STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

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, and 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,

Hon. Paula L. Feroleto
Index No. 810317/2023

-vs

Decision and Order
Motion #6

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

Defendants.

Argued by: Eric Tirschwell, Attorney for Fragrance Harris Stanfield, et al.
Peter V. Malfa, Attorney for MEAN, LLC

Defendant Mean, LLC (hereinafter Mean) has brought a Motion to Dismiss pursuant to CPLR §§3211(a)(3), (7) and (8) filed on November 9, 2023 (NYSCEF Doc. Nos. 61 to 75). Opposition papers are at documents 81 to 84. Also considered were documents in the companion action of *Jones v. MEAN LLC, et. al.* (Index no. 810316/2023) submitted by attorney Eric Tirschwell, co-counsel for plaintiffs in both actions. A reply memo of law and exhibit are at document numbers 95 and 96, supplements by letter to the court are at document numbers 103

and 104. These have all been considered in this decision.

There are six causes of action against Mean (Amended Complaint, Doc. 3 counts I - VI). 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 pages 22- 23, 46 - 54 and 80 - 89 of the Amended Complaint and for purposes of this motion must be taken as true (NYSCEF Doc. 3). (The Amended Complaint has two sets of paragraphs numbered 187 to 206 with the duplicate paragraphs on pages 48 to 54, so to avoid confusion this decision references primarily page numbers since the duplicate paragraph numbers reference claims against Mean).

The plaintiffs allege 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; that is not conceded by the plaintiffs. Plaintiffs claim the advertising was deceptive and the gun was not a legal weapon at the time of its sale.

In New York State no more than 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.

The MA Lock packaging comes with a printed four step process on the back detailing how the "lock" can be removed (NYSCEF Doc. 3 pg. 50). The plaintiffs claim the lock was easily removable; Mean provided instructions on how to remove the lock; and the shooter followed those instructions.

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 high capacity magazines (HCMs) holding more than the New York State maximum capacity. He was able to use "at least two large-capacity magazines and was able to fire approximately 60 rounds in rapid succession." (NYSCEF Doc. 3 pg.54 ¶ 207).

Protection of Lawful Commerce in Arms Act

Mean LLC argues plaintiffs' 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.* § 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. 66 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 *Savage* 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 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.,* 565F.3d 1129, 1145 (9th Cir. 2009). Here, Plaintiffs were 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.

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).

Plaintiffs allege Mean sells " the MEAN MA Lock, to customers in New York, through its website and third-party sellers. Its marketing materials targeted New York customers, among others" and "purposefully availed itself of New York law by manufacturing and selling products, including the MEAN Arms Lock, that are . . . sold in this State." (NYSCEF Doc. 3 ¶¶ 94 and 96.) 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]). Plaintiffs have detailed comments and information on the Mean website directed to New York and as to this specific lock. Plaintiffs set forth the following language from a Mean post that stated, "Once 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. 3 pg. 48 citing MEAN Arms FAQS from May 20, 2022).

On or before May 10, 2023, Mean changed its website to state that it would no longer ship the MA Lock to New York. As stated in its own FAQ section of a post Mean was knowingly shipping to New York prior to May 10, 2023. Given their advertisements and shipping to New York Mean was aware the 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.

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. 3). 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 defendants' alleged negligence and the plaintiffs' 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 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 actions following the removal of the lock break the chain of causation. The facts alleged do not show "only one conclusion" that could be made as to the connection between defendant's alleged negligence and the plaintiffs' injuries (quoting *Derdiarian* 51 NY2d). The acts of a third party, even though criminal, do not necessarily transform the inquiry into a question of law. (*See Oishei*

v. Gebura, 221 A.D.3d 1529 (4th Dept. 2023), holding the intervening 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 has also moved to dismiss causes of action which allege violations of GBL §§349 and 350. They seek dismissal pursuant to CPLR §§3211(a)(3) and 3211(a) (7) arguing the plaintiffs lack standing to bring the claims and failure to state cognizable legal claims.

The standing argument is based on the plaintiffs claims being "derivative". They were not the purchasers/consumers 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* 3NY3d at 208. This court does not read the case as broadly as Mean 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.". *Blue Cross v. Philip Morris*, id at 207. Unlike the plaintiff health insurance company in Blue Cross seeking recovery for health insurance payments to subscribers impacted by smoking; the plaintiffs 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 VI of the complaint alleging public nuisance. 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). Plaintiffs here set forth allegations at Paragraphs 353 - 358 of their complaint alleging violations of state laws posing a danger to the general public, and that plaintiffs suffered "special injuries distinct from the general public" (NYSCEF Doc. 3 ¶ ¶ 353 - 358). Plaintiffs have sufficiently pled a cause of action for public nuisance.

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 23rd day of February, 2024 at Buffalo, New York.

Hon. Paula L. Feroleto