STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

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

Plaintiff,

DECISION AND ORDER
Motion # 6
Index No.: 810316/2023

v.

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

Defendants.

HON. PAULA L. FEROLETO, J.S.C.

Argued by: Eric Tirschwell, Attorney for Wayne Jones
Peter V. Malfa, Attorney for MEAN, LLC

DECISION AND ORDER

Defendant Mean, LLC has brought a Motion to Dismiss pursuant to CPLR §§3211(a)(3), (7) and (8) filed on November 9, 2023 (NYSCEF Doc. Nos. 59 to 73). An opposition memorandum of law is at document 82 along with an affidavit and exhibits at documents 79 - 81. A reply memo of law is at document number 93 with a supplemental case *Arnold v Kotek* attached as Exhibit A. (NYSCEF Doc. No. 94). These have all been considered in this decision.

There are five causes of action against Mean LLC (NYSCEF Doc. No. 2) (hereinafter Mean). The primary defense asserted by Mean is that the Protection of Lawful Commerce in Arms Act (PLCAA) applies, requiring dismissal.

Mean also argues that they do not do business in New York State and therefore there is no

jurisdiction pursuant to CPLR §302 and hence the basis for the CPLR §3211(a)(8) motion.

Facts as they relate to Mean LLC

Specific allegations as to Mean LLC are at ¶¶ 16 - 24, 58, 120 -146, and 244 - 289 of the Complaint and for purposes of this motion must be taken as true (NYSCEF Doc. 2).

The plaintiff alleges Payton Gendron, used a Bushmaster XM-15 rifle which he purchased with an installed MA Lock. The "lock" designed, manufactured, and sold by MEAN converts assault weapons that may otherwise be illegal in New York into legal firearms by "locking" a magazine in place, thereby preventing a rifle from accepting a detachable magazine. (This will hereinafter be referred to as the "lock" or MA Lock.) Mean argues this makes the weapon "legal" in New York; plaintiff does not agree that the Lock converts the weapon to a legal weapon under New York law. In New York State no more than ten (10) rounds can be in a magazine and again the magazine must be fixed so detachable magazines can not be used on the weapon. The MA Lock replaces a rifle's magazine release button. A magazine release button is designed to temporarily lock a magazine in place. When the MA Lock is installed in place of the magazine release button, it fixes the magazine to the rifle.

Plaintiff alleges the shooter discovered on social media that he could buy an assault weapon in New York so long as it had a "MEAN Arms Lock installed". Using social media the shooter cited videos on installation and removal of the MA Lock (NYSCEF Doc. 2 ¶¶ 85 -86). He looked for an assault rifle with an MA Lock, finally locating one at Vintage Firearms. The lock removal process was "easy enough" and through either videos or store personnel at Vintage Firearms, the Shooter learned how to remove the MA Lock which he did the same day as he purchased the weapon (NYSCEF Doc. 2 ¶¶ 90 -94).

The MA Lock is designed to hold a magazine with the maximum capacity of ten (10) bullets. The lock was removed by the shooter so the AR-15 could be used with detachable large capacity magazines thereby increasing the firepower and lethality of his attack (NYSCEF Doc. 2 ¶¶ 94 -95).

Plaintiff alleges Mean had actual knowledge the "lock" could be removed from AR-15 rifles, and engaged in deceptive and false advertising. The Mean website stated the lock "could not be removed with a tool" and yet the packaging has printed a four step process for removal. (NYSCEF Doc. 2 ¶¶ 130 - 134).

Protection of Lawful Commerce in Arms Act

Mean argues plaintiff's claims are barred by 15 USC §§7901-03 (PLCAA). This is a federal immunity statute. The stated purposes of the PLCAA is to "prohibit causes of action against manufacturers . . . of firearms or ammunition products … for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended." *Id.* at § 7901(b)(1).

A claim is barred if it is "brought by any person against a manufacturer . . . of a qualified product . . . for damages, punitive damages, injunctive or declaratory relief, or penalties or other relief resulting from the criminal or unlawful misuse of a qualified product by . . . a third party . . ." id. at § 7903(5)(A). Mean is a manufacturer of firearms and other related products. (NYSCEF Doc. No. 64 Ex. 4). Mean claims the MA Lock is a qualified product; and even if the lock is not a qualified product as a manufacturer of firearms PLCAA bars the suit against them as a gun was used in the unlawful act.

The PLCAA defines a "qualified product" as a firearm, ammunition, "or a component

part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce." 15 U.S.C. § 7903(4). Mean argues the MA Lock is a "component part" so the protection of PLCAA applies. It is clearly not a firearm or ammunition.

PLCAA does not define "component part". "Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175-76, (2009). In the absence of any statutory definition, a court's interpretation looks to the plain and common meaning of the word derived from dictionary definitions.

Merriam-Webster's dictionary defines component, when used as an adjective, as "serving or helping to constitute". So the question is whether the MA Lock constitutes a part of a weapon. Part is defined as "one of the often indefinite or unequal subdivisions into which something is or is regarded as divided and which together constitute the whole," or "an essential portion or integral element." If it is not a "component part" is it an accessory defined as "an object or device that is not essential in itself but adds to the beauty, convenience or effectiveness of something else".

In *Sambrano v. Savage Arms, Inc.*, the New Mexico Court of Appeals held that a "cable gun lock," an attachable cord enabling consumers to secure firearms, is an accessory. 2014-NMCA 113, 338 P.3d 103, (N.M. App. 2014). The injuries in *Sambrano* arose from the use of a rifle, manufactured and distributed by Savage, which was sold with an NAD lock. The lock was removed with a "key that was not a designated key for unlocking" the lock and the gun was used to kill the plaintiff's decedent. That the lock was an accessory was not disputed by Savage or the plaintiff. The court dismissed the claim against Savage Arms, Inc. as the rifle was a qualified

product, but found PLCAA did "not preclude Plaintiffs' claims against NAD, the lock distributor." *id.* at 105.

In *Auto-Ordnance Corp. v. United States,* the court found that "sights and compensators" are accessories because "the carbine will fire without the sights or compensator." 822 F.2d 1566, 1570-72 (Fed. Cir. 1987).

No courts have ruled on whether a fixed magazine lock is an essential component part of a firearm or an accessory. Here the gun was manufactured without a lock on it. The lock was added in an attempt to comply with New York state gun laws. This Court finds that the MA Lock is not an integral part of the gun because the lock could be and was removed and the firearm was still able to function. Therefore this court finds the MA Lock is not a "qualified product" and PLCAA does not prevent this personal injury lawsuit.

This court declines to provide the broad immunity suggested by MEAN in which they claim immunity as a manufacturer of qualified products, even though they did not manufacture the gun used in this shooting. "The 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 1129, 1145 (9th Cir. 2009). Here, Plaintiff was harmed when the shooter used a qualified product (AR-15) manufactured by a different entity (Bushmaster); Mean may not step into Bushmaster's shoes for purposes of PLCAA. The protection of PLCAA is not transferable among manufacturers.

Having determined the MA Lock is an accessory and not a "qualified product" this court does not need to reach the question of whether a "predicate exception" allowing an action against a manufacturer or seller of firearms is met in this case for this defendant.

The CPLR 3211(a)(8) motion.

Mean LLC bases their argument on the lack of contacts between this Georgia limited liability company and the State of New York. In reliance on CPLR §302 they argue New York State is not the proper forum for this lawsuit.

Mean has timely asserted a claim that the court does not have personal jurisdiction. They are not a New York corporation and do not have a principal place of business in New York.

A determination must be made as to whether the action is permissible under the long-arm statute (CPLR §302) and also comply with due process. As to whether there is jurisdiction under CPLR §302(a)(1) the court must look to determine whether a defendant conducted sufficient activities within the state; and second, whether a plaintiff's claims have an articulable nexus to a defendant's transactions within the state. *English v Avon Products, Inc.*, 206 AD3d 404, 406 (1st Dept 2022). If specific jurisdiction exists, the Court still must determine whether the exercise of jurisdiction comports with due process. *Williams v Beemiller, Inc.*, 33 NY3d 523, 529 (2019).

Pursuant to CPLR § 302(a)(3)(ii) plaintiff must show: (1) the defendant committed a tortious act outside New York; (2) the cause of action arose from that act; (3) the tortious act caused an injury to a person or property in New York; (4) the defendant expected or should reasonably have expected the act to have consequences in New York; and (5) the defendant derived substantial revenue from interstate or international commerce. *Penguin Group (USA) Inc. v. Am. Buddha*, 16 N.Y.3d 295, 302 (2011); *see also LaMarca v. PakMor Mfg. Co.*, 95 N.Y.2d 210 (2000).

Plaintiff alleges Mean sells "the MEAN MA Lock . . . which at all relevant times it marketed as a device capable of bringing firearms into compliance with New York laws

prohibiting assault weapons... MEAN Arms marketed and sold its product ... to customers in New York .., Its marketing materials targeted New York customers" (NYSCEF Doc. 2 ¶ 17). CPLR 302 (a) (3) (ii) allows personal jurisdiction over a non-domiciliary when, among other things, such party (1) "expects or should reasonably expect the act to have consequences in the state"; and (2) "derives substantial revenue from interstate or international commerce" (CPLR 302 [a] [3] [ii]). Plaintiff details comments and information on the Mean website directed to New York about this specific lock. Plaintiff cites from the Mean website advertising to potential purchasers the MA Lock '[o]nce installed, it cannot be removed with a tool, which satisfies CA and NY state law. We have no issue shipping to customers in CA or NY." (NYSCEF Doc. 2 ¶124).

Mean clearly stated it ships products to New York on its website. Mean should have expected that their MA Lock was being purchased and used in New York State and should its lock fail to act as intended, i.e. be permanent, consequences would follow in New York State. Mean's purposeful sale and marketing of products outside of Georgia to New York residents sufficiently establishes their connection to interstate commerce and their generating revenue from that commerce. As such, Mean is subject to the jurisdiction of this Court. Sufficient facts have been pled under CPLR Section 302(a)(3) for the case to proceed in a New York court.

Proximate Cause

There were many events and actions that took place between the shooter beginning and ending his plan to commit a mass shooting which included criminal acts. The Complaint sets forth in detail the development of the plan culminating in the shootings (NYSCEF Doc. 2). Part of defendant's argument is that the criminal actions of the shooter break the chain of causation

between his removal of the fixed lock and the ensuing shooting.

As a general proposition the issue of proximate cause between the defendant's alleged negligence and the plaintiff's injuries is a question of fact for a jury to determine. See, *Oishei v. Gebura* 221 A.D.3d 1529 (4th Dept.2023). Mean argues the criminal acts of the third party, break any causal connection, and therefore causation can be decided as a matter of law. There are limited situations in which the New York Court of Appeals has found intervening third party acts to break the causal link between parties. These instances are where "only one conclusion may be drawn from the established facts and where the question of legal cause may be decided as a matter of law." *Derdiarian v Felix Contr. Corp*., 51 NY2d 308 at 315 (1980). These exceptions involve independent intervening acts that do not flow from the original alleged negligence. *Id.*

At this juncture of the litigation it is far too early to rule as a matter of law that intervening actions require dismissal on proximate cause. The facts alleged do not show "only one conclusion" that could be made as to the connection between defendant's alleged negligence and the plaintiff's injuries (quoting *Derdiarian* 51 NY2d). The acts of the third party, even though criminal, do not necessarily transform the inquiry into a question of law. (*See Oishei v. Gebura*, 2023 NY Slip Op 05868, 221 A.D.3d 1529 (4th Dept.), holding the intervening causation of a criminal act did not amount to an exception to the general rule of allowing the fact finder to determine proximate cause).

General Business Law §§ 349 and 350

Defendant Mean, LLC has also moved to dismiss causes of action numbered IV and V which allege violations of GBL §§349 and 350. They seek dismissal pursuant to CPLR §§3211(a)(3) and 3211(a) (7) arguing the plaintiff lacks standing to bring the claims and failure to state cognizable legal claims.

The standing argument is based on the plaintiff's claims being "derivative". She was not the purchaser/consumer of the MA lock. General Business Law §349 is a consumer protection statute designed to protect against "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state" (General Business Law § 349 [a]). Though originally intended to be enforced by the Attorney General (see General Business Law § 349 [b]), the statute was amended in 1980 to include a private right of action (L 1980, ch 346). The amendment was intended to afford additional protection for consumers, allowing them to bring suit on their own behalf without relying on the Attorney General for enforcement (see Assembly Mem in Support, Bill Jacket, L 1980, ch 346; see also Mem of Atty Gen, Bill Jacket, L 1980, ch 346 [suggesting the Attorney General must focus on those cases that have a widespread effect and the measure would allow individuals to prosecute remaining actions]). Thus, "any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions."

Defendant cites *Blue Cross v. Philip Morris*, 3 NY3d 200 (2004) wherein the court held that "a third-party payer has no standing to bring an action under General Business Law §349 because its claims are too remote." *Blue Cross* 3 NY3d at 208. This court does not read the case

as broadly as Mean, LLC would like to interpret it. In the same decision the Court of Appeals also stated, "in holding that third-party payers cannot recover derivatively under the General Business Law, we recognize that section 349 is a broad, remedial statute and that the provision creating a private right of action employs expansive language." Id at 207. Unlike the plaintiff health insurance company in Blue Cross seeking recovery for health insurance payments to subscribers impacted by smoking; the plaintiff in this case have direct injuries. GBL §349(h) authorizes "*any person* who has been injured by reason of any violation of this section" to file suit for injunctive and/or monetary relief.

The plaintiff's have sufficiently pled causes of action under the General Business Law.

Public Nuisance Cause of Action

Mean moves to dismiss Count III alleging public nuisance against Mean. The Fourth Department in *Williams v. Beemiller, Inc.*, 103 A.D.3d 1191, (4th Dept. 2013) declined to dismiss a public nuisance cause of action also on a CPLR 3211 motion. The court stated, "the allegations in the complaint are sufficient to state a cause of action for public nuisance." *Id.* at 1192, (citations omitted). Plaintiff sets forth allegations at Paragraphs 266 - 270 of the complaint alleging violations of state laws posing a danger to the general public, and that plaintiff suffered "special injuries to Celestine Chaney." (NYSCEF Doc. No. 2 ¶ 270).

THEREFORE, IT IS HEREBY

ORDERED, Mean, LLC's motion to dismiss is denied in its entirety.

This constitutes the Decision and Order of this court. Submission of an Order by the parties is not necessary. Receipt of notice of the uploading of this Decision and Order by the court to NYSCEF shall not constitute notice of entry.

Signed this 22nd day of February, 2024 at Buffalo, New York.

Hon. Paula L. Feroleto, J.S.C.