DOCKET NO. FBT-CV-15-6048103-S	:	OFFICE OF THE CLERK SUPERIOR COURT
DONNA L. SOTO, ADMINISTRATRIX (ESTATE OF VICTORIA L. SOTO), ET AL.	:	JUDICIAL DISTRICT 2016 OCT 14 PM 2:54
V.	:	JUDICIAL DISTRICT OF FAIRFIELD AT BRIDGEPORT STATE OF CONNECTICUT AT BRIDGEPORT
BUSHMASTER FIREARMS INTERNATIONAL, LLC, ET AL.	:	OCTOBER 14, 2016

MEMORANDUM OF DECISION
RE: MOTIONS TO STRIKE #148, 150, 151

I
BACKGROUND

On January 26, 2015, the plaintiffs, William D. Sherlach, Natalie Hammond, and the administrators or executors[1] of the estates of Victoria L. Soto, Dylan C. Hockley, Mary J. Sherlach, Noah S. Pozner, Lauren G. Rousseau, Benjamin A. Wheeler, Jesse McCord Lewis, Daniel G. Barden, and Rachel M. D'Avino, filed this action for damages and injunctive relief against the defendants, Bushmaster Firearms International, LLC, Freedom Group, Inc., Bushmaster Firearms, Bushmaster Firearms, Inc., Bushmaster Holdings, LLC, Remington Arms Co., LLC, and Remington Outdoor Company (collectively, Remington defendants); Camfour, Inc. and Camfour Holding, LLP (collectively, Camfour defendants); and Riverview Sales, Inc. and David LaGuercia (collectively, Riverview defendants). On January 15, 2015,[2] the

[1] The names of the administrators and executors of the estates are as follows: Donna L. Soto, administratrix of the estate of Victoria L. Soto; Ian and Nicole Hockley, co-administrators of the estate of Dylan C. Hockley; William D. Sherlach, executor of the estate of Mary J. Sherlach; Leonard Pozner, administrator of the estate of Noah S. Pozner; Gilles J. Rousseau, administrator of the estate of Lauren G. Rousseau; David C. Wheeler, administrator of the estate of Benjamin A. Wheeler; Neil Heslin and Scarlett Lewis, co-administrators of the estate of Jesse McCord Lewis; Mark and Jacqueline Barden, co-administrators of the estate of Daniel G. Barden; and Mary D'Avino, administratrix of the estate of Rachel M. D'Avino.

[2] While this action was not filed in this court until January 26, 2015, the action was, in fact, commenced by service of process on the defendants at various dates in December of 2014 and January of 2015. Accordingly, the Remington defendants were able to file a motion for

Sent to all counsel of record and the R.J.D. 10/14/16

Remington defendants, with the consent of the Camfour and Riverview defendants, removed the case to the United States District Court for the District of Connecticut on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332.[3] The plaintiffs filed a motion to remand, and the District Court, *Chatigny, J.*, ultimately agreed with the plaintiffs, and ordered the case to be remanded to this court on October 9, 2015.

In their thirty-three count amended complaint dated October 29, 2015, the plaintiffs allege the following facts. On the morning of December 14, 2012, Adam Lanza entered Sandy Hook Elementary School, located in Newtown, Connecticut, carrying a Bushmaster AR-15 rifle, model XM15-E2S. Lanza then used the weapon, which was designed for military use and engineered to deliver maximum carnage with extreme efficiency, to kill twenty-six people, including the plaintiffs' decedents, and to wound others, including Natalie Hammond, in less than five minutes. The weapon had been bought by Lanza's mother to give to and/or share with her son.

The plaintiffs further allege that the defendants, all makers and sellers of the Bushmaster XM15-E2S, know that civilians are unfit to operate AR-15s, and yet continue selling the Bushmaster XM15-E2S to the civilian market, disregarding the unreasonable risks that the weapon poses "outside of specialized, highly regulated institutions like the armed forces and law enforcement," in an effort to continue profiting from the weapon's sale. In addition, the defendants knew, or should have known, the following: the sale of assault rifles like the XM15-E2S to the civilian market posed an unreasonable and egregious risk of physical injury to others,

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removal to federal court on January 15, 2015, before the filing of the action in this court actually occurred.

[3] Title 28 of the United States Code, § 1332, provides in relevant part: "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—(1) Citizens of different States . . . ."

as a mass casualty event was within the scope of the risk created both by the Remington defendants' marketing and by the defendants' sale of the XM15-E2S to the civilian market; there was an unreasonably high risk that the XM15-E2S would be used in a mass shooting to inflict maximum casualties before law enforcement was able to intervene; schools are particularly vulnerable to—and frequently targets of—mass shootings; the utility of the XM15-E2S for hunting, sporting, or self-defense was negligible in comparison to the risk that the weapon would be used in its assaultive capacity; and the XM15-E2S, when used in its assaultive capacity, would be likely to inflict multiple casualties and serious injury.

The plaintiffs also allege that, despite this knowledge, the Remington defendants "unethically, oppressively, immorally, and unscrupulously marketed and promoted the assaultive qualities and military uses of AR-15s to civilian purchasers," and all of the defendants "unethically, oppressively, immorally, and unscrupulously promoted the sale of AR-15s with the expectation and intent that possession and control of these weapons would be shared with and/or transferred to unscreened civilian users following purchase, including family members." Moreover, the Remington defendants knew, or should have known, that the Camfour defendants' use of the product—supplying it to dealers who sell directly to civilians—involved an unreasonable risk of physical injury to others, while the Camfour defendants knew, or should have known, that the Riverview defendants' use of the product—supplying it to the civilian population—involved an unreasonable risk of physical injury to others.[4]

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[4] The amended complaint also expressly alleges that the Camfour defendants and the Riverview defendants are qualified product sellers within the meaning of 15 U.S.C. § 7903 (6). Section 7903 (6) of title 15 of the United States Code provides in relevant part: "The term 'seller' means, with respect to a qualified product—(A) an importer . . . who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code . . . ; (B) a dealer . . . who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code . .

Counts one through nine and thirteen through thirty of the amended complaint sound in wrongful death[5] against the three groups of defendants on behalf of the plaintiffs' decedents. These counts allege that the defendants' conduct was a substantial factor resulting in the injuries, suffering, and death of the plaintiffs' decedents in that the decedents suffered terror, ante-mortem pain and suffering, destruction of the ability to enjoy life's activities, destruction of earning capacity, and death. These counts also allege that as a result of the injuries and deaths of the plaintiffs' decedents, their estates incurred funeral expenses to their financial loss. Counts ten through twelve sound in loss of consortium against the three groups of defendants by William Sherlach, the husband of Mary J. Sherlach. Finally, counts thirty-one through thirty-three are brought against the three groups of defendants by Natalie Hammond, alleging that the defendants' conduct was a substantial factor resulting in the injuries of Hammond in that she suffered terror; pain and suffering; severe, permanent, and painful injuries to her left calf, foot, thigh, and hand; destruction of the ability to enjoy life's activities; and destruction of earning capacity. Hammond also alleges she incurred medical expenses to her financial loss. Within each of these thirty-three counts, the plaintiffs allege that the defendants' conduct constituted a knowing violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.

. ; or (C) a person engaged in the business of selling ammunition . . . in interstate or foreign commerce at the wholesale or retail level."

[5] The wrongful death claims are brought pursuant to General Statutes § 52-555, which provides in relevant part: "(a) In any action surviving to or brought by an executor or administrator for injuries resulting in death, whether instantaneous or otherwise, such executor or administrator may recover from the party legally at fault for such injuries just damages together with the cost of reasonably necessary medical, hospital and nursing services, and including funeral expenses, provided no action shall be brought to recover such damages and disbursements but within two years from the date of death, and except that no such action may be brought more than five years from the date of the act or omission complained of."

On April 22, 2016, the Remington defendants,[6] Camfour defendants,[7] and Riverview defendants[8] each filed a motion to strike the amended complaint for failure to state legally sufficient claims upon which relief may be granted, on the grounds that the defendants are immune from the claims by virtue of the Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. § 7901 et seq. (2012),[9] because they have not sufficiently alleged causes of action that are permitted under any exception to immunity set forth in PLCAA, namely, the negligent entrustment exception, 15 U.S.C. § 7903 (5) (A) (ii),[10] and/or the predicate exception, 15 U.S.C. § 7903 (5) (A) (iii).[11] On May 27, 2016, the plaintiffs filed an omnibus objection to the

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[6] The Remington defendants specifically move to strike counts one, four, seven, ten, thirteen, sixteen, nineteen, twenty-two, twenty-five, twenty-eight, and thirty-one. These particular counts constitute the entirety of the allegations against the Remington defendants contained in the amended complaint.

[7] The Camfour defendants specifically move to strike counts two, five, eight, eleven, fourteen, seventeen, twenty, twenty-three, twenty-six, twenty-nine, and thirty-two. These particular counts constitute the entirety of the allegations against the Camfour defendants contained in the amended complaint.

[8] The Riverview defendants move to strike counts three, six, nine, twelve, fifteen, eighteen, twenty-one, twenty-four, twenty-seven, thirty, and thirty-three. These particular counts constitute the entirety of the allegations against the Riverview defendants contained in the amended complaint.

[9] Title 15 of the United States Code, § 7902 (a), provides that "[a] qualified civil liability action may not be brought in any Federal or State court." A "qualified civil liability action" is "a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party . . . ." 15 U.S.C. § 7903 (5) (A) (2012).

[10] Title 15 of the United States Code, § 7903 (5) (A) (ii), provides: "The term 'qualified civil liability action' . . . shall not include . . . an action brought against a seller for negligent entrustment or negligence per se . . . ."

[11] Title 15 of the United States Code, § 7903 (5) (A) (iii), provides in relevant part: "The term 'qualified civil liability action' . . . shall not include . . . an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale

defendants' motions to strike, and on June 10, 2016, the Remington and Camfour defendants filed reply memoranda. Oral argument on the motions was heard on June 20, 2016, at which time the court reserved judgment.

II
DISCUSSION

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). A motion to strike "requires no factual findings by the trial court . . . . [The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Moreover, [the court notes] that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Coppola Construction Co.* v. *Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013).

A
Negligent Entrustment Exception to PLCAA

Pursuant to PLCAA, and subject to certain exceptions enumerated therein, "causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful

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or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought . . . ."

misuse of firearm products or ammunition products by others when the product functioned as designed and intended," are prohibited.[12] 15 U.S.C. § 7901 (b) (1) and § 7902 (a) (2012). One such exception, which is set forth in 15 U.S.C. § 7903 (5) (A) (ii), permits "an action brought against a seller for negligent entrustment." PLCAA specifically defines "negligent entrustment" as "the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others." 15 U.S.C. § 7903 (5) (B) (2012). "[A]n action brought against a seller for negligent entrustment"; 15 U.S.C. § 7903 (5) (A) (ii) (2012); is exempt from the PLCAA definition of a qualified, and therefore prohibited, civil liability action. 15 U.S.C. §§ 7902, 7903 (2012).

The parties disagree as to which law the plaintiffs' negligent entrustment claims must comply with in order to satisfy PLCAA's negligent entrustment exception – Connecticut state law on negligent entrustment, the statutory definition set forth in PLCAA, or both. In their memorandum of law, the Remington defendants contend that "[a] viable state law action that fits within an exception is not prohibited under the PLCAA" and recognize that "relevant state law must be examined to determine whether a plaintiff has pleaded a cause of action that fits within a narrowly defined exception to immunity." The arguments in their brief, however, pertain solely to the negligent entrustment exception set forth in PLCAA. The Camfour defendants aver that the plaintiffs have failed to allege legally sufficient negligent entrustment claims pursuant to both Connecticut law and PLCAA. Finally, the Riverview defendants adopt the other defendants' contentions, but they argue exclusively under PLCAA. At oral argument, counsel for the

[12] The parties do not dispute that, unless one of the exceptions enumerated in PLCAA applies, the plaintiffs' action against the defendants would be barred by PLCAA's immunity provisions.

plaintiffs contended that "the sufficiency of [their] claim[s] should be about Connecticut law and it shouldn't be about PLCAA."

There is no appellate authority on this issue. In one decision, the Superior Court found that "[The PLCAA definition of negligent entrustment] is consistent with Connecticut law on negligent entrustment . . . ." *Gilland* v. *Sportsmen's Outpost, Inc.*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X04-CV-09-5032765-S (May 26, 2011, *Shapiro, J.*), appeal dismissed, Appellate Court, Docket No. AC 33926 (November 17, 2011), cert. denied, 303 Conn. 938, 36 A.3d 696 (2012). Nonetheless, because "[i]t is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions"; (internal quotation marks omitted) *Lopa* v. *Brinker International, Inc.*, 296 Conn. 426, 433, 994 A.2d 1265 (2010); the court must presume "that there is a purpose behind every sentence, clause, or phrase used in [PLCAA] . . . that no part of [the] statute is superfluous . . . [and that] [e]very word and phrase . . . [has] meaning . . . ." (Internal quotation marks omitted.) Id.

Although PLCAA explicitly preserves claims that fall within its enumerated exceptions, such as negligent entrustment actions, it does not create them. 15 U.S.C. § 7903 (5) (A) (ii) and (5) (C) (2012). PLCAA explicitly provides that "no provision of this chapter shall be construed to create a public or private cause of action or remedy." 15 U.S.C. § 7903 (5) (C) (2012). By its own terms, therefore, PLCAA cannot be read as creating a cause of action. Accordingly, the court concludes that for a plaintiff's negligent entrustment claim to be permitted under PLCAA, it must arise under state law. See *Phillips* v. *Lucky Gunner, LLC*, 84 F. Supp. 3d 1216 (2015) ("Although the PLCAA identifies negligent entrustment as an exception to immunity, it does not create the cause of action. . . . Accordingly, the claim arises under state law."). Nonetheless,

because Congress specifically included a definition of "negligent entrustment" in PLCAA, the court presumes that the definition serves a purpose and carries a meaning beyond merely referencing state common law claims. Therefore, any state law negligent entrustment claim must also satisfy the PLCAA definition of "negligent entrustment." See, e.g., *Delana* v. *CED Sales, Inc.*, 486 S.W.3d 316 (Mo. 2016), reh'g denied (May 24, 2016) ("a state-law claim may continue to be asserted . . . if it falls within the definition of a 'negligent entrustment' claim provided in the PLCAA"). Accordingly, the court will examine whether the plaintiffs' allegations meet the requirements for negligent entrustment claims under both Connecticut common law and the statutory definition set forth in PLCAA.

1

Negligent Entrustment Pursuant to Connecticut Law

All three defendant groups argue, with varying levels of specificity, that the plaintiffs have not alleged legally sufficient negligent entrustment claims pursuant to Connecticut law. The Camfour defendants, whose state law argument is most fully developed, contend that their entrustees, the Riverview defendants: (1) are not alleged to have used the firearm in a way that created an unreasonable risk; (2) are not alleged to have been incompetent; and (3) did not directly cause the harm. The plaintiffs counter that the sufficiency of their claims depends on the element of foreseeability and urge the court to adopt their argument that the defendants foresaw, or should have foreseen, that entrustment of an AR-15 to civilians, as a class, in a civilian environment created an unreasonable risk of harm, including the risk that the firearm would be used in a mass shooting in a school setting. In their reply memorandum, the Camfour defendants argue that "civilians" cannot constitute a "class of persons" for purposes of negligent entrustment.

Negligent entrustment has existed as a cognizable tort in Connecticut for at least one hundred years. In 1916, without using the term "negligent entrustment," our Supreme Court addressed whether parents were negligent for putting a shotgun in the hands of their nearly sixteen year old son. *Wood* v. *O'Neil*, 90 Conn. 497, 498-500, 97 A. 753 (1916). Although the opinion does not set forth the parameters of this cause of action, it is notable that the court concluded that the claim must fail, in part, due to the lack of evidence that the parents had knowledge that their son would misuse the shotgun. Four years later, that court considered whether a "defendant was negligent in entrusting to . . . 'an unlicensed, reckless young man, a loaded revolver, in violation of the statute laws of the state, when it knew, or by the exercise of reasonable care might have known, that he was an unfit and reckless person and liable to fall into a passion, and in that it did not select a proper and fit person for the duties assigned him' . . . ." *Turner* v. *American District Telegraph & Messenger Co.*, 94 Conn. 707, 711-12, 110 A. 540 (1920). In that case, the Supreme Court noted the necessity of establishing the entrustor's knowledge of the entrustee's incompetence. It explained: "Another condition stated is that the defendant, when it sent [the shooter] forth with a revolver, knew or ought to have known that he was a reckless person, liable to fall into a passion and unfit to be entrusted with a deadly weapon upon such an occasion. We have examined with care the testimony and fail to find even a scintilla of evidence that the defendant had or ought to have had knowledge or even suspicion that [the shooter] possessed any of the traits rightly or wrongly attributed to him by the plaintiff. Without this vitally important fact the plaintiff's claim falls to the ground . . . ." Id., 716. In other words, the court held that the plaintiff's claim could not succeed without evidence that the defendant had, or should have had, knowledge or suspicion about the entrustee's traits.

Since *Turner*, courts have discussed negligent entrustment mostly in the automobile context. *Lewis* v. *Burke*, Superior Court, judicial district of Hartford, Docket No. CV-10-6011976-S (November 28, 2014, *Elgo, J.*); but see *Gilland* v. *Sportsmen's Outpost, Inc.*, supra, Superior Court, Docket No. X04–CV–09–5032765–S (negligent entrustment of a handgun and ammunition); *Kalina* v. *Kmart Corp.*, Superior Court, judicial district of Fairfield, Docket No. CV–90–269920–S (August 5, 1993, *Lager, J.*) (negligent entrustment of a rifle and ammunition). "The Connecticut Supreme Court first recognized a cause of action for negligent entrustment of an automobile in *Greeley* v. *Cunningham*, 116 Conn. 515, 165 A. 678 (1933)." *Davis* v. *Elrac, LLC*, Superior Court, judicial district of New Haven, Docket No. CV-13-6037866-S (September 26, 2014, *Wilson, J.*). "Superior Court cases applying the negligent entrustment doctrine established in *Greeley* note that *Greeley* adopted the approach set forth in the Restatement of Torts. See, e.g., *Morin* v. *Keddy*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV-90-701113-S (October 25, 1993, *Hennessey, J.*) (10 Conn. L. Rptr. 281); *Hughes* v. *Titterton*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 292024 (July 13, 1987, *Wagner, J.*) (2 C.S.C.R. 845)." *Jordan* v. *Sabourin*, Superior Court, judicial district of New London, Docket No. 537041 (November 22, 1996, *Hurley, J.T.R.*) (18 Conn. L. Rptr. 269, 270). Section 390 of the Restatement (Second) of Torts provides that "[o]ne who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them." 2 Restatement (Second), Torts § 390 (1965).

Comment (b) to § 390 explains: "This Section deals with the supplying of a chattel to a person incompetent to use it safely, irrespective of whether the chattel is to be used for the suppliers' purposes or for the purpose of him to whom it is supplied. In the one case as in the other, liability is based upon the rule . . . that the actor may not assume that human beings will conduct themselves properly if the facts which are known or should be known to him should make him realize that they are unlikely to do so. Thus, one who supplies a chattel for the use of another who knows its exact character and condition is not entitled to assume that the other will use it safely if the supplier knows or has reason to know that such other is likely to use it dangerously, as where the other belongs to a class which is notoriously incompetent to use the chattel safely, or lacks the training and experience necessary for such use, or the supplier knows that the other has on other occasions so acted that the supplier should realize that the chattel is likely to be dangerously used, or that the other, though otherwise capable of using the chattel safely, has a propensity or fixed purpose to misuse it. This is true even though the chattel is in perfect condition, or though defective, is capable of safe use for the purposes for which it is supplied by an ordinary person who knows of its defective condition." 2 Restatement (Second), supra, § 390, comment (b).

As several Superior Court decisions have recognized, our appellate case law has not altered the doctrine of negligent entrustment from that which was announced in *Greeley*. See, e.g., *Short* v. *Ross*, Superior Court, judicial district of New Haven, Docket No. CV-12-6028521-S (February 26, 2013, *Wilson, J.*) (55 Conn. L. Rptr. 668, 671); *Angione* v. *Bloom*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-09-5012285 (January 5, 2012, *Adams, J.T.R.*) (53 Conn. L. Rptr. 347, 350); *Snell* v. *Norwalk Yellow Cab, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-10-5013455-S (May 24, 2011, *Jennings,*

J.T.R.) (52 Conn. L. Rptr. 43, 47). Nonetheless, it is generally accepted that "entrustment plainly means *permitting another to do something or to use something.*" (Emphasis in original; internal quotation marks omitted.) *Bryda* v. *McLeod*, Superior Court, judicial district of New Haven at Meriden, Docket No. CV-03-0285188-S (July 12, 2004, *Tanzer, J.*) (37 Conn. L. Rptr. 492, 494); accord *Czulewicz* v. *Raymond*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-89-0100248-S (November 20, 1990, *Cioffi, J.*) (3 Conn. L. Rptr. 531, 532).

More specifically, the Superior Court has determined that an entrustment can be considered negligent only if (1) there is actual or constructive knowledge that the entrustee is incompetent or has a dangerous propensity and (2) the injury resulted from that incompetence or propensity. See, e.g., *Arocho* v. *Simonelli*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-12-6013221-S (June 23, 2015, *Adams, J.T.R.*); *Kaminsky* v. *Scoopo*, Superior Court, judicial district of New Haven, Docket No. CV-08-6002084-S (July 30, 2008, *Bellis, J.*) (46 Conn. L. Rptr. 82, 83). "Actual knowledge is based on incompetency or a failure to appreciate some visible or demonstrable impairment . . . whereas constructive knowledge . . . is based on facts that are openly apparent or readily discernible." (Internal quotation marks omitted.) *Morillo* v. *Georges*, Superior Court, judicial district of Hartford, Docket No. CV-15-6058761-S (December 31, 2015, *Peck, J.*) (61 Conn. L. Rptr. 541, 544). Whether actual or constructive, knowledge "is the essential element of a cause of action for negligent entrustment." *Beale* v. *Martins*, Superior Court, judicial district of Waterbury, Docket No. CV-13-6020940-S (December 1, 2015, *Brazzel-Massaro, J.*) (61 Conn. L. Rptr. 389, 390) ("[w]ithout the key allegation of knowledge, the plaintiff has not sufficiently pled a claim for negligent entrustment"); see also *Kaminsky* v. *Scoopo*, supra, 83.

Other states that base their negligent entrustment doctrine on Section 390 of the Restatement (Second) of Torts similarly focus on the element of foreseeability of the entrustee's misuse of the chattel.[13] For example, in New York,[14] "[t]he tort of negligent entrustment is based on the degree of knowledge the supplier of a chattel has or should have concerning the *entrustee's propensity* to use the chattel in an improper or dangerous fashion." (Emphasis added.) *Hamilton* v. *Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 237, 750 N.E.2d 1055, 727 N.Y.S.2d 7, opinion after certified question answered, 264 F.3d 21 (2d Cir. 2001); *Al-Salihi* v. *Gander Mountain, Inc.*, United States District Court, Docket No. 3:11-CV-00384 (NAM) (N.D.N.Y. September 20, 2013) (concluding "that the 'negligent entrustment' exception does not apply" because "there [was] simply no evidence demonstrating that prior to the sales of the [weapons at issue], [defendant] knew or should have known that [entrustee] posed an unreasonable risk of harm to himself or others"); see also *Gummo* v. *Ward*, 57 F. Supp. 3d 871, 876–77 (M.D. Tenn. 2014) ("[t]he focus of the tort of negligent entrustment is the degree of knowledge the supplier of the chattel has or should have concerning the entrustee's propensity to use the chattel in an improper or dangerous fashion" [internal quotation marks omitted]);[15] *McGuiness* v. *Brink's Inc.*, 60 F. Supp. 2d 496, 500 (D. Md. 1999) ("The cause of action for negligent entrustment is based on the requisite knowledge of the supplier of the chattel. If the supplier knows or should know of

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[13] Negligent entrustment is a common law tort. *Ellis* v. *Jarmin*, Superior Court, judicial district of New London, Docket No. CV-09-5010839 (December 17, 2009, *Cosgrove, J.*) (49 Conn. L. Rptr. 1, 3 n.2). In the context of a common law claim, courts may look outside of their own jurisdiction for guidance. *State* v. *Courchesne*, 296 Conn. 622, 680-81 n.39, 998 A.2d 1 (2010).

[14] "Under New York law, a claim for negligent entrustment of a dangerous instrumentality is based on the Restatement (Second) of Torts § 390 . . . ." *Breitkopf* v. *Gentile*, 41 F. Supp. 3d 220, 274 (E.D.N.Y. 2014).

[15] "Tennessee recognizes the tort of negligent entrustment as found in section 390 of the Restatement of Torts." Id., 876.

the entrustee's propensities to use the chattel in an improper or dangerous manner, the entrustor owes a duty to foreseeable parties to withhold the chattel from the entrustee." [Internal quotation marks omitted.]).[16]

Within Connecticut and other Restatement states, two general lines of negligent entrustment cases have emerged. The first line of cases involves the entrustment of an automobile to an incompetent driver, who then drives the vehicle in a dangerous way and injures another. In the automobile context, it has been stated that "Connecticut law is clear that liability can only be imposed if the defendant entrusts the vehicle to the driver." *Angione* v. *Bloom*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-08-5006850-S (October 6, 2011, *Jennings, J.T.R.*). The plaintiffs have cited a handful of cases, including two Superior Court decisions, that call this principle into question and seemingly recognize liability via more attenuated entrustments. In *Delprete* v. *Senibaldi*, Superior Court, judicial district of New Haven, Docket No. CV-11-6024795-S (September 16, 2014, *Wilson, J.*), the plaintiff asserted a negligent entrustment claim against the defendant Enterprise. Enterprise owned a vehicle that it leased to Tresor Kapila, another defendant, who then allowed Dina Senibaldi, a third defendant, to operate the vehicle. Senibaldi collided with the motor vehicle in which the plaintiff's decedent was a passenger. As is relevant to the present case, the plaintiff alleged "that the defendant Enterprise 'knew or should have known that the lessee was renting the vehicle for an unqualified and/or unlicensed operator,' namely . . . Senibaldi. . . . Thus, there [was] an issue of whether the defendant Enterprise may be liable under a theory of negligent entrustment of a vehicle to a lessee who was not operating the vehicle during the accident and whether liability

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[16] Maryland has adopted the doctrine of negligent entrustment as stated in Section 390 of the Restatement (Second) of Torts. *Broadwater* v. *Dorsey*, 344 Md. 548, 554, 688 A.2d 436 (1997).

may be imposed when the entrusted vehicle was being operated by a non-lessee individual." Id. Relying on two other Superior Court decisions that addressed a similar issue, the court concluded that the legal sufficiency of the plaintiff's claim hinged upon whether the plaintiff had pleaded that "it was foreseeable at the time of the rental that Kapila would give a non-lessee permission to drive the car." Id. *Delprete* relies explicitly on *Galloway* v. *Thomas*, Superior Court, judicial district of New Haven, Docket No. CV-95-0371814-S (September 26, 1995, *Corradino, J.*) (15 Conn. L. Rptr. 143), which is the second Superior Court decision to which the plaintiffs in the present case cite. In *Galloway*, the court held that "[t]he missing link in the plaintiff's [negligent entrustment] theory of recovery [was] . . . the failure to allege [that the entrustor] knew or should have known [that the entrustee] would permit another to drive the car." Id., 144. Although the plaintiffs are correct that the requirements of negligent entrustment may be satisfied under more attenuated circumstances, there remains the requirement that the original entrustor have knowledge of the entrustee's propensities that caused harm to the plaintiffs.

Other cases further support the conclusion that negligent entrustment claims must fail if the defendant lacked knowledge of the entrustee's propensities. A case relied on by the plaintiffs, *LeClaire* v. *Commercial Siding & Maintenance Co.*, 308 Ark. 580, 826 S.W.2d 247 (1992), is one such case. In *LeClaire*, "[t]he complaint alleged that [the defendant] Commercial owned the vehicle in which LeClaire was a passenger when the injury occurred. Commercial had entrusted the vehicle to its employee, Garcia, who became intoxicated and further entrusted the vehicle to another person. . . . It was further alleged that . . . prior to entrusting Garcia with the vehicle [Commercial] knew, or should have investigated and learned, that Garcia 'frequently became intoxicated' and had moving traffic violations." Id., 581-82. The court stated: "The real rub in this case is the fact that it involves two entrustments. That is not a bar to recovery. . . . Other

jurisdictions have recognized that an original entrustor may be liable for negligence in entrusting a chattel to one who further entrusts it, resulting in injury." Id., 583. Although the defendant attempted to distinguish its case on the ground that, in a seemingly analogous case, "the ultimate entrustee was in the vehicle with the knowledge or consent of the original entrustor when the vehicle was entrusted to the first entrustee . . . [the court] faile[d] to see how knowledge of, consent to, or even approval by the original entrustor of the presence of the person to whom the chattel is ultimately entrusted ma[de] a difference if liability of the original entrustor is predicated upon negligence in entrusting the chattel to the original entrustee." Id. The court paid particular attention to the issues of proximate cause and foreseeability and "conclude[d] [that] the complaint stated facts upon which relief could be granted for negligent entrustment." Id., 585. Thus, this case supports the conclusion that the entrustor must have knowledge of the original entrustee's propensities to misuse the chattel in order to prevail on a claim for negligent entrustment.

These principles are not limited to automobile cases. The second line of negligent entrustment decisions involves the entrustment of something other than a vehicle in a "[circumstance] where an entrustor should know that there is cause why a chattel ought not to be entrusted to another." *Short* v. *Ross*, supra, 55 Conn. L. Rptr. 668, 672; see, e.g., *Bernard* v. *Baitch*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-09-5013017-S (March 22, 2011, *Jennings, Jr., J.T.R.*) (51 Conn. L. Rptr. 604, 607-608) (allegations that parents supplied son with medications and drugs knowing son "had threatened and acted to harm himself in the past . . . had been diagnosed and treated for mental illness . . . and . . . was not taking [a specific drug] in accordance with his prescription" formed legally sufficient negligent entrustment claim). As they did in the automobile context, the plaintiffs have identified a handful

of cases from outside of the automobile context that support attaching liability for more remote entrustments. Nevertheless, these cases similarly make clear that negligent entrustment claims in this context also require that the entrustor had knowledge of the original entrustee's propensities toward misuse of the chattel in order for such a claim to succeed.

In *Earsing* v. *Nelson*, 212 A.D.2d 66, 629 N.Y.S.2d 690 (1995), the plaintiff, Earsing, "was injured when he was hit by a BB shot from a gun that was manufactured by defendant Daisy . . . and sold by defendant Service . . . to defendant . . . Nowinski, a 13-year-old boy. After purchasing the gun, Nowinski gave it to a 17-year-old friend, defendant . . . Garvey, for safekeeping. [The] [p]laintiffs allege[d] that Garvey accidentally shot . . . Earsing with the BB gun, not knowing it was loaded at the time." Id., 69. On appeal, the "plaintiffs argue[d] that they ha[d] stated causes of action against Daisy as well as Service for negligent entrustment and illegal sale of the air gun." Id. The court explained: "The tort of negligent entrustment is based on the degree of knowledge the supplier of a chattel had or should have had concerning the entrustee's propensity to use the chattel in an improper or dangerous fashion . . . . If such knowledge can be imputed, the supplier owes a duty to foreseeable parties to withhold the chattel from the entrustee . . . . Gun sales to children have been included in that category . . . . There is no authority, however, to extend liability on this theory against Daisy, the manufacturer of the air gun . . . and thus the [lower] court properly dismissed that cause of action against it." Id., 70.

The New York Court of Appeals considered a similarly remote entrustment scenario in *Rios* v. *Smith*, 95 N.Y.2d 647, 744 N.E.2d 1156, 722 N.Y.S.2d 220 (2001). In *Rios*, the plaintiff was injured in an ATV accident that occurred while the plaintiff, her younger sister, and the defendants Frank Smith, Jr., and Theodore Persico, Jr. (Persico, Jr.)–all teenagers–were staying at a residence located on a farm owned by the defendant Alphonse Persico (Persico). Id., 650.

Persico owned at least two ATVs and kept them at this residence. Id. "On the day of the accident, Persico was not present at the farm. Persico, Jr. and Smith, each operating an ATV, asked [the] plaintiff and her sister to go for a ride on the vehicles. When the young women consented, [the] plaintiff climbed aboard the ATV driven by Smith and her sister rode with Persico, Jr. At some point during the excursion, the operators rode the vehicles onto a blacktop pathway that was lined with trees, and proceeded to perform 'wheelies,' lifting the front wheel of the vehicle off the ground. As the young men then began to race, Smith drove the ATV he was operating off the pathway and up a grassy incline. [The] [p]laintiff suffered serious injuries when the vehicle hit a tree, causing her to be thrown against the tree trunk, with the ATV coming to rest on top of her." Id. The plaintiff asserted, among other claims, a negligent entrustment cause of action against Persico. Id. The court first discussed parental liability for negligent entrustment and held that "a parent owes a duty to protect third parties from harm that is clearly foreseeable from the child's improvident use or operation of a dangerous instrument, where such use is found to be subject to the parent's control." Id., 653. Reviewing the evidence, the court found that "Persico could have clearly foreseen that his son's access to and use of the ATVs could involve riding one of the vehicles while lending the other to a friend and that such use might expose passengers on the ATVs to injury. Thus, the evidence was legally sufficient for the jury to determine that Persico created an unreasonable risk of harm to plaintiff by negligently entrusting the ATVs to his son, whose use of the vehicles involved lending one of the ATVs to Smith, another minor." Id.

Finally, in *Collins* v. *Arkansas Cement Co.*, 453 F.2d 512 (8th Cir. 1972), the court considered whether there was sufficient evidence to sustain a theory of negligent entrustment against an employer who had entrusted cherry bombs to an employee who then gave cherry

bombs to children who subsequently passed them along to a minor who was injured when they exploded. The court stated: "While the proof must show that the entrustor knew or should have known of the entrustee's propensities, the notice . . . that employees were not faithful in returning the unused cherry bombs or were using them in horseplay around the plant was sufficient evidence of misuse, which when coupled with the lax control exercised over their use and the return of unused bombs, was sufficient to make a submissible case . . . . Having reason to know of the misuse to which the cherry bombs were being put and the possible tragic results upon such instrumentalities coming into the hands of children, especially those of a tender age, the injury here was clearly foreseeable and was proximately caused by the negligent entrustment." (Footnote omitted.) Id., 515.

In the present case, the court agrees with the plaintiffs that the theory of common law negligent entrustment rests on the foreseeability of the likelihood of misuse of the chattel. Nevertheless, regardless of whether a direct entrustee or a third person ultimately causes the injury, the dispositive issue is whether the entrustor knows or should know of the direct entrustee's incompetence. See *LeClaire* v. *Commercial Siding & Maintenance Co.*, supra, 308 Ark. 580 (negligence of initial entrustment dispositive). This incompetence can arise from trusting a chattel to someone else in a situation in which such entrustment is improper or constitutes misuse. See, e.g., *Delprete* v. *Senibaldi*, supra, Superior Court, Docket No. CV-11-6024795-S (giving nonlessee permission to drive car could constitute misuse and, if foreseeable, render renter incompetent); *Galloway* v. *Thomas*, supra, 15 Conn. L. Rptr. 143 (same); *Earsing* v. *Nelson*, supra, 212 A.D.2d 66 (entrusting gun to child is negligent because children as a class are deemed incompetent to handle guns and will therefore foreseeably misuse them in unspecified ways); *Rios* v. *Smith*, supra, 95 N.Y.2d 647 (teenager's lending ATV to someone

else constitutes misuse and, if foreseeable, renders teenager incompetent); *Collins* v. *Arkansas Cement Co.*, supra, 453 F.2d 512 (negligent to entrust cherry bombs to employees who misuse them by regularly not returning them or using them in horseplay).[17] If the element of foreseeability with regard to the direct entrustee's misuse is lacking, the negligent entrustment claim must fail.

The court recognizes that there is a fundamental disagreement among the parties regarding the nature of the plaintiffs' allegations. The defendants characterize the complaint as alleging successive entrustments. Accordingly, the defendants' arguments address the entrustments from the Remington defendants to the Camfour defendants, from the Camfour defendants to the Riverview defendants, and from the Riverview defendants to Nancy Lanza. Under this scenario, the successive entrustees are the Camfour defendants, the Riverview defendants, and Nancy Lanza, and it is their propensities and purported "uses," putting the firearm in inventory and selling it, keeping the firearm on a shelf and then making it available to a law-abiding, approved buyer, and storing it in a home, respectively, that are at issue.

The plaintiffs, on the other hand, have explicitly stated that their claims are not dependent on these parties' propensities; instead, the plaintiffs argue, "in a top-down case like this [the court looks] to the propensities of a class of individuals and the environment in which those individuals are likely to use [the instrument]." In other words, the plaintiffs suggest that a claim of negligent entrustment can be sufficiently alleged where the chattel will ultimately reach individuals who are likely to misuse it.

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[17] The New York Court of Appeals has specifically stated: "The owner or possessor of a dangerous instrument is under a duty to entrust it to a responsible person whose use does not create an unreasonable risk of harm to others . . . . The duty may extend through successive, reasonably anticipated entrustees . . . ." (Citations omitted) *Hamilton* v. *Beretta U.S.A. Corp.*, supra, 96 N.Y.2d 236-37.

Regardless of which characterization the court adopts, based on the case law set forth above, in order to allege a legally sufficient negligent entrustment claim, the plaintiffs must allege that each entrustment was initially negligent. In other words, the plaintiffs must identify what foreseeable misuse rendered the initial entrustees incompetent. In the operative complaint, the plaintiffs have alleged the following relevant facts: The defendants knew or had reason to know that their respective entrustees were engaging in substantial sales of military caliber AR-15s, meant for specialized, highly regulated institutions, such as the armed forces and law enforcement, to the civilian market on a consistent basis and that such sales would give individuals who are unfit to operate the weapons access to them. Complaint, ¶¶ 9, 12. This, the defendants knew or should have known, posed an unreasonable and egregious risk of physical injury. Complaint, ¶ 213. Finally, each defendant knew, or should have known, that their respective entrustee's use of the product involved an unreasonable risk of physical injury to others. Complaint, ¶¶ 224, 225. Despite this knowledge, the plaintiffs allege, by transferring the XM15-E2S to each entrustee, the defendants continued to entrust the XM15-E2S to the civilian population. Complaint, ¶¶ 171, 172, 176, 177, 178, 182. Accordingly, the plaintiffs allege, selling to the civilian market is a misuse that renders each entrustment tortious.

As discussed further below, this court concludes that such sales do not constitute misuse as a matter of law. The court does not agree with the plaintiffs' assertion that the common law recognizes a class as broad as civilians to support a claim for negligent entrustment. In *McCarthy* v. *Sturm, Ruger & Co.*, 916 F. Supp. 366, 369 (S.D.N.Y. 1996), aff'd sub nom. *McCarthy* v. *Olin Corp.*, 119 F.3d 148 (2d Cir. 1997), in a situation that is closely analogous to the present case, Judge Baer addressed a similar issue directly. The *McCarthy* plaintiffs "[sought] to hold [the] defendant Olin Corporation liable based on its design, manufacture, marketing and sale of 'Black

Talon' ammunition, which was allegedly used by [Colin Ferguson in a murderous shooting spree on a Long Island Railroad passenger train]. Black Talon ammunition incorporates a hollow-point bullet that is designed to expand upon impact exposing razor-sharp edges at a 90–degree angle to the bullet. This expansion dramatically increases the wounding power of the bullets." Id., 368. Among other things, the plaintiffs alleged that Olin Corporation "was negligent in marketing the Black Talon ammunition to the general public. . . . [The] [p]laintiffs argue[d] that sales of the ammunition should have been limited to law enforcement agencies, as was allegedly Olin's original plan." (Citation omitted.) Id., 369. More specifically, "[the] plaintiffs argue[d] that marketing Black Talon ammunition to the general public breached a duty flowing from manufacturers to those affected by use of the ammunition." Id., 370. Although the plaintiffs did not explicitly raise a negligent entrustment claim, the court explained: "Restatement (Second) § 390 . . . limits the negligent entrustment theory to those people a reasonable person would consider lacking in ordinary prudence. To extend this theory to the general public would be a dramatic change in tort doctrine. It would imply that the general public lacks ordinary prudence and thus undermine the reasonable person concept so central to tort law. The common law has not yet adopted a negligent entrustment rule for the protection of the general public. I decline to adopt one here." Id.

Even narrower classes of persons have been rejected for purposes of negligent entrustment claims. For example, in 2008, the United States District Court for the Southern District of New York in *Adeyinka* v. *Yankee Fiber Control, Inc.*, 564 F. Supp. 2d 265 (S.D.N.Y. 2008), applied the *McCarthy* analysis to resolve whether any reasonable jury could conclude that the defendant was liable for negligent entrustment of an "ultra high pressure water jetting system." Id., 268, 288. The jet was manufactured by Aqua-Dyne, bought from Aqua-Dyne by

Yankee Fiber, and leased from Yankee Fiber by the New York City Housing Authority (NYCHA). Id., 267. The plaintiff was hired by NYCHA to perform lead abatement work and was injured while using the water jet to remove lead paint from the walls of a building at a work site. Id., 270. The plaintiff brought multiple causes of action against the defendants, including a negligent entrustment claim against Yankee Fiber. Id., 267. Specifically, the "[p]laintiff allege[d] that Yankee Fiber [was] liable for 'negligent entrustment' because it permitted [the] plaintiff to use the water jet when Yankee Fiber's employees knew plaintiff was likely, 'because of inexperience, to use [the water jet] in an unsafe manner . . . .' . . . Yankee Fiber assert[ed] that it did not have reason to believe [the] plaintiff, or any other NYCHA employees, were likely to use the water jet in an unsafe manner." (Citation omitted.) Id., 286.

The court analogized the case before it to *McCarthy* and stated, "in this case, [the] plaintiff argues that, while Yankee Fiber did not owe [the] plaintiff a 'special duty,' it owed a duty 'to everyone who was operating this machine' to ensure that they were sufficiently 'experienced' so as to operate the water jet in a reasonably safe manner. . . . The Court rejects this argument as inconsistent with well-settled authority regarding the tort of negligent entrustment. As Judge Baer noted in *McCarthy*, courts have not construed the tort as imposing a duty on defendants to examine the competence of 'the general public' to whom they market or lease products. . . . Rather, it is well settled that the tort applies solely where the defendant had knowledge or reason to know that the user of the item at issue was someone that 'a reasonable person would consider lacking in ordinary prudence.'" Id., 287. "Therefore, given the lack of case law supporting [the] plaintiff's broad construction of the tort and the absence of evidence indicating that Yankee Fiber knew or had reason to know of a characteristic or condition 'peculiar to plaintiff' indicating that he was 'lacking in ordinary prudence' . . . the Court [found]

that no reasonable jury could conclude that Yankee Fiber [was] liable for negligent entrustment." (Citation omitted.) Id., 288.

In the present case, the plaintiffs allege that the defendants' entrustment of the firearm to respective entrustees was negligent because the defendants could each foresee the firearm ending up in the hands of members of an incompetent class in a dangerous environment. The validity of this argument rests on labeling as a misuse the sale of a legal product to a population that is lawfully entitled to purchase such a product. Based on the reasoning from *McCarthy*, and the fact that Congress has deemed the civilian population competent to possess the product that is at issue in this case, this argument is unavailing. To extend the theory of negligent entrustment to the class of nonmilitary, nonpolice civilians – the general public - would imply that the general public lacks the ordinary prudence necessary to handle an object that Congress regards as appropriate for sale to the general public.[18] This the court is unwilling to do.

Accordingly, because they do not constitute legally sufficient negligent entrustment claims pursuant to state law, the plaintiffs' negligent entrustment allegations do not satisfy the negligent entrustment exception to PLCAA.[19] Therefore, unless another PLCAA exception applies, the court must grant the defendants' motions to strike.

2
Negligent Entrustment Pursuant to PLCAA

[18] In their reply brief, the Remington defendants contend that the plaintiffs' argument is based on designating the class of adult civilian residents of Connecticut who are legally able to purchase and own the firearm at issue as incompetent. "The entire frame-work of Plaintiffs' argument has no basis in the law and, if accepted, would turn the separation of powers between the branches of government on its head." They continue: "If an entirely new 'class' of persons is to be declared ineligible to own firearms . . . the legislature is best-suited to make [that] policy [decision] . . . ."

[19] With regard to count thirty-two, the Camfour defendants also argue that Hammond's claim for negligent entrustment is barred by the three year statute of limitations contained in General Statutes § 52-584. The plaintiffs did not respond to this argument and the court does not reach it.

In light of this court's conclusion above that the plaintiffs' negligent entrustment allegations are legally insufficient under Connecticut's common law, it is not necessary for this court to consider whether those claims meet the narrower definition of such claims set forth in PLCAA. Nevertheless, in the interest of thoroughness, and to provide an alternative basis for this court's decision with regard to the legal sufficiency of the plaintiffs' negligent entrustment claims, the court will also consider whether the plaintiffs' claims satisfy the narrower definition of negligent entrustment under PLCAA.

As is stated above, based on basic tenets of statutory construction, the court finds that no part of PLCAA, including the definition of "negligent entrustment," is superfluous. Again, PLCAA specifically defines "negligent entrustment" as "the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others." 15 U.S.C. § 7903 (5) (B) (2012). As this statutory definition of negligent entrustment claims is narrower than the common-law definition discussed above, the plaintiffs' negligent entrustment claims must satisfy the statutory definition as well in order to fit the negligent entrustment exception to immunity set forth in PLCAA.

a

Seller

Unlike the definition of negligent entrustment set forth in the Restatement, PLCAA's definition of negligent entrustment applies only to entrustment by "a seller" of a qualified product. The Remington defendants argue that the plaintiffs have not sufficiently alleged that the Remington defendants qualify as "sellers" within the definition of PLCAA. The plaintiffs

disagree. In relevant part, PLCAA defines a "seller" as "a dealer (as defined in section 921 (a) (11) of Title 18) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of Title 18 . . . ." 15 U.S.C. § 7903 (6) (A) (2012). "The term 'engaged in the business' has the meaning given that term in section 921 (a) (21) of Title 18, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition." 15 U.S.C. § 7903 (1) (2012).

Section 921 (a) (11) of title 18 of the United States Code defines a dealer, in relevant part, as "any person engaged in the business of selling firearms at wholesale or retail . . . ." According to subsection (a) (21) of the same section, the term "engaged in business" means, "as applied to a dealer in firearms . . . a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms . . . ."

Consistent with the standard applicable to motions to strike, the following facts are taken from the complaint and accepted as true for purposes of this motion. "Defendants know that, as a consequence of selling AR-15s to the civilian market, individuals unfit to operate these weapons gain access to them." Complaint, ¶ 9. "Despite . . . knowledge [about the AR-15] defendants continue to sell the Bushmaster XM15-E2S to the civilian market." Complaint, ¶ 11. "In order to continue profiting from the sale of AR-15s, defendants chose to disregard the

unreasonable risks the Bushmaster XM15-E2S posed . . . ." Complaint, ¶ 12. "At all relevant times, Bushmaster Firearms manufactured and sold AR-15s." Complaint, ¶ 14. "Upon information and belief, Bushmaster Firearms, Inc. manufactured and sold AR-15s." Complaint, ¶ 15. "At all relevant times, Bushmaster Firearms International, LLC manufactured and sold AR-15s." Complaint, ¶ 17. "At all relevant times, Remington Arms Company, LLC manufactured and sold AR-15s." Complaint, ¶ 19. "Freedom Group, Inc. is one of the world's largest manufacturers and dealers in firearms, ammunition, and related accessories." Complaint, ¶ 21. "Upon information and belief, from 2006 on, Freedom Group, Inc. controlled, marketed and sold the Bushmaster brand. Upon information and belief, during this time period Freedom Group, Inc. sold Bushmaster brand products directly to retail stores." Complaint, ¶ 22. "Remington Outdoor Company, Inc. . . . is engaged in the business of manufacturing and selling AR-15s." Complaint, ¶ 23. These named defendants "are functionally one entity . . . ." Complaint, ¶ 24. These defendants "manufacture and sell firearms and ammunition . . . ." Complaint, ¶ 25. One or more of these defendants "manufactured and sold the Bushmaster XM15-E2S rifle that was used in the shooting at Sandy Hook Elementary School on December 14, 2012." Complaint, ¶ 26. "Bushmaster . . . [is] the largest supplier of combat rifles [including the XM15-E2S] to civilians." Complaint, ¶¶ 54, 55. The Bushmaster defendants market the AR-15 rifle. Complaint ¶¶ 75-92, 174-75. "The Bushmaster defendants . . . [sell] directly to Wal-Mart, Dick's Sporting Goods, and other prominent chain retail stores." Complaint, ¶ 172. "The Bushmaster defendants, as those who deal in firearms, are required to exercise the closest attention and the most careful precautions in the conduct of their business." Complaint, ¶ 221.

To qualify as a seller, a dealer: (1) must devote time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and

profit through the repetitive purchase and resale of firearms; and (2) must be licensed to engage in business as such a dealer under chapter 44 of title 18. Taking all well-pleaded facts and those facts necessarily implied from the allegations as admitted, and construing the complaint broadly and realistically, the court finds that the plaintiffs have sufficiently alleged that the Remington defendants qualify as sellers as defined by PLCAA. As to the first requirement, the court finds that the plaintiffs have explicitly alleged that the Remington defendants sell and deal firearms to civilians and retail stores and that the Remington defendants devote labor to marketing, promoting, and selling the firearms with the objective of profit. As to the second requirement, although the plaintiffs have not explicitly alleged that the Remington defendants are licensed to engage in business as a dealer under chapter 44 of title 18, this fact is necessarily implied from the allegations. Under subsection (a) of that chapter, "[n]o person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General." That the Remington defendants are allegedly one of the world's largest firearms manufacturers and dealers necessarily implies that they are licensed to manufacture and deal.[20] Accordingly, taking all well-pleaded facts and those facts necessarily implied from the allegations as admitted, and construing the complaint broadly and realistically, the court finds that the plaintiffs have sufficiently alleged that the Remington defendants qualify as sellers as defined by PLCAA.

b
Actionable Use

[20] Furthermore, the basis of the Remington defendants' argument is that they are manufacturers, not sellers. PLCAA specifically defines the term "manufacturer" as "a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18." 15 U.S.C. § 7903 (2) (2012). Although the Remington defendants argue that the plaintiffs' failure to allege that the Remington defendants are licensed as a dealer is fatal, they ignore the fact that the plaintiffs similarly have not explicitly stated that the Remington defendants are licensed as a manufacturer.

The defendants essentially put forth two arguments: (1) they cannot be held liable for the actions of anyone other than their respective immediate entrustees (the Camfour defendants, the Riverview defendants, Nancy Lanza) and (2) the plaintiffs have not alleged that any of the immediate entrustees "used" the product in accordance with the PLCAA definition of negligent entrustment.[21] They argue for a narrow definition of the term "use" in light of the context in which the term is utilized and the overall purpose of PLCAA. Although they do not provide a specific definition of the term, the defendants contend that "use" cannot include a legal transaction. The plaintiffs counter that the PLCAA definition of negligent entrustment codifies the essential elements of the Restatement definition and, thus, permits actions that satisfy the common-law elements of negligent entrustment. They argue in favor of a broad definition of the term "use" in accordance with its plain meaning, statutory context, and common-law roots and assert that selling a weapon can constitute a "use."

Fundamentally, the parties' arguments depend on the meanings of the terms "negligent entrustment" and "use" as utilized in PLCAA. To resolve these questions, the court must engage in statutory interpretation. "With respect to the construction and application of federal statutes, principles of comity and consistency require us to follow the plain meaning rule . . . because that is the rule of construction utilized by the United States Court of Appeals for the Second Circuit. . . . Moreover, it is well settled that [t]he decisions of the Second Circuit Court of Appeals carry particularly persuasive weight in the interpretation of federal statutes by Connecticut state courts." (Internal quotation marks omitted.) *Rodriguez* v. *Testa*, 296 Conn. 1, 11, 993 A.2d 955 (2010).

[21] The Riverview defendants also assert a foreseeability argument, namely that, because they did not supply the product to Adam Lanza, they could not foresee that the product would be used in a manner involving an unreasonable risk of physical injury to Adam Lanza or others. The court finds that this argument is encompassed by the defendants' first argument.

According to the Second Circuit Court of Appeals, "[w]hen construing a statute, [the court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature." *New York* v. *Beretta U.S.A. Corp.*, 524 F.3d 384, 401 (2d Cir. 2008), cert. denied, 556 U.S. 1104, 129 S. Ct. 1579, 173 L. Ed. 675 (2009). "Statutory construction begins with the plain text and, if that text is unambiguous, it usually ends there as well." *United States* v. *Gayle*, 342 F.3d 89, 92 (2d Cir. 2003), as amended (January 7, 2004), cert. denied, 542 U.S. 925, 124 S. Ct. 2888, 159 L. Ed. 2d 787 (2004), cert. denied, 544 U.S. 1026, 125 S. Ct. 1968, 161 L. Ed. 2d 872 (2005). "The text's plain meaning can best be understood by looking to the statutory scheme as a whole and placing the particular provision within the context of that statute." (Internal quotation marks omitted.) Id., 93. "If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." *New York* v. *Beretta U.S.A. Corp.*, supra, 430.

The Second Circuit has not directly addressed the contours of the PLCAA definition of "negligent entrustment." Therefore, the court begins with the plain text. The plaintiffs argue that the PLCAA definition of "negligent entrustment" mirrors the definition from § 390 of the Restatement. Comparing the two definitions, it is clear that the PLCAA definition of "negligent entrustment" omits the language from § 390 of the Restatement which allows for liability arising from the supplying of a chattel "through a third person." This distinction lends support to the defendants' argument.

The meaning of the term "use" is not as clear. Instead, it is susceptible to more than one reasonable interpretation. The defendants argue for a narrow reading of the term and limit its

meaning to some action beyond the mere selling of a firearm. Read in isolation, there is no indication that Congress intended to so limit the definition of the term. To the contrary, when Congress intended to specifically limit a definition, it did so by using more specific verbs such as "to sell"; 15 U.S.C. § 7903 (5) (A) (iii) (II) (2012); to "otherwise dispose of"; 15 U.S.C. § 7903 (5) (A) (iii) (II) (2012); and to "discharge." 15 U.S.C. § 7903 (5) (A) (v) (2012). The plaintiffs argue for a broad reading of the term and place no limit on its meaning. Considering its relationship to the rest of PLCAA, to include "lawfully sell" within the definition of "use" would yield absurd and unreasonable results. Assuming that PLCAA only allows for claims based on direct entrustment, this broad definition of use would extend liability to a dealer who supplies a firearm to a lawful distributor who legally sells it to an incompetent buyer, and simultaneously forbid these types of indirect negligent entrustment actions from going forward. The definition of the term use, when read in context, is therefore ambiguous. As the previous sentence demonstrates, it also calls into question whether PLCAA allows for attenuated entrustments.

"To resolve . . . textual ambiguity, [courts] may consult legislative history and other tools of statutory construction to discern Congress's meaning. . . . Resort to authoritative legislative history may be justified where there is an open question as to the meaning of a word or phrase in a statute, or where a statute is silent on an issue of fundamental importance to its correct application. As a general matter, we may consider reliable legislative history where . . . the statute is susceptible to divergent understandings and, equally important, where there exists authoritative legislative history that assists in discerning what Congress actually meant. . . . The most enlightening source of legislative history is generally a committee report, particularly a conference committee report, which [the Second Circuit] ha[s] identified as among the most

authoritative and reliable materials of legislative history." (Citations omitted; footnote omitted; internal quotation marks omitted.) *United States* v. *Gayle*, supra, 342 F.3d 93-94.

As is discussed above, there is an open question as to the meaning of the term "use" in PLCAA and the statute is silent on this issue, which is fundamental to the correct application of the "negligent entrustment" exception. Therefore, the court may consider reliable legislative history. In May 2001, H.R. 2037, the "Protection of Lawful Commerce in Arms Act" was placed on the House calendar. House Committee on the Judiciary Report 108-59, concerning House Bill No. 1036, entitled "Protection of Lawful Commerce in Arms Act," (April 7, 2003). As is memorialized in House Report 107-727, Representative John Conyers, Jr., from Michigan voiced his concern with the "negligent entrustment" exception. He cautioned that "the bill irresponsibly protects dealers who recklessly sell to gun traffickers knowing (or with reason to know) that the trafficker intends to resell the guns to criminals. This loophole is achieved as a result of the bill's narrow definition of 'negligent entrustment.' The bill defines 'negligent entrustment' to include only initial transfers completed between the original seller and purchaser of a gun. It does not include secondary transfers even when the original seller is aware of the purchaser's intent to resell to a particular individual." House Committee on the Judiciary Report 107-727, concerning House Bill No. 2037, entitled "Protection of Lawful Commerce in Arms Act," (October 8, 2002).

"Days after H.R. 2037 was placed on the House calendar, the Washington, DC area was besieged by a sniper(s) who indiscriminately gunned down innocent victims with a high caliber rifle. In the aftermath of the sniper shooting, no further action was taken on the bill . . . ." House Bill No. 1036. H.R. 2037 was the predecessor to H.R. 1036. House Bill No. 1036. In 2003, the House of Representatives Committee on the Judiciary issued a Report on H.R. 1036.

Representative Conyers again expressed his concerns, only changing the word "loophole" from his previous statement to "exemption from liability." House Bill No. 1036. In the same report, dissenters expressed the following policy concern with the bill: "Only in the narrow class of cases enumerated in Section 4 of the bill (e.g., when a dealer knowingly transferred a gun to someone despite knowing it would be used to commit a crime of violence or a drug trafficking crime, or when the dealer negligently entrusted the gun to a shooter, or a plaintiff files a negligence per se case) would plaintiffs be permitted to seek relief for their foreseeable injuries." House Bill No. 1036. Later, in a section entitled "The Narrow Exceptions in H.R. 1036 Will Not Protect Most Victims of Gun Industry Negligence," the dissenters articulated their concerns regarding the negligent entrustment exception more particularly. They pointed out that the exception "would cover only cases where the dealer knows or should know that the person who is buying the gun is likely to misuse it and the buyer does, in fact, misuse it. [T]his would still shut the courthouse door to victims of the far more common practice of dealers negligently selling guns to traffickers who, in turn, supply criminals. . . . Under [the negligent entrustment] exception, not only would the previously-mentioned Byrdsong[22] case be barred, but the bill would deny relief to . . . former New Jersey police officer Lemongello and his partner, who were shot with a handgun sold as part of a 12-handgun sale by a West Virginia dealer to a 'straw buyer' for a gun trafficker. Even though the dealer who irresponsibly supplied the gun trafficker with multiple guns should have known the guns would be sold to and used by criminals, they arguably did not 'negligently entrust' the guns since the persons to whom they sold the guns were not the shooters." House Bill No. 1036.

[22] "Mr. Byrdsong was walking with his children in Skokie, Illinois when he was shot and killed with one of 72 guns sold to an Illinois gun trafficker by a dealer over a period of a year and a half. The dealer clearly should have known that the trafficker did not need 72 guns for his own use, but intended to sell them to criminals." House Bill No. 1036.

In 2005, the Protection of Lawful Commerce in Arms Act was again called up on the floor of the House. As it had years earlier, PLCAA, now labeled H.R. 800, generated cautionary views. Representative Conyers again argued against the bill. He stated: "Here we are today, April 20th on the 6th anniversary of the Columbine shootings, considering a bill that would eliminate the liability of those in the gun industry for marketing to criminals. . . . Section 4 of the bill [which was enacted as 15 U.S.C. § 7903] specifically protects gun manufacturers and sellers from liability, even when they produce and distribute weapons that expose unassuming purchasers to unreasonable risks of harm. In addition, the bill protects dealers who recklessly sell to gun traffickers knowing that the trafficker intended to resell the guns to criminals. . . . So we've finally gone over the top. Congratulations, Committee on the Judiciary. This is quite a way to mark the sixth anniversary of the Columbine shootings in this country." House Committee on the Judiciary Report 109-124, concerning House Bill No. 800, entitled "Protection of Lawful Commerce in Arms Act," (June 14, 2005). As to the "negligent entrustment" exception specifically, the dissenters argued that the section, as written, would protect "the dealer who irresponsibly supplied the gun trafficker with multiple guns [and who] should have known the guns would be sold to and used by criminals, [because] they arguably did not 'negligently entrust' the guns since the persons to whom they sold the guns did not commit the underlying criminal acts." House Bill No. 800.

Despite these concerns, and aware that the only actionable entrustment is from a seller to a buyer who then engages in a criminal act, Congress did not substantively amend PLCAA or the negligent entrustment exception. These comments now serve to highlight PLCAA's narrow definition of the term "negligent entrustment." Clearly, although foreseeability is the essential element to the common law tort, the same is not true for the PLCAA definition. In the post-

Columbine world, cognizant of the environment in which gun sales occur and undeniably aware of the consequences of narrowly interpreting PLCAA exceptions, Congress contemplated negligent entrustment to include only direct entrustments to a shooter, regardless of what an entrustor knew or should have known.

In the present case, the plaintiffs have alleged that the Remington defendants sold the firearm to the Camfour defendants, that the Camfour defendants sold the firearm to the Riverview defendants, and that the Riverview defendants sold the gun to Nancy Lanza. In addition, it is alleged that Adam Lanza was the individual who actually fired the weapon. Based on the clear intent of Congress to narrowly define the "negligent entrustment" exception, Adam Lanza's use of the firearm is the only actionable use. Accordingly, the plaintiffs have not alleged that any of the defendants' entrustees "used" the firearm within the confines of PLCAA's definition of the term. To the contrary, the plaintiffs have alleged facts that place them directly in the category of victims to which Congress knowingly denied relief.

For these reasons, in addition to the reasons set forth in the preceding section discussing state law, the plaintiffs' allegations against all three defendant groups do not satisfy the negligent entrustment exception to PLCAA.

B

Predicate Exception to PLCAA

The other exception to PLCAA immunity upon which the plaintiffs rely is set forth in 15 U.S.C. § 7903 (5) (A) (iii), which permits a plaintiff to bring "an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought . . . ." The parties refer to this as the predicate exception. The defendants argue that the amended complaint should be stricken because the plaintiffs' CUTPA claims are not legally

sufficient to satisfy the predicate exception to PLCAA immunity under 15 U.S.C. § 7903 (5) (A) (iii). More specifically, the defendants contend that CUTPA does not qualify as a predicate statute pursuant to 15 U.S.C. § 7903 (5) (A) (iii) and that, even if it does qualify as such, the plaintiffs' CUTPA claims are legally insufficient because (a) the plaintiffs are not consumers, competitors, or other business persons with a commercial relationship to the defendants, (b) the plaintiffs have not alleged the type of financial injury that CUTPA was enacted to redress, (c) they are barred by CUTPA's three-year statute of limitations, (d) they are foreclosed by General Statutes § 52-572n,[23] the exclusivity provision of the Connecticut Product Liability Act (CPLA), and (e) they are barred by General Statutes § 42-110c (a),[24] an exemption provision.

1

CUTPA as a Predicate Statute

The defendants first argue that CUTPA does not qualify as a predicate statute pursuant to 15 U.S.C. § 7903 (5) (A) (iii) under the plain meaning of PLCAA's text and guiding precedent, because the plaintiffs interpret that exception too broadly in contending that CUTPA has been applied to or "clearly can be said to implicate" the "sale or marketing" of firearms. In response, the plaintiffs argue that the decision of the Court of Appeals for the Second Circuit in *New York* v. *Beretta U.S.A. Corp.*, supra, 524 F.3d 384, indicates that CUTPA is an appropriate predicate statute to satisfy the relevant exception to PLCAA immunity.

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[23] "The exclusivity provision of the product liability act provides: 'A product liability claim . . . may be asserted and shall be in lieu of all other claims against product sellers, including actions of negligence, strict liability and warranty, for harm caused by a product.' General Statutes § 52-572n (a)." (Footnotes omitted.) *Gerrity* v. *R.J. Reynolds Tobacco Co.*, 263 Conn. 120, 125-26, 818 A.2d 769 (2003).

[24] General Statutes § 42-110c (a), a subsection of CUTPA, provides in relevant part: "Nothing in this chapter shall apply to: (1) Transactions or actions otherwise permitted under law as administered by any regulatory board or officer acting under statutory authority of the state or of the United States . . . ."

That exception, 15 U.S.C. § 7903 (5) (A) (iii), provides as follows: "The term 'qualified civil liability action' . . . shall not include . . . an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of Title 18 . . . ."

There is no appellate authority resolving the issue of whether CUTPA qualifies as a predicate statute or discussing the breadth of the predicate exception. Therefore, under principles set forth previously in this memorandum, the court must follow the plain meaning rule to interpret the federal statute and, accordingly, will look to the decisions of the Second Circuit Court of Appeals as particularly persuasive authority. See *Rodriquez* v. *Testa*, supra, 296 Conn. 11.

In *New York* v. *Beretta U.S.A. Corp.*, supra, 524 F.3d 384, the Second Circuit Court of Appeals specifically addressed the meaning of the term "applicable" as Congress used that word in the phrase "statute applicable to the sale or marketing of [firearms]." In *Beretta*, the city of New York brought an action against various firearms manufacturers to decrease the alleged

public nuisance caused by the defendants' negligent and reckless merchandising of handguns. While the plaintiffs relied on the dictionary definition of "applicable," i.e., "capable of being applied," the defendants argued that "the phrase 'statute applicable to the sale or marketing of [a firearm]' in the context of the language in the entire statute limits the predicate exception to statutes specifically and expressly regulating the manner in which a firearm is sold or marketed—statutes specifying when, where, how, and to whom a firearm may be sold or marketed." Id., 400. After determining that both groups of parties in *Beretta* relied on a reasonable meaning of the term, the Second Circuit conducted a statutory interpretation of the word using canons of statutory construction and the legislative history of PLCAA. Ultimately, the court held that the exception created by 15 U.S.C. § 7903 (5) (A) (iii) "does encompass statutes (a) that expressly regulate firearms, or (b) that courts have applied to the sale and marketing of firearms; and . . . does encompass statutes that do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms." Id., 404.

In light of this highly persuasive interpretation of the term "applicable," and because CUTPA does not expressly regulate firearms, the court must next analyze whether: (1) courts have applied CUTPA to the sale and marketing of firearms or (2) CUTPA clearly can be said to implicate the purchase and sale of firearms. With regard to whether CUTPA is a statute that courts have previously applied to the sale or marketing of firearms, the answer is yes. Specifically, in *Salomonson* v. *Billistics, Inc.*, Superior Court, judicial district of New London, Docket No. CV-88-508292 (September 27, 1991, *Freeman, J.T.R.*), the court held that "[t]he instant transactions for the sale, manufacture and delivery of remanufacturer weapons to Plaintiff meets the statutory definition of trade or commerce, General Statutes § 42-110a (4) . . . ." In addition, in *Ganim* v. *Smith & Wesson Corp.*, 258 Conn. 313, 780 A.2d 98 (2001), the plaintiffs,

the city of Bridgeport and its mayor, Joseph Ganim, asserted CUTPA claims against the defendants, various firearm manufacturers, trade associations, and retail sellers, arising from the defendants' alleged misconduct in the advertising, marketing, and selling of handguns. Id., 315-16, 334-35. Although the Supreme Court ultimately dismissed the CUTPA claims on standing grounds; id., 373; it expressed no concern regarding whether the statute applied to such transactions. To the contrary, the Supreme Court expressly left open the possibility that a CUTPA claim based on a defendant's misleading marketing of firearms could be maintained by appropriate plaintiffs who are less removed than those in the *Ganim* case. Therefore, the test set forth in *New York* v. *Beretta* is satisfied because the Superior Court has applied CUTPA to the sale and marketing of firearms. Accordingly, CUTPA is a valid predicate statute.

2

Legal Sufficiency of CUTPA Claims

The defendants next argue that, even if CUTPA qualifies as a predicate statute, the plaintiffs' allegations of CUTPA violations do not satisfy PLCAA's predicate exception because they do not constitute legally sufficient CUTPA claims.

a

Relationship Between the Parties

First, the defendants contend that the CUTPA counts are legally insufficient because CUTPA does not provide protection for persons who do not have a consumer or commercial relationship with the alleged wrongdoer, and such a relationship does not exist between the plaintiffs and the defendants in the present action. In response, the plaintiffs argue that any person who suffers any ascertainable loss of money or property may sue under CUTPA, regardless of whether they have a consumer or commercial relationship with the defendant.

"In 1973, when CUTPA was first enacted, the predecessor to § 42-110g contained language that limited standing to [a]ny person who purchases or leases goods or services . . . . In 1979, however, the legislature amended [CUTPA], deleting all references to purchasers, sellers, lessors, or lessees. . . . Notwithstanding the elimination of the privity requirement, [our Supreme Court] previously ha[s] stated that it strains credulity to conclude that CUTPA is so formless as to provide redress to any person, for any ascertainable harm, caused by any person in the conduct of any trade or commerce." (Citations omitted; internal quotation marks omitted.) *Vacco* v. *Microsoft Corp.*, 260 Conn. 59, 87-88, 793 A.2d 1048 (2002). More recently in *Pinette* v. *McLaughlin*, 96 Conn. App. 769, 901 A.2d 1269, cert. denied, 280 Conn. 929, 909 A.2d 958 (2006), our Appellate Court reiterated this point, stating that "[a]lthough our Supreme Court repeatedly has stated that CUTPA does not impose the requirement of a consumer relationship . . . the court also has indicated that a plaintiff must have at least *some* business relationship with the defendant in order to state a cause of action under CUTPA." (Citation omitted; emphasis in original.) Id., 778; see also *Ventres* v. *Goodspeed Airport, LLC*, 275 Conn. 105, 157-58, 881 A.2d 937 (2005) (rejecting defendants' argument that CUTPA plaintiff is not required to allege any business relationship with defendant), cert. denied, 547 U.S. 1111, 126 S. Ct. 1913, 164 L. Ed. 2d 664 (2006).

"Although the doctrine of stare decisis permits a court to overturn its own prior cases in limited circumstances, the concept of binding precedent prohibits a trial court from overturning a prior decision of an appellate court. This prohibition is necessary to accomplish the purpose of a hierarchical judicial system. A trial court is required to follow the prior decisions of an appellate court to the extent that they are applicable to the facts and issues in the case before it, and the trial court may not overturn or disregard binding precedent." (Emphasis omitted.) *Potvin* v.

Lincoln Service & Equipment Co., 298 Conn. 620, 650, 6 A.3d 60 (2010). In both *Ventres* and *Pinette*, our Supreme Court and Appellate Court, respectively, rejected the plaintiffs' assertions that they need not allege *any* business relationship with the defendants in order to bring claims against them under CUTPA.

Although this court acknowledges that, consistent with the plaintiffs' argument, the language of CUTPA itself makes no mention of a business relationship requirement,[25] this court is bound by the appellate court precedent set by *Ventres* and *Pinette*. The plaintiffs here do not contend that a consumer, competitor, or other commercial relationship exists between themselves, i.e., the Sandy Hook shooting victims, and the defendants, i.e., the manufacturers and/or sellers of the gun allegedly used in the Sandy Hook shooting. Because the plaintiffs do not allege at least *some* business relationship with the defendants, pursuant to *Ventres* and *Pinette*, they have not set forth legally sufficient violations of CUTPA. Therefore, to the extent that the plaintiffs have relied on CUTPA as a predicate statute, the plaintiffs have not set forth legally sufficient claims permitted under the predicate exception to PLCAA.

b

[25] As further support for their argument that they are not required to allege a business relationship with the defendants in order to bring CUTPA claims, the plaintiffs cite to the portion of the decision in *Ganim* v. *Smith & Wesson Corp.*, supra, 258 Conn. 313, in which our Supreme Court stated: "We have already identified some of the directly injured parties who could presumably, without the attendant [remoteness] problems . . . remedy the harms directly caused by the defendants' conduct and thereby obtain compensation . . . ." Id., 359. "[T]he harm suffered by the potential other plaintiffs . . . exists at a level less removed from the alleged actions of the defendants [various handgun manufacturers, trade associations, and retail gun sellers]. They include, for example, all the homeowners in Bridgeport who have been deceived by the defendants' misleading advertising, all of the persons who have been assaulted or killed by the misuse of handguns, and all of the families of the persons who committed suicide using those handguns." Id. Notably, however, this language appears in the context of the court's discussion regarding the remoteness doctrine as a limitation on standing, a completely different issue than that which is before the court in the present case. In fact, *Ganim* expressly declined to consider whether a CUTPA claim is confined to consumers, competitors, and those in some business or commercial relationship with the defendants. Id., 372. Accordingly, this court finds the plaintiffs' references to *Ganim* to be inapposite to the present issue.

Alternative Arguments as to the Legal Sufficiency of Alleged CUTPA Violations

Although the foregoing analysis is dispositive of the motions to strike with regard to the CUTPA analysis, the court will consider, in the interest of completeness, the alternative arguments of the defendants regarding the legal sufficiency of the plaintiffs' CUTPA claims. Those issues are: (1) whether the type of injury alleged is sufficient under CUTPA; (2) whether the claims are time barred by CUTPA's three-year statute of limitations; (3) whether the claims are actually products liability claims and therefore cannot be asserted as CUTPA claims; and (4) whether General Statutes § 42-110c (a) exempts the defendants from CUTPA liability.

i

Type of Injury Permitted Under CUTPA

The defendants contend that the plaintiffs have not set forth legally sufficient CUTPA violations because the plaintiffs do not seek the sort of relief CUTPA affords, namely, damages for financial injury. In contrast, the plaintiffs argue that CUTPA indeed provides a remedy for personal injury and wrongful death.

Section 42-110g (a) of CUTPA provides: "Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by section 42-110b, may bring an action . . . to recover actual damages." Although the statute does not define what kinds of damages constitute "actual damages," "[c]ourts have held a number of types of economic damages recoverable as 'actual damages' pursuant to CUTPA, including lost profits, the lost value of a business, the lost benefit of a bargain, restitution and out-of-pocket losses. . . . Less clear is if and to what extent damages for personal injuries or such injuries as damage to reputation can be recovered as 'actual damages' under § 42-110g (a). The legislative history of both CUTPA and the model legislation on which CUTPA was based, is silent as to whether the legislation was intended to allow recovery of

personal injury damages. . . . Although a number of cases in which the plaintiff sought recovery for personal injuries based on a violation of CUTPA have reached the Connecticut appellate court, in each case the appellate court denied recovery for a reason other than the inability to recover for personal injury damages under the Act. In none of these cases did the court address, or even refer to, the issue of whether damages for personal injuries are recoverable under CUTPA." (Footnotes omitted.) R. Langer, J. Morgan & D. Belt, 12 Connecticut Practice Series (2015-2016 Ed.) § 6.7, pp. 805-807 (citing various appellate court cases as examples, including *Sherwood* v. *Danbury Hospital*, 252 Conn. 193, 213-15, 746 A.2d 730 [2000]; *Haynes* v. *Yale-New Haven Hospital*, 243 Conn. 17, 34, 699 A.2d 964 [1997]; *Haesche* v. *Kissner*, 229 Conn. 213, 224, 640 A.2d 89 [1994]).

While Connecticut's trial court judges are divided on this issue, the majority of judges addressing it have held that damages for personal injuries can be recovered under CUTPA. See 12 R. Langer, J. Morgan & D. Belt, supra, § 6.7, p. 808 (citing *DiTeresi* v. *Stamford Health System, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-06-5001340-S (September 2, 2011, *Tierney, J.T.R.*) (denying motion to reargue previously granted motion for summary judgment in favor of defendant on plaintiff's CUTPA claim because plaintiff failed to present evidence demonstrating that any physical injuries resulted from defendant's practices); *Mola* v. *Home Depot USA*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-98-0167635-S (October 29, 2001, *Mintz, J.*); *Cole* v. *Federal Hill Dental Group, P.C.*, Superior Court, judicial district of Hartford-New Britain, Docket No. CV-99-0492391-S (July 20, 2000, *Kocay, J.*) (28 Conn. L. Rptr. 18); *Simms* v. *Candela*, 45 Conn. Supp. 267, 711 A.2d 778 (1998) (plaintiff who has suffered "ascertainable loss" as a result of a CUTPA violation may recover for personal injuries where business practices are implicated); *Abbhi* v.

AMI, Superior Court, judicial district of New Haven, Docket No. CV-96-0382195-S (June 3, 1997, *Silbert, J.*) (19 Conn. L. Rptr. 493) (CUTPA claim can be asserted where plaintiff suffered personal injuries).

Most notably, in *Simms* v. *Candela*, supra, 45 Conn. Supp. 267, the court conducted a thorough analysis of this issue, ultimately denying the defendant's motion to strike that was brought on the ground that damages for personal injury are not recoverable under CUTPA. Id., 268. The court based its decision on the legislative history of CUTPA, Federal Trade Commission precedent, other cases that allowed CUTPA claims seeking damages for personal injury to proceed, the fact that the plaintiff's economic damages satisfied the "ascertainable loss" requirement, the statutory language of § 42-110g (a) allowing recovery for "actual damages," and the recognition of personal injury claims under the statutes of other jurisdictions prohibiting unfair trade practices. See id., 271-76. This court finds the reasoning set forth in *Simms* to be comprehensive and persuasive, and thus it adopts this majority view.[26] Accordingly, the court finds that the fact that the plaintiffs seek damages for personal injuries does not render their claims of CUTPA violations legally insufficient.

ii

Statute of Limitations

The defendants next argue that the CUTPA allegations are legally insufficient because the claims are barred by CUTPA's three-year statute of limitations. The plaintiffs contend that the applicable statute of limitations is, in fact, two years pursuant to General Statutes § 52-555, the wrongful death statute, and that, therefore, the motions cannot be granted on this ground.

[26] The Supreme Judicial Court of Massachusetts has reached a similar conclusion with regard to an analogous Massachusetts statute. It has expressly stated "that damages due to personal injuries are recoverable under c. 93A." *Haddad* v. *Gonzalez*, 410 Mass. 855, 868, 576 N.E.2d 658 (1991).

"[O]rdinarily, [a] claim that an action is barred by the lapse of the statute of limitations must be pleaded as a special defense, not raised by a motion to strike." (Internal quotation marks omitted.) *Greco* v. *United Technologies Corp.*, 277 Conn. 337, 344 n.12, 890 A.2d 1269 (2006). "[T]here are two exceptions to that holding. Those exceptions relate to situations in which a motion to strike, filed instead of a special defense of a statute of limitations, would be permitted." *Girard* v. *Weiss*, 43 Conn. App. 397, 415, 682 A.2d 1078, cert. denied, 239 Conn. 946, 686 A.2d 121 (1996). "The first is when [t]he parties agree that the complaint sets forth all the facts pertinent to the question [of] whether the action is barred by the [s]tatute of [l]imitations and that, therefore, it is proper to raise that question by [a motion to strike] instead of by answer." (Internal quotation marks omitted.) *Forbes* v. *Ballaro*, 31 Conn. App. 235, 239, 624 A.2d 389 (1993). The second exception "exists . . . when a statute gives a right of action which did not exist at common law, and fixes the time within which the right must be enforced, the time fixed is a limitation or condition attached to the right–it is a limitation of the liability itself as created, and not of the remedy alone." (Internal quotation marks omitted.) *Greco* v. *United Technologies Corp.*, supra, 277 Conn. 345 n.12. Because CUTPA gives a right of action which did not exist at common law; see *Associated Investment Co. Ltd. Partnership* v. *Williams Associates IV*, 230 Conn. 148, 159, 645 A.2d 505 (1994); and fixes the time within which the right must be enforced; General Statutes § 42-110g (f); the defendants' motions to strike on this ground fall into the second exception and are thus properly before the court.

CUTPA provides in relevant part that "[a]n action under this section may not be brought more than three years after the occurrence of a violation of this chapter." General Statutes § 42-110g (f). Here, the defendants argue that, pursuant to the amended complaint, the occurrence of the alleged CUTPA violation took place either "sometime prior to March of 2010" with regard to

the Remington and Camfour defendants[27] and "[i]n March of 2010" with regard to the Riverview defendants.[28] Accordingly, the defendants argue, the three-year statute of limitations for the CUTPA claims against them expired either sometime prior to or within March of 2013 for all of the defendants. Because this action was not filed within that timeframe, the defendants reason, the claims at issue were brought well after the three-year mark from the date of the alleged CUTPA violations.

In contrast, the plaintiffs argue that the wrongful death statute, § 52-555, contains the controlling statute of limitations for purposes of their CUTPA claims. Section 52-555 provides in relevant part that "no action shall be brought to recover such damages and disbursement but within two years from the date of death . . . ." As support for their assertion, the plaintiffs rely on the Superior Court case *Pellecchia* v. *Connecticut Light & Power Co.*, 52 Conn. Supp. 435, 54 A.3d 1080 (2011), aff'd in part and appeal dismissed in part, 139 Conn. App. 88, 54 A.3d 658 (2012), cert. denied, 307 Conn. 950, 60 A.3d 740 (2013).

As in the present case, the court in *Pellechia* considered the applicable statute of limitations that controls in an action involving wrongful death, stating: "The wrongful death statute . . . is the sole basis upon which an action that includes as an element of damages a person's death or its consequences can be brought. . . . As a result, where damages for a wrongful death are sought, the pertinent statute of limitations is to be found in § 52-555 rather than the statutes of limitations for torts or negligence generally. . . . This rule, however, does not bar the plaintiff from advancing alternative theories of recovery, or causes of action, pursuant to

[27] More specifically, paragraph 176 of the amended complaint alleges that "[s]ometime prior to March of 2010, the Bushmaster Defendants entrusted the XM15-E2S to the Camfour Defendants," and paragraph 178 alleges that "[s]ometime prior to March of 2010, the Camfour Defendants entrusted the Bushmaster XM15-E2S to the Riverview Defendants."

[28] Paragraph 182 of the amended complaint alleges: "In March of 2010, the Riverview Defendants entrusted the Bushmaster XM15-E2S to Nancy Lanza."

the wrongful death statute. . . . Here, all of the plaintiff's claims against the . . . defendants seek damages arising from the death of the plaintiff's decedent in July, 2006. While he has advanced different theories of liability (such as negligence, recklessness, and violation of [CUTPA]) . . . they all are subject to the two year limitations period set forth in § 52-555." (Citations omitted; internal quotation marks omitted.) *Pellechia* v. *Connecticut Light & Power Company*, supra, 52 Conn. Supp. 445. On appeal, the Appellate Court adopted the "well reasoned decision" of the trial court and affirmed the trial court on the statute of limitations issue.[29] *Pellechia* v. *Connecticut Light & Power Company*, supra, 139 Conn. App. 90.

In the present case, the plaintiffs may advance different theories of recovery or causes of action, such as CUTPA, pursuant to the wrongful death statute. *Pellechia* makes clear, however, that those theories of liability are all subject to the two-year statute of limitations period set forth in § 52-555. Moreover, the court finds no support for the defendants' contention that *Pellechia* holds that *both* statutes of limitations under CUTPA and the wrongful death statute must be satisfied in order for the plaintiffs to assert legally sufficient CUTPA wrongful death claims. The plaintiffs' action satisfies the two-year limitations period set forth in § 52-555.[30] Accordingly,

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[29] Specifically, the Appellate Court said: "We have examined the record on appeal and considered the briefs and arguments of the parties and conclude that the judgment of the trial court should be affirmed. Because the trial court thoroughly addressed the arguments raised in this appeal, we adopt its well reasoned decision as a statement of the facts and the applicable law on the issue. . . . Any further discussion by this court would serve no useful purpose." (Citation omitted.) *Pellechia* v. *Connecticut Light & Power Company*, supra, 139 Conn. App. 90.

[30] The deaths at issue in the present case occurred on December 14, 2012. Therefore, by the normal operation of the limitations period set forth in § 52-555, the plaintiffs would have needed to commence this action within two years of that date, i.e., by December 14, 2014. Although the action was not commenced by service of process on or before that date, a review of the court documents reveals that the wrongful death claims are not time barred. General Statutes § 52-593a provides in relevant part that "a cause or right of action shall not be lost because of the passage of the time limited by law within which the action may be brought, if the process to be served is personally delivered to a state marshal, constable or other proper officer within such time and the process is served, as provided by law, within thirty days of the delivery. . . ." As the process was delivered to the marshal within the two year period and the marshal served process

the plaintiffs' wrongful death claims are not barred by the applicable statute of limitations as set forth in § 52-555.

With regard to the allegations of CUTPA violations contained within counts thirty-one, thirty-two, and thirty-three, however, the plaintiffs concede, and the court agrees, that these counts brought by survivor Natalie Hammond against the defendants must be stricken on the ground that § 52-555 does not apply to these claims; thus, these claims are barred by the CUTPA three-year statute of limitations.

iii

The Exclusivity Provision of the Connecticut Product Liability Act (CPLA)

The defendants contend that the plaintiffs' claims are actually product liability claims and that the CPLA contains an exclusivity provision which forecloses any other claims.[31] The plaintiffs aver that they have not alleged a product liability claim because their arguments for liability are not based on a defective product, the marketing of a defective product, or the failure to warn about such a product.

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on the defendants within thirty days of the delivery, the wrongful death claims are not time barred.

[31] The defendants additionally argue that PLCAA prohibits a product liability action where the discharge of the firearm was the result of a volitional criminal act. The plaintiff does not claim to be asserting a product liability cause of action. PLCAA specifically exempts "an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage"; (emphasis added) 15 U.S.C. § 7903 (A) (5) (v) (2012); from the definition of a qualified, and therefore prohibited, civil liability action. In the present case, "[i]t is uncontroverted that a third party discharged the [weapon], during the commission of a criminal act." *Jefferies* v. *District of Columbia*, 916 F. Supp. 2d 42, 46 (2013). Accordingly, regardless of whether the plaintiffs have alleged a product liability action, this exception does not apply.

"The exclusivity provision of the product liability act provides: 'A product liability claim . . . may be asserted and shall be in lieu of all other claims against product sellers, including actions of negligence, strict liability and warranty, for harm caused by a product.' General Statutes § 52-572n (a)." (Footnotes omitted.) *Gerrity* v. *R.J. Reynolds Tobacco Co.*, supra, 263 Conn. 125-26. Therefore, if the plaintiffs' claims sound in products liability, they may not be brought pursuant to CUTPA.

In Connecticut, "the legislature defined a product liability claim to include all claims or actions brought for personal injury, death or property damage caused by [an] allegedly *defective* product. General Statutes § 52-572m (b). The legislature also provided that the damages are caused by the *defective* product if they arise from the manufacture, construction, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging or labeling of any product. General Statutes § 52-572m (b). In addition, a product liability claim is defined broadly to include, but not be limited to, all actions based on [s]trict liability in tort; negligence; breach of warranty, express or implied; breach of or failure to discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation or nondisclosure, whether negligent or innocent. General Statutes § 52-572m (b). Finally, the legislature defined [h]arm for purposes of the act to include damage to property, including the product itself, and personal injuries including wrongful death. General Statutes § 52-572m (d). These definitions must be read together, with the understanding that the [liability act] was designed in part to codify the common law of product liability, and in part to resolve, by legislative compromise, certain issues among the groups interested in the area of product liability. The [liability act], however, was not designed to eliminate claims that previously were understood to be outside the traditional scope of a claim for liability based on a defective product. Given this contextual framework, [the

Supreme Court] conclude[d] that a product liability claim under the [liability] act is one that seeks to recover damages for personal injuries, including wrongful death, or for property damages, including damage to the product itself, caused by the *defective* product." (Emphasis added; internal quotation marks omitted.) *Hurley* v. *Heart Physicians, P.C.*, 278 Conn. 305, 324–25, 898 A.2d 777 (2006), quoting *Gerrity* v. *R.J. Reynolds Tobacco Co.*, supra, 263 Conn. 128.

"A product may be defective due to a flaw in the manufacturing process, a design defect or because of inadequate warnings or instructions." *Vitanza* v. *Upjohn Co.*, 257 Conn. 365, 373, 778 A.2d 829 (2001). As Justice Zarella has observed, "[c]onsistent with our product liability law, the Restatement (Third) recognizes three distinct categories of product defect claims: manufacturing defects, design defects, and marketing defects, also called a failure to warn." *Izzarelli* v. *R.J. Reynolds Tobacco Co.*, 321 Conn. 172, 214, 136 A.3d 1232 (2016) (*Zarella, J.*, concurring). Reading these definitions together, the court concludes that "a product liability claim under the [CPLA] is one that seeks to recover damages for personal injuries, including wrongful death, or for property damages, including damage to the product itself, caused by"; (internal quotation marks omitted) *Hurley* v. *Heart Physicians, P.C.*, supra, 278 Conn. 325; "a flaw in the [product's] manufacturing process, a design defect or because of inadequate warnings or instructions." *Vitanza* v. *Upjohn Co.*, supra, 257 Conn. 373. "Inadequate warnings or instructions" encompasses "failure to warn" and "marketing defects." *Izzarelli* v. *R.J. Reynolds Tobacco Co.*, supra, 214-15 (*Zarella, J.*, concurring); see also Restatement (Third), Torts, Products Liability § 2 (1998).

In the present case, the defendants argue that the plaintiffs seek wrongful death and personal injury damages allegedly resulting from product design. "To prevail on a design defect

claim a plaintiff must prove that the product is unreasonably dangerous. . . . Unreasonably dangerous is defined under Connecticut law using the consumer expectation standard, which provides that the article sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics." (Citation omitted; internal quotation marks omitted.) *Fraser* v. *Wyeth, Inc.*, 857 F. Supp. 2d 244, 256 (D. Conn. 2012). The plaintiffs are not claiming that the defendants are liable because the firearm is unreasonably dangerous and state "indeed, it is an ideally dangerous product for a large consumer base (that is, military and law enforcement personnel)."

The defendants also argue that the plaintiffs seek wrongful death and personal injury damages allegedly resulting from wrongful marketing. As stated above, defective marketing is synonymous with inadequate warnings or instructions. "[A] product may be defective because a manufacturer or seller failed to warn of the product's unreasonably dangerous propensities. . . . Under such circumstances, the failure to warn, by itself, constitutes a defect." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Sharp* v. *Wyatt, Inc.*, 31 Conn. App. 824, 833, 627 A.2d 1347 (1993), aff'd, 230 Conn. 12, 644 A.2d 871 (1994). Again, the plaintiffs have not alleged liability based on a product defect. Furthermore, the plaintiffs have not alleged any facts regarding the defendants providing, or failing to provide, warnings or instructions.

In sum, construing the complaint in the light most favorable to sustaining its legal sufficiency, the plaintiffs have not alleged that the product was in any way defective and have therefore not alleged a product liability claim. For this reason, the plaintiffs' CUTPA claims are not barred by the CPLA's exclusivity provision.

iv

General Statutes § 42-110c (a): CUTPA's Exemption Provision

Finally, the defendants argue that § 42-110c (a) (1) exempts them from CUTPA liability. Section 42-110c (a) provides in relevant part: "Nothing in this chapter shall apply to: (1) Transactions or actions otherwise permitted under law as administered by any regulatory board or officer acting under statutory authority of the state or of the United States . . . ." The court does not grant the defendants' motions to strike on this basis. First, as the plaintiffs contend, the applicability of this provision generally should be raised by way of a special defense or a motion for summary judgment, rather than a motion to strike. See *Gonzalez* v. *Church Street New Haven, LLC*, Superior Court, judicial district of New Haven, Docket No. CV-14-6050201 (November 2, 2015, *Blue, J.*) (61 Conn. L. Rptr. 169) (CUTPA's exemption provision is affirmative defense that must be alleged in pleadings and proved at trial or raised in motion for summary judgment, not motion to strike). Second, none of the defendants has adequately briefed the issue of whether this exemption applies to the present case, and the court, therefore, will not address it. See *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, 266 Conn. 108, 120, 830 A.2d 1121 (2003) (court is "not required to review issues that have been improperly presented . . . through an inadequate brief" [Internal quotation marks omitted]). Accordingly, the court does not grant the motions to strike on the ground that CUTPA's governmental exemption provision bars the action.

III

CONCLUSION

Congress, through the Protection of Lawful Commerce in Arms Act (PLCAA), has broadly prohibited lawsuits "against manufacturers, distributors, dealers, and importers of firearms . . . for the harm solely caused by the criminal or unlawful misuse of firearm products . .

. by others when the product functioned as designed and intended." 15 U.S.C. § 7901 (b) (1) and § 7902 (a) (2012). The present case seeks damages for harms, including the deaths of the plaintiffs' decedents, that were caused solely by the criminal misuse of a weapon by Adam Lanza. Accordingly, this action falls squarely within the broad immunity provided by PLCAA.

Although PLCAA provides a narrow exception under which plaintiffs may maintain an action for negligent entrustment of a firearm, the allegations in the present case do not fit within the common-law tort of negligent entrustment under well-established Connecticut law, nor do they come within PLCAA's definition of negligent entrustment. Furthermore, the plaintiffs cannot avail themselves of the Connecticut Unfair Trade Practices Act (CUTPA) to bring this action within PLCAA's exception allowing lawsuits for violation of a state statute applicable to the sale or marketing of firearms. A plaintiff under CUTPA must allege some kind of consumer, competitor, or other commercial relationship with a defendant, and the plaintiffs here have alleged no such relationship.

For all of the foregoing reasons, the court grants in their entirety the defendants' motions to strike the amended complaint.[32]

Bellis, J.

[32] The court is aware that one of the defendants, Riverview Sales, Inc., has filed a petition for bankruptcy. Pursuant to the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362, this action is automatically stayed with respect to that defendant. Accordingly, this decision does not apply with regard to Riverview Sales, Inc. Any and all references to Riverview Sales, Inc., and "the Riverview defendants" in this memorandum, therefore, are included for the sake of clarity and should not be construed as applying this decision to the claims against Riverview Sales, Inc., in any way. See *Ellis* v. *Consolidated Diesel Electric Corp.*, 894 F.2d 371, 373 (10th Cir. 1990) ("[t]he operation of the stay should not depend on whether the . . . court finds *for* or *against* the debtor" [emphasis in original]); see also *Rexnord Holdings, Inc.* v. *Bidermann*, 21 F.3d 522, 528 (2d Cir. 1994) (bankruptcy stay applies to judicial decision making by court, but not ministerial acts performed by clerk following completion of judicial function).