in New York so long as it does not have one of the prohibited features listed in Penal Code § 265.00(22)(a).

21. A semiautomatic rifle with one of more of the prohibited characteristics is still legal

in New York so long as it has a fixed magazine. *Id.* § 265.00(22)(g)(ii).

22. The New York State Police’s published guidance to gun owners and licensed firearm dealers regarding Penal Code § 265.00(22)(a) have instructed that modifications can be made to firearms to make them compliant with New York law. *See* Ex. 1, Compl. ¶¶ 201-02, footnote 31 (citing and linking to the November 29, 2016 version of the New York State Police’s website with NY SAFE Act Resources for Gun Owners (<https://web.archive.org/web/20161129092548/https://safeact.ny.gov/gunowners?width=550&height=275&inline=true#rifle>) (last visited Aug. 7, 2023)). *See also* [Verified Complaint](#) in *Patterson v. Meta Platforms, Inc.* (Supreme Court, Erie County, Index No. 805896/2023, NYSCEF Doc. # 1) at ¶ 504; *id.* footnote 221.⁵

23. A true and correct copy of the New York State Police’s website with NY SAFE Act Resources for Gun Owners, dated November 29, 2016, (<https://web.archive.org/web/20161129092548/https://safeact.ny.gov/gunowners?width=550&height=275&inline=true#rifle>; last accessed November 9, 2023) is attached as **Exhibit 6**, and a true and correct copy of the New York State Police’s website with NY SAFE Act Resources for Gun Dealers, dated July 23, 2014, (<https://web.archive.org/web/20140723042249/http://www.governor.ny.gov/nysafeact/gun-dealers>; last accessed November 9, 2023) is attached as **Exhibit 7**.

24. The New York State Police’s published guidance specifically advises gun owners that “[t]he ban on selling assault weapons mainly affects dealers and manufacturers” and that “[n]ewly banned assault weapons may not be sold in New York and *dealers and manufacturers will know what weapons can and cannot be sold.*” Ex. 6 (NYSP Guidance to Gun Owners) at 1.

⁵ *See also* Paragraphs 24-26, *infra*.

(emphasis added); *see also* Ex. 1, Compl. ¶ 121 footnote 24.



25. The New York State Police’s published guidance specifically advises licensed firearm dealers that they “may continue to possess” “guns defined as assault weapons and magazines that can contain more than ten rounds” and “*can also permanently modify these guns and magazines and sell them in state.*” Ex. 7 (NYSP Guidance to Dealers) at 1 (emphasis added).

26. Neither the Penal Code nor any other New York laws or regulations define the terms “detachable magazine,” “fixed magazine,” or “permanently fixed.”

27. Various firearm component parts are available to convert a semiautomatic rifle with one of more of the prohibited features into a rifle that complies with New York law. Examples of such component parts and rifle conversion kits can be found at <https://ddsbranch.com/new-york-state-compliance-parts/>. A true and correct copy of the foregoing link, dated September 1, 2023, is attached as **Exhibit 8**.

28. There are also certain grips specifically designed to comply with New York law, such as the Thorsden stock (<https://www.thordsencustoms.com/frs-15-gen-iii-rifle-a2-stock-kits.html>). A true and correct copy of the foregoing link, dated September 1, 2023, is attached as **Exhibit 9**. A Thorsden stock on a semiautomatic rifle does not in any way change the functionality of the rifle. The shooter could have purchased the subject rifle with a Thorsden stock installed in place of the pistol grip and it would not have been necessary to permanently fix the magazine. Stated differently, in such configuration the same rifle could have been sold without the MA Lock (or any other device that locks the magazine) installed, with a detachable magazine, and the shooter could have used his illegal 30-round capacity magazines just as alleged. Ex. 1, Compl. ¶¶ 203(2)-206(2).

29. The photos below illustrate the difference between two such rifle configurations, which are both legal in New York:

	
<p>DS-15 M4 Style Fixed Magazine (not capable of accepting a detachable magazine)</p>	<p>DS-15 M4 Style "Featureless" (capable of accepting a detachable magazine)</p>

See DS-15 M4 Style Fixed Magazine (<https://www.dark-storm.com/dsi/dsi-fixed-mag-firearms/dark-storm-ds-15-m4-style-fixed-magazine-5.56-rifle-black/>). A true and correct copy of the foregoing link, dated September 1, 2023, is attached as **Exhibit 10**.

See DS-15 M4 Style "Featureless" (<https://www.dark-storm.com/dsi/dsi-featureless-firearms/dark-storm-ds-15-m4-style-featureless-5.56-rifle-black/>). A true and correct copy of the foregoing link, dated September 1, 2023, is attached as **Exhibit 11**.

30. The shooter's Discord Diary in fact confirms that both rifle configurations identified in Paragraph 29 were available to him and legal for him to purchase in New York, and that he simply chose to purchase the subject Bushmaster rifle. See [Discord Diary Entry dated January 14, 2022](#) ("...Then I traveled to Owego to [a non-party firearms dealer] to check out their AR's and such, they had a stag arms fixed mag and a windham weaponry featureless. I decided I was going to buy the one at Vintage Firearms instead, ...").

31. Both of the DS-15 rifles identified in Paragraph 29 shoot the same caliber ammunition, with the same rate of fire, and have the same magazine capacity (10-rounds). See also [Black Rain Ordnance Loves New York, Recoil Web](#) (<https://www.recoilweb.com/video->

[overview-of-the-black-rain-ordnance-new-york-rifle-42549.html](#)) for another example of a New York compliant semiautomatic rifle that is capable of accepting detachable magazines.

32. Prior to the incident, the shooter purchased a used AR-type rifle with an already installed MA Lock permanently affixing a 10-round magazine, thereby making it compliant with New York law. *See* Ex. 1, Compl. ¶¶ 166-70, 172.

33. The shooter also purchased a replacement Anderson Manufacturing lower parts kit for an AR-15 style rifle. *See* [Verified Complaint](#) in *Patterson v. Meta Platforms, Inc.* (Supreme Court, Erie County, Index No. 805896/2023, NYSCEF Doc. # 1) at ¶ 490; *see also* [Complaint](#) in *Salter v. Meta Platforms, Inc.* (Supreme Court, Erie County, Index No. 808604/2023, NYSCEF Doc. # 2) at ¶¶ 306, 362. A “lower parts kit” includes substantially all internal components of the rifle’s fire control system. These component parts include, among others, the trigger, hammer, selector, magazine release button/spring, and bolt catch. *See* <https://andersonmanufacturing.com/stainless-steel-hammer-trigger-lower-parts.html>. A true and correct copy of the foregoing link, dated September 1, 2023, is attached as **Exhibit 12**. The shooter modified his rifle by replacing the MA Lock that he destroyed with a “regular mag[azine] button and spring.” *See* *Patterson* [Verified Complaint](#) ¶¶ 522-24; *Salter* [Complaint](#) ¶ 348.

34. The photographs of the shooter’s rifle on page 24 of the *Patterson* [Verified Complaint](#) and page 32 of the *Salter* [Complaint](#) reveal that it had only one of the seven prohibited characteristics listed in Penal Code § 265.00(22)(a): a “pistol grip that protrudes conspicuously beneath the action of the weapon.”

35. Accordingly, even after removal of the MA Lock, the subject rifle would have still been legal for the shooter to possess in New York if he had simply removed the pistol grip.

Removal of the pistol grip on a standard AR-15 style rifle is accomplished by unscrewing one screw/bolt with a screwdriver.

36. Further, if the shooter had simply replaced the existing stock with a New York compliant stock, which is also accomplished by removing one screw/bolt, his rifle would have been legal to possess in New York, even after removing the MA Lock and replacing it with a magazine release button.

37. As shown in the accompanying Memorandum of Law, dismissal of the plaintiff's claims against Mean is warranted because they are barred by the PLCAA, a federal immunity statute that protects Mean from even having to present a defense to the allegations in the Complaint. Even if the claims against Mean were not barred by the PLCAA, they must still be dismissed because plaintiff lacks standing to assert claims against it for violations of N.Y. General Business Law ("G.B.L.") Sections 349 and 350, and otherwise fails to assert cognizable common law negligence, negligent infliction of emotional distress, negligence *per se* and public nuisance claims and/or violations of G.B.L. Sections 349 and 350. Plaintiff's claims should also be dismissed based on the additional and alternative basis that this Court lacks personal jurisdiction over Mean. Finally, dismissal of the cross-claims asserted by the Gendrons and RMA Armament is warranted for the same reasons.

For the reasons set forth above and in the accompanying Memorandum of Law, defendant MEAN L.L.C. respectfully requests that this Court grant its motion to dismiss, dismiss the claims against it in plaintiff's Complaint in their entirety, dismiss co-defendants' cross-claims for contribution and/or indemnification, and grant such other relief as this Court may deem just and proper.

FURTHER AFFIANT SAYETH NAUGHT

Dated: White Plains, New York
November 9, 2023



Peter V. Malfa, Esq.