

DN FST CV 15 6048103-S

DONNA L. SOTO, ADMINISTRATRIX)	SUPERIOR COURT
OF THE ESTATE OF VICTORIA L.)	
SOTO, DECEASED, ET AL.)	J.D. OF FAIRFIELD/BRIDGEPORT
)	@ BRIDGEPORT
v.)	
)	
BUSHMASTER FIREARMS)	
INTERNATIONAL, LLC, ET AL.)	April 22, 2016

**REMINGTON'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION
TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT**

TABLE OF CONTENTS

INTRODUCTION 1

MOTION TO STRIKE STANDARD 2

BACKGROUND 2

 A. The rifle was lawfully marketed, sold and possessed in Connecticut in 2010 and is lawful to possess in Connecticut today 3

 B. Public policy regarding the manufacture, marketing, sale and ownership of firearms has been established by the legislative branches of government and should not be undone by courts or juries 4

ARGUMENT 6

 A. Remington is immune from suit under the PLCAA 6

 1. Operation and application of the PLCAA 6

 2. This case meets the definition of a “qualified civil liability action” against a manufacturer of a “qualified product” 8

 3. Plaintiffs have not sufficiently alleged a “negligent entrustment” claim against Remington 9

 i. The PLCAA prohibits a “negligent entrustment” action against a firearm manufacturer 9

 ii. Plaintiffs’ allegations against Remington do not satisfy the PLCAA definition of negligent entrustment 13

 iii. The rules of statutory construction require that a firearm “use” be narrowly defined to preserve the purpose of the PLCAA 15

 4. Plaintiffs have not pleaded (and cannot plead) a knowing violation of a statute “applicable to the sale or marketing” of firearms 20

 i. CUTPA does not qualify as a predicate statute under the plain meaning of the PLCAA text and guiding precedent 20

 ii. Congress did not intend for a statute of general application to serve as a predicate statute under Section 7903(5)(A)(iii) 24

 iii. Recognition of CUTPA as a predicate statute applicable to the sale or marketing of firearms will render other enumerated exceptions to immunity superfluous 28

5.	The PLCAA prohibits a product liability action where the discharge of the firearm was the result of a volitional criminal act	29
B.	Plaintiffs’ CUTPA claims against Remington fail under Connecticut law	31
1.	Plaintiffs do not have the requisite relationship with Remington.....	31
2.	Plaintiffs do not seek financial damages against Remington.....	32
3.	Plaintiffs’ CUTPA claims are barred by the statute of limitations	32
4.	The CPLA “exclusivity” provision bars Plaintiffs’ CUTPA claim against Remington	33
5.	Section 42-110c(a) exempts Remington’s “transaction” from CUTPA liability	35
CONCLUSION	35

INTRODUCTION

Remington is immune from Plaintiffs' claims under the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq.* ("PLCAA"). Contrary to federal law, Plaintiffs seek to hold Remington responsible for the shooting at Sandy Hook Elementary School under various legal theories, including (1) negligent entrustment, (2) product liability, and (3) violation of the Connecticut Unfair Trade Practices Act ("CUTPA"). (*See, e.g.*, Pls.' First Am. Compl. ("FAC") at Count One, ¶¶ 213-227.) The PLCAA bars all three claims of Plaintiffs' First Amended Complaint as alleged against Remington.

The PLCAA was enacted to protect, *inter alia*, firearm manufacturers from civil actions for damages and other relief resulting from the criminal or unlawful use of firearms by third parties. 15 U.S.C. § 7901(b)(1). By providing immunity for such actions, Congress focused specifically on litigation that had "been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by third parties, including criminals." 15 U.S.C. § 7901(a)(3). Congress found these lawsuits to be "an abuse of the legal system" and enacted the PLCAA to ensure that those who manufacture firearms are not held "liable for the harm caused by those who criminally or unlawfully misuse them." 15 U.S.C. §§ 7901(a)(5) & (6). This lawsuit falls squarely within the immunity that the PLCAA affords to firearm manufacturers. As a result, Plaintiffs have failed to state viable claims against Remington. 15 U.S.C. § 7902.

Additionally, the CUTPA claims fail because (1) Plaintiffs are not consumers of Remington's product and are not competitors or other business persons with a commercial relationship to Remington; (2) Plaintiffs have not alleged the type of financial injury that CUTPA was enacted to redress; (3) the CUTPA claims are barred by the 3-year statute of limitations; (4)

the CUTPA claims are barred by the “exclusivity” provision of the Connecticut Product Liability Act (“CPLA”); and (5) the CUTPA claims are barred by § 42-110c(a).

MOTION TO STRIKE STANDARD

A motion to strike challenges the legal sufficiency of a complaint or any count therein, *Gulack v. Gulack*, 30 Conn. App. 305, 309, 620 A.2d 181 (1993), and requires no factual findings by the court. *Vacco v. Microsoft Corp.*, 260 Conn. 59, 64-65, 793 A.2d 1048, 1051 (2002); Practice Book § 10-39. “The role of the trial court in ruling on a motion to strike is to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action.” *Coe v. Board of Education*, 301 Conn. 112, 116-17, 19 A.3d 640 (2011) (citation omitted; internal quotation marks omitted).

BACKGROUND

Plaintiffs’ case against Remington is premised on their allegations that one of the firearms criminally misused by Adam Lanza – a Bushmaster XM-15 semi-automatic rifle – should not have been marketed and sold for civilian use in Connecticut because it allegedly posed an unreasonable risk of injury. The rifle had been lawfully purchased in 2010 by Adam Lanza’s mother, Nancy. Like any adult resident of Connecticut who passed the required law enforcement background check and was not otherwise legally disqualified from owning or possessing the rifle, she could purchase, own and use the firearm for lawful purposes. *See* 18 U.S.C. § 922(t)(1); 27 C.F.R. § 478.102. There are no allegations that Remington’s manufacture of the rifle violated any of the then existing federal, state or local firearm laws, regulations and ordinances. *See, e.g.*, Conn. Gen. Stat. § 53-202a(a)(3) (1993) (defining prohibited “assault weapons” as those having at least two specified features, *e.g.*, telescoping stock, pistol grip, flash suppressor). Plaintiffs nevertheless seek to turn

the lawful actions of the rifle's manufacturer into actionable wrongs justifying injunctive relief and recovery of compensatory and punitive damages for wrongful death and personal injury.

A. The rifle was lawfully marketed, sold and possessed in Connecticut in 2010 and is lawful to possess in Connecticut today.

The XM-15 rifle and other AR-type semiautomatic rifles with similar design features have been purchased and owned for decades by “[m]illions of Americans” for lawful civilian purposes. *Shew v. Malloy*, 994 F.Supp.2d 234, 245 (D.Conn. 2014), *aff’d in part, rev’d in part*, 804 F.3d 242 (2d Cir. 2015) (“[T]here can be little dispute that tens of thousands of Americans own these guns and use them exclusively for lawful purposes such as hunting, target shooting and even self-defense.”); *Heller v. District of Columbia*, 670 F.3d 1244, 1260 (D.C. Cir. 2010) (“We think it clear enough . . . that semi-automatic rifles and magazines holding more than ten rounds are indeed in ‘common use’ as the plaintiffs contend.”).¹ Semiautomatic rifles like the XM-15 “traditionally have been widely accepted as lawful possessions.” *Staples v. United States*, 511 U.S. 600, 612 (1994).

In 2013, the Connecticut General Assembly passed “An Act Concerning Gun Violence Prevention and Children’s Safety” in response to the shooting at Sandy Hook Elementary School. Conn. Gen. Stat. §53-202a (2013) (the “Act”). The Act expanded an earlier statutory definition of prohibited “assault weapons” to include specific semiautomatic rifles listed by make and model as well as and other rifles with certain prohibited design features. *Compare* Conn. Gen. Stat. § 53-202a (2013) (prohibiting rifles by specific make and model and others with two or more prohibited

¹ “AR” stands for Armalite, the company that first manufactured this type of semi-automatic rifle. Generally, an AR-type firearm is a semi-automatic rifle that has a detachable magazine, has a grip protruding roughly four inches below the action of the rifle, and is easily accessorized. *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 990 F. Supp. 2d 349, 364 (W.D.N.Y. 2013). A semi-automatic firearm fires only one shot with each pull of the trigger, in contrast to an automatic firearm, which fires repeatedly with a single trigger pull. *Heller v. District of Columbia*, 670 F.3d 1244, 1285-86 (D.C.Cir. 2011) (Kavanaugh J., dissenting). The vast majority of new handguns today are semi-automatic. *Id.*

design features); *with* Conn. Gen. Stat. § 53-202a (1993). The Act also prohibited the sale and purchase of ammunition magazines capable of holding more than ten rounds. Conn. Gen. Stat. § 53-202w (“large capacity magazines”).

The XM-15 rifle was among the firearms newly defined by the General Assembly as an “assault weapon” in 2013. Conn. Gen. Stat. § 53-202a(1)(B); *see also Shew*, 994 F.Supp.2d at 238-41. However, the General Assembly did not ban possession of the rifle and other firearms it classified as “assault weapons” or “large capacity magazines” altogether. Persons may lawfully possess the firearms today in Connecticut, provided they were lawfully owned as of April 4, 2013 and they are registered with the state. Conn. Gen. Stat. § 53-202d(a)(2)(A). And the firearms may be lawfully manufactured in Connecticut for sale outside the state. Conn. Gen. Stat. § 53-202i (circumstances in which manufacture of “assault weapons” not prohibited). “Large capacity magazines” may still be possessed in Connecticut if they were possessed prior to January 1, 2014 and a certificate of possession is obtained. Conn. Gen. Stat. § 53-202x.

Against this legislative back-drop, Plaintiffs contend the XM-15 rifle had negligible utility for hunting, sporting and self-defense use, posed unreasonable risks of physical injury and should not have been marketed and sold in 2010 for civilian use in Connecticut. (FAC at ¶¶ 12, 166.) Through this case, Plaintiffs, in essence, seek to substitute their view on what types of firearms law-abiding persons should be permitted to own in Connecticut for the policy choices made by the General Assembly.

B. Public policy regarding the manufacture, marketing, sale and ownership of firearms has been established by the legislative branches of government and should not be undone by courts or juries.

The General Assembly’s actions in 2013 underscore that policy decisions regarding what types of firearms are lawfully manufactured, marketed and sold for civilian use are appropriately

made by legislatures, not by courts or juries on a case-by-case basis. *See New York State Rifle & Pistol Ass'n v. Cuomo*, 2015 U.S. App. LEXIS 18121, *40 (2d Cir. Oct. 19, 2015) (“We remain mindful that ‘[i]n the context of firearms regulation, the legislature is far better equipped than the judiciary to make sensitive policy judgments . . . concerning the dangers of carrying firearms and the manner to combat those risks.’”) (internal citation omitted).²

The role legislatures have in regulating firearms is reflected in one of the stated purposes of the PLCAA: “[t]o preserve and protect the Separation of Powers doctrine” found in the United States Constitution. 15 U.S.C. § 7901(b)(6). The separation of powers doctrine is also firmly embedded in Connecticut law and the Connecticut Constitution. CONN. CONST., Article II; *see University of Connecticut Chapter AAUP v. Governor*, 200 Conn. 386, 394, 512 A.2d 152 (1986) (“In the establishment of three distinct departments of government the Constitution, by necessary implication, prescribes those limitations and imposes those duties which are essential to the independence of each and to the performance by each of the powers of which it is made the depository.”); *Kelley Property Dev., Inc. v. Lebanon*, 226 Conn. 314, 339-340, 627 A.2d 909 (1993) (separation of powers requires judicial deference to legislative resolution of conflicting considerations of public policy).

Congress deemed the PLCAA necessary because “liability actions” were seen as

² *See also City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1121 (Ill. 2004) (“[T]here are strong public policy reasons to defer to the legislature in the matter of regulating the manufacture, distribution, and sale of firearms.”); *Penelas v. Arms Tech., Inc.*, 778 So. 2d 1042, 1045 (Fla. App. 2001) (“[T]he judiciary is not empowered to ‘enact’ regulatory measures in the guise of injunctive relief. The power to legislate belongs not to the judicial branch of government, but to the legislative branch.”); *People v. Sturm, Ruger*, 761 N.Y. 2d 192, 203 (N.Y. App. 2003) (“As for those societal problems associated with, or following, legal handgun manufacturing and marketing, their resolution is best left to the legislative and executive branches.”); *In re Firearms Cases*, 126 Cal. App. 4th 959, 985 (Cal. App. 2005) (“While plaintiffs’ attempt to add another layer of oversight to a highly regulated industry may represent a desirable goal . . . [e]stablishing public policy is primarily a legislative function and not a judicial function, especially in an area that is subject to heavy regulation.”); *Hamilton v. Beretta*, 96 N.Y. 2d 222, 239-40 (N.Y. 2001) (“[W]e should be cautious in imposing novel theories of tort liability while the difficult problem of illegal gun sales remains the focus of a national policy debate.”).

“attempt[s] to use the judicial branch to circumvent the legislative branch of government.” 15 U.S.C. § 7901(a)(8). Plaintiffs seek to do exactly that in this case: circumvent the policy choice made by the General Assembly that the firearm purchased by Nancy Lanza in 2010 was lawful to manufacture, market, sell and possess in Connecticut. The criminal use to which the firearm was put was indeed tragic. However, as a matter of sound judicial policy, the decision made by the General Assembly cannot be undone by a court without significantly interfering with the powers that reside within the legislative branch of government.

ARGUMENT

A. Remington is immune from suit under the PLCAA.

1. Operation and application of the PLCAA.

The PLCAA was enacted to protect firearm manufacturers against the very claims Plaintiffs make in this case. The declared purpose of Congress was to “prohibit causes of action against manufacturers, distributors, dealers and importers of firearms” for harm “caused by the criminal or unlawful use of firearms” that “functioned as designed and intended.” 15 U.S.C. § 7901(b)(1); *see City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 402 (2d Cir. 2008) (“We think Congress clearly intended to protect from vicarious liability members of the firearms industry who engage in the ‘lawful design, manufacture, marketing, distribution, importation or sale of firearms.’”). Congress viewed actions by state and municipal governments, private interest groups and individual plaintiffs seeking to hold firearm manufacturers liable for the criminal misuse of firearms that “functioned as designed and intended” as improper attempts to regulate an already “heavily regulated” industry “through judgments and judicial decrees.” 15 U.S.C. §§ 7901(a) (3), (4), (8). Congress, therefore, prohibited such claims from being “brought in any Federal or State court.” 15 U.S.C. § 7902(a).

Under the plain and unambiguous terms of the PLCAA, a case that meets the definition of

a “qualified civil liability action” is barred. Congress defined a “qualified civil liability action” as follows:

The term “qualified civil liability action” means 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, 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). A “qualified product” includes “firearms as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18.” 15 U.S.C. § 7903(4). Section 921(a)(3), in turn, defines a “firearm” to include “any weapon ... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” 18 U.S.C. § 921(a)(3).

The PLCAA also defines those entitled to its protections—“manufacturers” and “sellers.” A “manufacturer” is defined as “a person who is engaged in the business of manufacturing the [qualified] product in interstate 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). A “seller” is defined as (1) an “importer (as defined in section 921(a)(9) of title 18),” (2) “a dealer (as defined in section 921(a)(11) of title 18),” or (3) “a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(a) of title 18).” 15 U.S.C. § 7903(6). Under the PLCAA, a “seller” of a “qualified product” does not include firearm manufacturers.

With these definitions in place, Congress created broad immunity for firearm manufacturers in “qualified civil liability actions,” subject to certain limited exceptions. 15 U.S.C. §§ 7903(5)(A)(i)-(vi). A viable state law action that fits within an exception is not prohibited under the PLCAA. The enumerated exceptions material to Plaintiffs’ claims are:

- (ii) an action brought against a seller for negligent entrustment or negligence per se;
- (iii) 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 an 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 entry 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 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 under subsection (g) or (n) of section 922 of title 18;

* * *

(v) 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 when 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.

15 U.S.C. §§ 7903(5)(A)(ii), (iii), (v).

Notably, Congress made clear that the exceptions to PLCAA immunity do not “create a public or private cause of action or remedy.” 15 U.S.C. § 7903(5)(C). Thus, 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.

2. This case meets the definition of a “qualified civil liability action” against a manufacturer of a “qualified product”.

This case meets the prefatory definition of a “qualified civil liability action.” It is a “civil action ... against a manufacturer ... for damages ... resulting from the criminal or unlawful misuse” of a firearm by a “third party.” 15 U.S.C. § 7903(5)(A). Plaintiffs allege Adam Lanza’s actions were criminal, and it is clear that their damages resulted from his criminal misuse of a

firearm. (FAC at ¶¶ 204-206.) The question, then, is whether any of the claims pleaded against Remington fit within any of the enumerated exceptions to manufacturer immunity. They do not.

3. Plaintiffs have not sufficiently alleged a “negligent entrustment” claim against Remington.

i. The PLCAA prohibits a “negligent entrustment” action against a firearm manufacturer.

Plaintiffs allege that Remington manufactured and negligently entrusted the firearm, eventually used by Adam Lanza, to Camfour, a wholesale distributor of sporting goods located in Massachusetts. (FAC at ¶¶ 176, 224-225.) However, Congress limited the availability of a state law action for negligent entrustment of a firearm to actions against a “seller.” *See* 15 U.S.C. §§ 7903(5)(A)(ii) (a qualified civil liability action [for which immunity exists] “shall not include ... an action brought against a *seller* for negligent entrustment or negligence per se.”) (emphasis added). As the plain language of the PLCAA makes clear, Remington was not a “seller” of the firearm used in the shooting. 15 U.S.C. § 7903(2). Indeed, as the Court noted in its Memorandum of Decision Re: Motions to Dismiss #119, #122, #125 (at n.4), Plaintiffs specifically allege that Riverview Sales and Camfour were “qualified product sellers within the meaning of 15 U.S.C. § 7903(6).” (FAC at ¶ 30, 36.) But Plaintiffs do not make that allegation as to Remington.

The omission of statutorily-defined “manufacturers” from the negligent entrustment exception was not a congressional oversight. Congress also omitted “manufacturers” from the definition of “negligent entrustment,” which is defined as:

[T]he 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) (emphasis added).

Legislative intent is reflected in the words used and the technical meaning given to those

words by the legislature. Conn. Gen. Stat. § 1-1. The words and their meaning make it clear that the PLCAA permits a “negligent entrustment” action only against one who acted as a statutorily-defined “seller” of the firearm used by the criminal to cause injury. A “seller” is defined in the PLCAA, in pertinent part, as

[A] dealer (as defined in Section 921(a)(11) of Title 18) who is engaged in the business as such 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)(B) (emphasis added).

Plaintiffs have not alleged that Remington sold the firearm to Camfour under a federal firearms dealer license.³ Plaintiffs have also not alleged that Remington was “engaged in the business” as a dealer with respect to the firearm that was sold and shipped. Section 921(a)(11)(A) defines a “dealer,” in pertinent part, as “any person engaged in the business of selling firearms at wholesale or retail.” The phrase “engaged in the business” has its own technical meaning under Section 921. As applied to a “dealer” in firearms, a person is “engaged in the business” by:

[D]evot[ing] time, attention, and labor to dealing in firearms as a regular course of trade or 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.

³ A licensed manufacturer sells the firearms it manufactures from its premises under its manufacturer license. *See* 27 CFR § 478.41 (“[I]t shall not be necessary for a licensed importer or a licensed manufacturer to also obtain a dealer’s license in order to engage in business on the licensed premises as a dealer in the same type of firearms authorized by the license to be imported or manufactured.”). Plaintiffs’ reliance on *Broughman v. Carver*, 624 F.3d 670, 677-78 (4th Cir. 2010), for the blanket proposition that a “manufacturer” and a “dealer” are not mutually exclusive is misplaced. *Broughman* merely stands for the proposition that one who has a dealer license but is also “engaged in the business” of manufacturing firearms must have a manufacturer’s license in order to lawfully manufacture them. Any reliance by Plaintiff on the definition of “dealer” under National Firearm Act (“NFA”) is also misplaced. Merely because Congress chose to distinguish between a “dealer” and “manufacturer” differently in the NFA than it did in the PLCAA, does not, turn a “manufacturer” of a firearm into its “seller” for purposes of assessing PLCAA immunity. *See* 26 U.S.C. § 5845(k) (under the NFA, “[t]he term ‘dealer’ means any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.”). Regardless, the NFA and PLCAA definitions of a “dealer” are harmonious. They both define “dealer” to exclude manufacturers.

18 U.S.C. § 921(a)(21)(C) (emphasis added). When Remington sold the firearm it had manufactured to Camfour, it did not engage in the purchase and resale of the firearm. Thus, Remington did not sell the firearm to Camfour as a “dealer,” as the term is defined in section 921(a)(11), or as a “seller,” as defined in the PLCAA. Given that a “manufacturer” manufactures and sells and that a “seller” purchases and resells, under the PLCAA, a “manufacturer” of a firearm cannot also be the firearm’s “seller” without eviscerating the distinction between the statutorily-defined terms. The technical meanings given to these terms in the PLCAA make them mutually exclusive. *See Kraiza v. Planning & Zoning Commission of the Town*, 121 Conn. App. 478, 492-93, 997 A.2d 583 (2010) (when a term is defined in the statute, common and ordinary usage is not considered).

Moreover, had Congress intended to make the “negligent entrustment” exception apply to both a “manufacturer” and a “seller,” it could have done so, as it did in making other exceptions applicable to a “manufacturer or seller.” *See, e.g.*, 15 U.S.C. § 7903(5)(A) (“The term ‘qualified civil liability action’ means a civil action or proceeding or an administrative proceeding brought by any person against a *manufacturer or seller*”); 15 U.S.C. § 7903(5)(A)(iii) (“an action in which a *manufacturer or seller* of a qualified product knowingly violated ... a statute applicable to the sale or marketing of the product....”); 15 U.S.C. § 7903(5)(A)(iii)(I) (“any case in which the *manufacturer or seller* knowingly made any false entry....”); 15 U.S.C. § 7903(5)(A)(iii)(II) (“any case in which the *manufacturer or seller* aided, abetted or conspired with another person....”) (emphasis added throughout). Under Plaintiffs’ interpretation, Congress need only have used the term “seller” in these other provisions to achieve the purpose of protecting both manufacturers and sellers from liability. But that is not what Congress did. The “negligent entrustment” exception stands apart because it is only intended to apply to the technically-defined “seller” of the

criminally-misused firearm.

The plain meaning rule requires that legislative intent first “be ascertained from the text of the statute.” Conn. Gen. Stat. § 1-2z; *accord United States v. Ripa*, 323 F.3d 73, 81 (2d Cir. 2003) (“Statutory analysis begins with the plain meaning of the statute.”). Any attempt by Plaintiffs to conflate the technical meaning given to “seller” and create ambiguity should be rejected. But assuming, for argument sake, that the definition of a “seller” in the PLCAA was somehow ambiguous, legislative history resolves any ambiguity because it plainly supports the interpretation that the “negligent entrustment” exception was not intended to reach manufacturers:

One exception, for example, would purport to permit certain actions for “negligent entrustment”. The bill goes on, however, to define “negligent entrustment” extremely narrowly. The exception applies only to sellers, for example, and would not apply to distributors or manufacturers no matter how egregious their conduct. Even as to sellers, the exception would apply only where the particular person to whom a seller supplies a firearm is one whom the sellers knows or ought to know will use it to cause harm.

151 Cong. Rec. S9071 (Sen. Feinstein) (reading from a letter signed by 50 law school professors).

Nothing in this bill is intended to allow “leap frogging” over the gun dealer to the manufacturer. The negligent entrustment exception provision applies specifically to the situation where a dealer knows or reasonably should know that a dangerous person is purchasing a firearm with the intent to commit, and does commit a crime with the firearm. When a manufacturer has done nothing but sell a legal, non-defective product according to the law, the negligent entrustment provision would not allow bypass of the gun dealer to get to the deeper pockets of the manufacturer.

151 Cong. Rec. S9374 (Sen. Craig).⁴ *See State v. Panek*, 2014 Conn. Super LEXIS 922, *14 (Conn. Super. Ct. Apr. 21, 2014) (despite finding plain and unambiguous meaning, the court examined legislative history and found it “fully consistent with the court’s conclusion”). The text

⁴ In their Sur-reply on the Motion to Dismiss, Plaintiffs misleadingly quoted Senator Craig’s statements from volume “150” of the Congressional Record relating to a 2004 proposed version of the immunity law that was rejected by Congress, but not the PLCAA that was debated and enacted into law in 2005, *i.e.*, volume “151” of the Congressional Record.

of the PLCAA, its legislative history and related statutory provisions do not support a construction that Remington was a “seller” of the firearm used in the shooting under the PLCAA.

ii. Plaintiffs’ allegations against Remington do not satisfy the PLCAA definition of negligent entrustment.

Even assuming, *arguendo*, that Remington is somehow considered a “seller” of the firearm under the PLCAA, its alleged actions do not meet the PLCAA definition of “negligent entrustment” because plaintiffs have not alleged that Camfour’s resale of the firearm was a “use” of the firearm, under the PLCAA definition of negligent entrustment. 15 U.S.C. § 7903(5)(B). Remington is alleged to have sold the lawfully-manufactured firearm to Camfour, a federally-licensed wholesale distributor of firearms. Camfour’s alleged actions with respect to the firearm – merely selling it to a federally-licensed retail dealer – cannot constitute a “use” of the firearm “involving an unreasonable risk of physical injury to the person or others.” *Id.* If it did, then every firearm manufacturer and wholesale distributor would be exposed to the burdens of litigation, because all firearms are sold in commerce and are capable of being criminally misused. PLCAA immunity was created, in part, to protect firearm sellers against this very kind of claim.

The allegations in support of a negligent entrustment action must satisfy the following definition in order to survive PLCAA immunity:

As used in subparagraph (A)(ii), the term “negligent entrustment” means 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). This definition provides the minimum elements required to be pleaded in order to qualify for the negligent entrustment exception under the PLCAA. If the allegations in support of a negligent entrustment claim against a firearm seller do not reach the PLCAA’s definitional “floor,” the claim is a qualified civil liability action and it may not proceed. *Cf. Geier*

v. Am. Honda Motor Co., 529 U.S. 861, 870 (federal preemptive statute established a minimum standard, *i.e.*, a “floor”); *Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008) (holding that the preemption clause of the Food, Drug and Cosmetic Act relating to medical devices, 21 U.S.C. § 360k(a), preempts certain state law claims: “Petitioner’s common-law claims are pre-empted because they are based upon New York ‘requirement[s]’ with respect to Medtronic’s catheter that are ‘different from, or in addition to’ the federal ones, and that relate to safety and effectiveness, § 360k(a).”).

Plaintiffs’ allegations describe Remington’s lawful sale of a lawfully-manufactured firearm to Camfour, a federally-licensed wholesale firearms distributor, which in turn sold the firearm to Riverview Sales, a federally-licensed firearms dealer. (FAC at ¶¶ 29-36.) Although Plaintiffs allege that each of these two lawful transactions was an “entrust[ment]” (*id.* at ¶¶ 176-78), they do not allege that either transaction was a “use” by Camfour or Riverview Sales of the product, under the PLCAA definition of negligent entrustment. Nor can the Court accept such an allegation because doing so would expose firearm manufacturers to liability under the guise of negligent entrustment for merely selling firearms later used in crime. Plaintiffs’ theory—that a legal transaction between two federal firearm licensees involving a product that was lawfully manufactured, sold, owned and possessed in Connecticut creates liability on the manufacturer for harm by a criminal’s misuse of the product—eviscerates the PLCAA. The theory would expose firearm manufacturers to negligent entrustment litigation every time a criminal uses a firearm to cause harm – regardless of the type of firearm used because all firearms can be alleged to be attractive to criminals. It is an absolute liability theory that the PLCAA was unquestionably enacted to prohibit.⁵

⁵ Even prior to the enactment of the PLCAA, courts declined to impose such sweeping liability on firearm sellers. *Cf. Delahanty v. Hinckley*, 564 A.2d 758 (D.C. App. 1989) (rejecting strict liability claim against

iii. The rules of statutory construction require that a firearm “use” be narrowly defined to preserve the purpose of the PLCAA.

Congress did not intend that a manufacturer’s sale of a lawfully manufactured firearm to a wholesale distributor could be a firearm “use” under § 7903(5)(B). Again, if such a transaction were sufficient to invoke the negligent entrustment exception, the other exceptions would be mere surplusage.

Plaintiffs’ argument that the Court should adopt a “common law” meaning of “use” is not helpful to their position. First of all, there is no accepted common law meaning of the word “use.” As the Supreme Court has recognized, “[m]ost words have different shades of meaning and consequently may be variously construed, not only when used in different statutes, but when used more than once in the same statute or even the same section.” *Environmental Defense v. Duke Energy Corporation*, 549 U.S. 561, 574 (2007). The meaning of the word “use” as it appears in § 7903(5)(B) can only be understood by considering the context of the surrounding language in which it appears and the PLCAA as a whole. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Fundamental rules of statutory construction require that “use” be defined narrowly in recognition of the purpose of the PLCAA: to protect firearm sellers against claims arising from the criminal misuse of lawfully sold firearms. *See Commissioner v. Clark*, 489 U.S. 726, 739 (1989).⁶

Secondly, any suggestion that certain “congruence” between language found in the

manufacturer for the criminal use of a small, concealable handgun based on the theory that they have no social value); *Riordan v. International Armament Corp.*, 132 Ill. App. 3d 642 (1985) (same); *Perkins v. F.I.E. Corp.*, 762 F.2d 1250 (5th Cir. 1985) (same); *Moore v. R.G. Industries, Inc.*, 789 F.2d 1326 (9th Cir. 1985) (same).

⁶ The dictionary definition of “use” is the “act or practice of employing something” (WEBSTER’S NEW COLLEGIATE DICTIONARY, 1299 (1987)) or “to put or bring into action or service.” BLACK’S LAW DICTIONARY 1382 (5th ed. 1979)). These definitions include affirmative acts of use, not passive shipment of products by a manufacturer to a wholesale distributor. Simply selling a firearm to Camfour is hardly “employing” a firearm or putting it into “action.”

Restatement (Second) of Torts § 390 and § 7903(5)(B) was intentional on the part of Congress is pure speculation. In any event, the congruence between Section 390 and § 7903(5)(B) is not complete, which means that to the extent the drafters of the PLCAA considered Section 390, that Restatement Section’s language did not fully reflect congressional intent to provide firearm sellers broad protection against claims arising from the criminal use of firearms they sell.

Restatement Section 390 contemplates that a supplier will incur liability for supplying “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 . . . to use [the chattel] in a manner involving unreasonable risk of physical harm to himself and others.” Restatement (Second) of Torts § 390 (1965) (emphasis added). In contrast, PLCAA § 7903(5)(B) specifies that, in order to qualify for the negligent entrustment exception, the plaintiff must show that the firearm 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) (emphasis added). PLCAA § 7903(5)(B) is specific where Restatement Section 390 is general, *i.e.*, with regard to the class of persons whose “use” will potentially expose the product seller to liability. Under the PLCAA definition of negligent entrustment, this is a class of one: “the person to whom the product is supplied.” 15 U.S.C. § 7903(5)(B). This distinction from Restatement Section 390—which permits liability to attach to the seller based on use of the chattel by “another”—plainly reflects Congress’s intent to craft a narrow exception to the broad immunity from suit provided under the PLCAA.⁷

⁷ In any event, each of the Illustrations to Section 390 involve a class of one—namely, the person to whom the product was supplied was the person who thereafter carelessly drove the car, operated the boat or discharged the firearm. None of the Illustrations involved a situation where the person to whom the product was supplied later on gave it to another person without the supplier’s knowledge, and the other person thereafter used the product to cause harm.

Permitting negligent entrustment actions arising from the criminal use of a firearm by persons who are once, twice or three times removed from the manufacturer's initial sale would destroy the protections afforded by the PLCAA. Under Plaintiffs' expansive interpretation of "use," the initial lawful sale of any firearm, which passes through legal commerce and then is later used in crime, could be alleged to have been negligently entrusted. But there is no way to reconcile that interpretation with the purpose of the PLCAA—to protect firearm sellers from lawsuits arising from the criminal use of firearms.⁸

By the same token, there is no credible argument that Congress intended to preserve a cause of action against a firearm seller for a "successive entrustment" of an entire "class" of firearms, simply because a firearm in the "class" is later used in a crime. Indeed, the opposite is true. Congress was aware of lawsuits filed against firearms manufacturers, distributors and retail dealers alleging that they had entrusted firearms downstream in commerce to persons who were remote from the criminal use of the firearm and could not in any sense be found to have proximately caused the injuries claimed, and Congress enacted the PLCAA to extinguish such claims. *See* 15 U.S.C. § 7901(a)(7) ("The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States

⁸ Interpreting the "negligent entrustment" exception to encompass only situations in which "the person to whom" the seller "suppl[ies]" the firearm is "the person" who thereafter "use[s]" the firearm to harm "the person or others," 15 U.S.C. § 7903(5)(B), reflects the reality that a seller who entrusts an instrumentality to a customer—whether a car, a firearm or other potentially dangerous instrumentality—can only assess the competency of the customer with whom it is dealing to use the instrumentality safely. *See Phillips v. Lucky Gunner, LLC*, No.14-cv-2822, 2015 U.S. Dist. LEXIS 39284, *19 (D. Colo. Mar. 27, 2015) (dismissing all claims against sellers as barred by the PLCAA, including a negligent entrustment claim: "the standard for negligent entrustment liability is narrower than the ordinary negligence standard because the manner in which the chattel is ultimately used is outside the supplier's control"). Extending liability under a negligent entrustment theory for the actions of persons unknown to the supplier, who later gain access to the instrumentality, eliminates the concept of "entrustment" from the cause of action altogether, and potentially leads to unlimited supplier liability. *See id.* at *19.

and do not represent a bona fide expansion of the common law.”). An interpretation of the PLCAA that will allow the type of claims made in those cases to proceed would be directly at odds with the clear intent of Congress.

Ileto is an example of a “successive entrustment” case that Congress intended to preempt. There, the plaintiffs brought suit against the manufacturer and wholesale distributor of a handgun used in a mass shooting. The firearm changed hands multiple times before it reached the shooter, including a police department, a licensed retail dealer and two private gun collectors. *See Ileto v. Glock, Inc.*, 421 F.Supp.2d 1274, 1280-81 (C.D. Cal. 2006). The Ninth Circuit looked to the PLCAA’s legislative history and observed that “congressional speakers referred to *this very case* as the type of case they meant the PLCAA to preempt” and dismissed the plaintiffs’ common law tort claims. *Ileto*, 565 F.3d at 1136 (emphasis in original).

Indeed, seventy-five law professors joined in the opinion that the PLCAA defines “negligent entrustment extremely narrowly” and prohibits claims for “successive entrustments”:

The exception applies only to sellers, for example, and would not apply to distributors or manufacturers, no matter how egregious their conduct. Even as to sellers, the exception would apply only where the particular person to whom a seller supplies a firearm is the one whom the seller knows or ought to know will use it to cause harm.

151 Cong. Rec. S9229 (July 28, 2005). The PLCAA should be interpreted in light of the purpose for which it was enacted: to stem the flood of litigation seeking to hold firearms suppliers responsible for the criminal misuse of firearms by remote third parties.

Plaintiffs’ reliance on the Supreme Court’s interpretation of “use” under § 924(c)(1) of the Gun Control Act in *Smith v. United States*, 508 U.S. 223 (1993), should be rejected. First of all, the same language in different statutes may be construed together only when the statutes are *in pari materia*. *Firststar Bank, N.A. v. Faul*, 253 F. 3d 982, 990 (7th Cir. 2001) (before construing

different statutes *in pari materia*, a court must determine that the purposes and subjects of the acts are in fact similar); *Lieberman v. FTC*, 771 F.2d 32, 40 (2d Cir. 1985) (even same term within different version of same statute is not *in pari materia* where goals of the statute changed). Section 924(c)(1) provides for enhanced punishment of persons convicted of carrying or using a firearm “during or in relation to any crime of violence or drug trafficking crime.” 18 U.S.C. § 924(c)(1). In *Smith*, the defendant was found to have “used” a firearm under § 924(c)(1) when he traded a firearm for drugs. *Smith*, 508 U.S. at 226. The Court held that the act of trading a firearm for drugs can be a firearm “use” for the purpose of § 924(c)(1).

Secondly, in *Bailey v. United States*, 516 U.S. 137 (1995), a subsequent decision further addressing the meaning of “use” under § 924(c)(1), the Court held that although a “use” under § 924(c)(1) can include “brandishing, displaying, bartering, striking with, and, most obviously, firing or attempting to fire a firearm,” a defendant cannot be charged for merely storing a firearm near drugs. *Id.* at 149. “Storage of a firearm, without its more active employment, is not reasonably distinguishable from possession.” *Id.* Thus, *Bailey* establishes that, even under the expansive interpretation of a firearm “use” in *Smith*, Camfour did not “use” the firearm by merely possessing and then selling it to Riverview Sales. Nor did Riverview Sales “use” the firearm when it sold it to Nancy Lanza. And Nancy Lanza did not “use” the firearm by merely possessing it in her home.

In sum, the PLCAA prohibits a wide variety of claims against firearm manufacturers and sellers, and only permits specifically enumerated others. However, Plaintiffs’ primary allegations against Remington in this case—that a firearm manufacturer acted tortiously by making a lawful sale of a commonly purchased firearm to a law abiding, federally-licensed wholesale distributor—is prohibited by the PLCAA.

4. Plaintiffs have not pleaded (and cannot plead) a knowing violation of a statute “applicable to the sale or marketing” of firearms.

i. CUTPA does not qualify as a predicate statute under the plain meaning of the PLCAA text and guiding precedent.

An action in which a firearm manufacturer “knowingly violated a State or Federal statute applicable to the sale or marketing” of a qualified product and “the violation was a proximate cause of the harm for which relief is sought” is an exception to PLCAA immunity. 15 U.S.C. § 7903(5)(A)(iii) (referred to as the “predicate exception”). CUTPA is a remedial statute of general application. Congress did not intend that alleged violations of this kind of statute were to serve as exceptions to PLCAA immunity.

Application of the plain meaning rule to the PLCAA requires a finding that the type of statutes Congress had in mind as predicate statutes under § 7903(5)(A)(iii) are those that Congress specifically enumerated as examples in the text of the predicate exception itself, and other similar statutes that also “actually regulate the firearms industry.” *City of New York v. Beretta*, 524 F.3d 384, 402-03 (2d Cir. 2008). This interpretation does not “yield absurd or unworkable results” but is entirely consistent with the overall purpose of the PLCAA: to provide immunity to firearm manufacturers who conduct their manufacturing activities in accordance with the myriad federal, state and local laws applicable to their highly-regulated businesses. *See* Conn. Gen. Stat. § 1-2z; *see Heim v. Zoning Board of Appeals*, 288 Conn. 628, 637, 953 A.2d 877 (2008) (“We must always construe a regulation in light of its purpose.”) (citing *West Hartford Interfaith Coalition v. Town Council*, 228 Conn. 498, 508 (1994) (“[a] statute should not be construed to thwart its purpose.”)).

As explained by the Second Circuit in *City of New York*, the predicate exception encompasses only those statutes that “expressly regulate firearms” or “that clearly can be said to implicate the purchase and sale of firearms.” 524 F.3d at 403 (holding that the New York criminal

nuisance statute was not “applicable to the sale or marketing of firearms”); *Ileto*, 565 F.3d at 1135-36 (finding it “likely that Congress had in mind only ... statutes that regulate manufacturing, importing, selling, marketing, and using firearms or that regulate the firearms industry – rather than general tort theories that happened to have been codified by a given jurisdiction”).

The existence of myriad laws relating to the manufacture, marketing, sale and ownership of firearms was recognized by Congress. In enacting the PLCAA, Congress expressly found that “[t]he manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws.” 15 U.S.C. § 7901(a)(4). Indeed, at the federal level, statutes and regulations touch on virtually all aspects of firearms manufacture, ownership and use. *See, e.g.*, 18 U.S.C. § 921 *et seq.* (Gun Control Act of 1968) and regulations promulgated thereunder, 27 CFR Part 478 (Commerce in Firearms and Ammunition); 26 U.S.C. § 5801 *et seq.* (National Firearms Act) and regulations promulgated thereunder, 27 CFR Part 479 (Machine Guns, Destructive Devices and Certain Other Firearms); and 28 CFR Part 25 (National Instant Criminal Background Check System). However, federal law does not occupy the field to the exclusion of state and local laws. 18 U.S.C. § 927 (Federal firearms laws do not “operate[] to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict ... so that the two cannot be reconciled or consistently stand together.”).

Most states, including Connecticut, also regulate the manufacture, sale and ownership of firearms. *See, e.g.*, Conn. Gen. Stat. § 29-28 *et seq.* (permit for sale at retail of pistol or revolver); Conn. Gen. Stat. § 29-33 (sale, delivery or transfer of pistols and revolvers); Conn. Gen. Stat. § 29-37a (sale or delivery at retail of firearm other than pistol or revolver); Conn. Gen. Stat. § 29-37b (retail dealer to equip firearms with locking device at time of sale and warn of consequence of unlawful storage); Conn. Gen. Stat. § 53-202a (permitted rifle, shotgun and pistol designs);

Conn. Gen. Stat. § 53-202b (sale or transfer of assault weapons); Conn. Gen. Stat. § 53-202c (possession of assault weapons); Conn. Gen. Stat. § 53-202d (certification of possession of assault weapons); Conn. Gen. Stat. § 53-202f (transportation of assault weapons). Some states, including Massachusetts, Maryland and California, dictate firearm designs by statute, specifying the mechanical safety features of firearms. *See* Cal. Pen. Code § 12126; Mass. Gen. L. § 131K; Md. Code § 5-132.⁹

Although many firearms regulations do not expressly reference the “sale or marketing” of firearms, most can be said to “implicate” the sale or marketing of firearms by, for example, dictating what types of firearms may be lawfully possessed and who may lawfully possess them. *See Gilland v. Sportsmen’s Outpost, Inc.*, 2011 Conn. Super. LEXIS 1320, *20 (Conn. Super. Ct. May 26, 2011) (illustrating the type of statutes, both federal and state, that Congress intended to serve as predicate statutes under § 7903(5)(A)(iii), including 18 U.S.C. § 922(b)(2) (sales prohibited to certain persons), and Conn. Gen. Stat. §§ 29-31 (pertaining to display of permits to sell and record sales of pistols and revolvers), 29-33 (pertaining to the sale, delivery, or transfer of pistols and revolvers), 29-361 (pertaining to verification of eligibility of persons to receive or possess firearms, the State database, the instant criminal background check and related issues)). Remington is not alleged to have violated any of these regulations.

Congressional intent is plainly reflected in the two examples of predicate statutes set forth in § 7903(5)(A)(iii). The examples include statutes dictating the records to be kept by sellers with respect to firearm sales and statutes prohibiting seller complicity in illegal firearm sales. 15 U.S.C.

⁹ Firearm laws applicable to the sale and marketing of firearms are also found at the local level. In Connecticut, for example, Bridgeport, Hartford and New Haven are municipalities with laws addressing firearms sales and ownership. *See* Bridgeport Municipal Code, Title 9, Ch. 9.16; Municipal Code of Hartford, Ch. 21, Art. II; New Haven Code of Ordinances, Ch. 18; *see also ATF State Laws and Published Ordinances*, available at: www.atf.gov/file/58536/download (last visited Apr. 19, 2016).

§§ 7903(5)(B)(iii)(I) & (II). In its analysis of whether the New York nuisance statute was the type of statute Congress intended to serve as a predicate statute, the Second Circuit in *City of New York* looked to these examples and applied two canons of statutory construction: *noscitur a sociis* (meaning of one term may be determined by reference to terms it is associated with) and *ejusdem generis* (general words should be limited to things similar to those specifically enumerated). *City of New York*, 524 F.3d at 401. The court held that a nuisance statute could not serve as a predicate statute under the PLCAA because it was not similar or related to the enumerated examples. Indeed, the court in *Ileto* reasoned that “there would be no need to list examples at all” if “any statute that ‘could be applied’ to the sales and manufacturing of firearms qualified as a predicate statute.” *Ileto*, 565 F.3d at 1134 (emphasis in original).¹⁰

The same analysis compels one conclusion in this case: that Congress did not intend for general state unfair trade practice statutes, such as CUTPA, to serve as predicate statutes under § 7903(5)(B)(iii). See *Webster Bank v. Oakley*, 265 Conn. 539, 555 n.16, 830 A.2d 139 (2003) (“[T]he decisions of the Second Circuit Court of Appeals carry particular persuasive weight in the interpretation of federal statutes in Connecticut state courts ... [and] that court’s decisions may be

¹⁰ The example provided in § 7903(5)(B)(iii)(II) specifically refers to aiding and abetting violations of Section 922(g) and (n) of the Gun Control Act, which identify the categories of persons who are prohibited from purchasing firearms. The example provided in § 7903(5)(B)(iii)(I) sets forth language found in Sections 922(m) of the Gun Control Act, which makes it unlawful for sellers to knowingly fail to maintain required record of firearm sales or make false entries in those records. Indeed, in their Objection to the Motion to Dismiss, Plaintiffs endorsed use of the *ejusdem generis* rule to interpret the predicate exception, but rejected the conclusion reached by the court in *City of New York* based on the rule. (Pls.’ Obj. at 38-39.) In any event, the Second Circuit’s application of *ejusdem generis* was within the parameters of the plain meaning rule because it did not require leaving the text of the statute itself to determine meaning. And resort to the rule is not dependent on an initial finding of ambiguity. See *Town of Stratford v. Jacobelli*, 317 Conn. 863, 873-75, 120 A.3d 500 (2015) (using *ejusdem generis* rule to find clear and unambiguous meaning). Under the rule, the specific examples of statutes “applicable to the sale or marketing” of firearms included in the predicate exception help shape the more general description of predicate statutes. See *id.* at 872 (“[W]here a particular enumeration is followed by general descriptive words, the latter will be understood as limited in their scope to...things of the same general kind or character as those specified in the particular enumeration.”).

more helpful to us if we follow the same analytical approach to federal statutory interpretation that it does.”). As a result, the predicate statute analyses undertaken by the Second Circuit is particularly persuasive. *Gilland*, 2010 Conn. LEXIS 142, at *14-15.

ii. Congress did not intend for a statute of general application to serve as a predicate statute under Section 7903(5)(A)(iii).

CUTPA does not expressly regulate or clearly implicate the regulation of firearms. *See* Conn. Gen. Stat. § 42-110g. To the contrary, CUTPA is a remedial statute of general application that creates an action to recover an “ascertainable amount of money or property” resulting from unfair or deceptive business practices. The CUTPA liability scheme is “expansive.” *Associated Inv. Co. Ltd. Partnership v. Williams Assoc. IV*, 230 Conn. 148, 156, 645 A.2d 505 (1984). CUTPA embraces a much broader range of business conduct than common law tort actions. *Sportsmen’s Boating Corp., v. Hensely*, 192 Conn. 148, 156, 645 A.2d 505 (1994). CUTPA is a broad, remedial statute and is not the type of statute “Congress had in mind” when carving out a narrow statutory violation exception to the broad immunity afforded by the PLCAA. *Ileto*, 565 F.3d at 1135-36. And because it is a fundamental rule of statutory construction that statutory exceptions are to be narrowly construed to preserve the primary purpose of the statute, CUTPA cannot be reconciled with congressional intent to protect firearm manufacturers from litigation. A statutory exception is *not* to be construed so broadly that it defeats the primary purpose of the statute. *Clark*, 489 U.S. at 739; *Hartford v. Freedom of Information Commission*, 210 Conn. 421, 431, 518 A.2d 49 (1986) (exceptions to FOIA disclosure must be narrowly construed to preserve policy favoring public disclosure).

Much like CUTPA, the nuisance statute at issue in *City of New York* is also a statute of general application. It prohibits conduct that endangers the public that is alleged to be “unreasonable under all the circumstances.” N.Y. Penal Law § 240.45. The Second Circuit,

relying on the overall purpose of the PLCAA, well-established canons of statutory construction, and legislative history, held that the New York nuisance statute did not “fall within the predicate exception to the claim restricting provisions of the PLCAA.” *City of New York*, 524 F.3d at 399. The court’s reasoning was straightforward: the New York nuisance statute was not the type of statute Congress intended to serve as a predicate statute because it neither “expressly regulat[ed]” nor could “clearly . . . be said to implicate” the sale or marketing of firearms. 524 F.3d at 403. The court expressly rejected an interpretation of “applicable to” to mean “capable of being applied” because it was a “too-broad reading of the predicate exception.” *Id.* at 402. Such an interpretation would be an “absurdity” because it “would allow the predicate exception to swallow the statute, which was intended to shield the firearms industry from vicarious liability for harm caused by firearms that were lawfully distributed into primary markets.” *Id.* at 401-02.¹¹

The analysis of whether CUTPA can serve as a predicate statute under § 7903(5)(A)(iii) should be consistent with the analysis performed by the Second Circuit in *City of New York*. Both statutes are statutes of general applicability capable of being applied to a broad spectrum of impermissible commercial conduct. CUTPA broadly focuses on “unfair or deceptive” conduct causing commercial harm. Conn. Gen. Stat. § 42-110b(a). The New York nuisance statute is equally broad, prohibiting “conduct . . . unreasonable under all the circumstances.” N.Y. Penal Law § 240.45(1). Neither statute expressly references the sale or marketing of firearms. And although the court in *City of New York* stated in *dicta* that a predicate statute need not necessarily “expressly refer to the firearms industry,” 524 F.3d at 400, it specifically held that “construing the term ‘applicable to’ to mean statutes that clearly can be said to regulate the firearms industry more

¹¹ The dictionary definition of “implicate” is “to be involve[d] in the nature or operation of something.” WEBSTER’S NEW COLLEGIATE DICTIONARY, 605 (1987). It is difficult to envision a statute being “applicable to the sale or marketing of firearms” without some aspect of firearms-related activity being inherent in the statute’s purpose or basic to its operation.

accurately reflects the intent of Congress.” *Id.* at 401. The court had little difficulty finding that § 7903(5)(A)(iii) did “not encompass” the New York nuisance statute. *Id.* at 403.

In reaching the same conclusion, the Ninth Circuit in *Ileto*, 565 F.3d at 1136-37, found that legislators’ “unanimously expressed understanding” that “sellers of firearms would be liable only for statutory violations concerning firearm regulations or sales and marketing regulations” was in “complete harmony” with the purpose and text of the PLCAA. *Ileto*, 565 F.3d at 1137. The court stated:

We make two general observations from our review of the extensive legislative history of the PLCAA. First, all of the congressional speakers’ statements concerning the scope of the PLCAA reflected the understanding that manufacturers and sellers of firearms would be liable only for statutory violations concerning firearm regulations or sales and marketing regulations. *See, e.g.*, 151 Cong. Rec. S9087-01 (statement of Sen. Craig) (“This bill does not shield [those who] . . . have violated existing law . . . and I am referring to the Federal firearms laws.”); *id.* S9217-02 (statement of Sen. Hutchison) (“[Lawsuits] would also be allowed where there is a knowing violation of a firearms law.”); *id.* (statement of Sen. Craig reading a *Wall Street Journal* article) (“The gun makers . . . would continue to face civil suits for defective products or for violating sales regulations.”); *id.* (statement of Sen. Reed in opposition to the PLCAA) (“We will let [plaintiffs] proceed with their suit if there is a criminal violation or a statutory violation, a violation of regulations, but for the vast number of other responsibilities we owe to each other, that are defined for the civil law, one will not have the opportunity to go to court.”); *id.* S8927-01 (statement of Sen. Reed) (stating that the PLCAA would not apply to violations of “statutes related to the sale or manufacturing of a gun”); *id.* S9246-02 (statement of Sen. Santorum) (“This bill provides carefully tailored protections that continue to allow legitimate suits based on knowing violations of Federal or State law related to gun sales.”).

Id. at 1136-37; *see also City of New York*, 524 F.3d at 402-03 (“[W]e think that the [congressmen’s] statements nevertheless support the view that the predicate exception was meant to apply only to statutes that actually regulate the firearms industry, in light of the statements’ consistency amongst each other and with the general language of the statute itself.”); *see State v. Courchesne*, 296 Conn. 622, 669, 998 A.2d 1 (2010) (holding that when a statute is not plain and unambiguous, the legislative history, the circumstances surrounding the statute’s enactment, and the legislative

policy the statute was designed to implement is examined).

The argument that a statute merely *capable of being applied* to the sale or marketing of firearms is sufficient to bring a cause of action within the predicate exception has been flatly rejected by the Second Circuit, and all other courts that have addressed the issue. *See City of New York*, 524 F.3d at 402 (finding this “a far too broad reading of the predicate exception”); *accord Iletto*, 565 F.3d at 1126 (“Indeed, if any statute that ‘could be applied’ to the sales and manufacturing firearms qualified as a predicate statute, there would be no need to list examples at all.”). There is simply no way to shoehorn an expansive CUTPA action into the narrow Section 7903(5)(A)(iii) exception without ignoring precedent and congressional intent. *See, e.g., District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 171 (D.C. App. 2008) (“Shoehorning, as it were, into the predicate exception [the D.C. Assault Weapons Manufacturing Strict Liability Act] that, at bottom, simply shifts the cost of injuries resulting from the discharge of lawfully manufactured and distributed firearms would, in our view, ‘frustrate Congress’s clear intention.’”).¹²

In *City of New York*, the plaintiff broadly complained about the sales and marketing practices of the defendant handgun manufacturers, claiming that their practices helped create a criminal marketplace for firearms. In *dicta*, the court in *City of New York* “declin[ed] to foreclose

¹² In *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. App. 2007), an Indiana appellate court found that the Indiana nuisance statute was “applicable” to the sale or marketing of firearms and could serve as a predicate statute under § 7903(5)(A)(iii), but did so for reasons not present here. The court’s ruling was based on a pre-PLCAA decision in the case by the Indiana Supreme Court, which held that defendants’ alleged violations of Indiana statutes “specifically applicable to the sale or marketing of firearms” gave rise to a statutory public nuisance claim. *Id.* at 430-32 (“Thus, even assuming that the PLCAA requires an underlying violation of a statute directly applicable to the sale or marketing of a firearm, the City has alleged such violations in their complaint.”). In contrast, Plaintiffs here have not alleged that Remington violated any laws directly applicable to the sale or marketing of firearms. Moreover, the court in *City of Gary* relied on an interpretation of “applicable” by the district court in *City of New York* to mean “capable of being applied” (*id.* at 431), which has since been overruled and rejected by the Second Circuit as “a far too-broad reading of the predicate exception.” *City of New York*, 524 F.3d at 384.

the possibility that, under certain circumstances, state courts may apply a statute of general applicability to the type of conduct that the City complains of, in which case such a statute might qualify as a predicate statute.” *Id.* at 399. The court’s *dicta*, however, should be viewed in light of the court’s holding, in which it “foreclose[d] the possibility” that the New York state nuisance statute could serve as a predicate statute under § 7903(5)(A)(iii). The court did not provide any further guidance as to what other type of “statute of general applicability” might qualify as a predicate statute, what “circumstances” might exist to conclude that Congress intended for such a statute to serve as a predicate, or whether it was the “specific conduct that the City complain[ed] of” that led to the court’s *dicta*. Without more, the *dicta* is just that—a statement that is not binding in subsequent cases. *Horne v. Coughlin*, 191 F.3d 244, 247 (2d Cir. 1999) (dictum not binding).

iii. Recognition of CUTPA as a predicate statute applicable to the sale or marketing of firearms will render other enumerated exceptions to immunity superfluous.

Permitting CUTPA to serve as a predicate statute would eviscerate congressional intent to provide immunity to firearm manufacturers from lawsuits arising from the criminal misuse of firearms. It would also render the other exceptions to immunity unnecessary, including the breach of contract or warranty, negligent entrustment and negligence *per se* exceptions. *See* 15 U.S.C §§ 7903(5)(A)(ii), (iv). “Statutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant.” *Housatonic R.R. Co. v. Comm’r of Revenue Servs.*, 301 Conn. 268, 303, 21 A.2d 759 (2011) (citing *Semerzakis v. Comm’r of Soc. Servs.*, 274 Conn. 1, 18, 873 A.2d 911 (2005) (Courts are to presume “the legislature did not intend to enact meaningless provisions.”)). In order to avoid PLCAA immunity, a person harmed by a criminal use of a firearm would have no reason to plead and take on a burden of proving anything more than a firearm manufacturer acted “unfairly” under CUTPA. Firearm manufacturers will find

themselves immersed in litigation based on allegations that their lawful manufacture and sale of firearms was nevertheless morally or ethically wrong and caused harm. The PLCAA was enacted to provide firearm manufacturers immunity for this very type of claim.

CUTPA is not the type of statute Congress intended to serve as a predicate statute under § 7903(5)(A)(iii) for an additional reason. Under CUTPA, a plaintiff need not prove defendant's actual or constructive knowledge that its actions were wrongful and caused harm. *See Normand Josef Enters. v. Connecticut Nat'l Bank*, 230 Conn. 486, 523, 646 A.2d 1289 (1994) (“a party need not prove an intent to deceive to prevail under CUTPA”). In contrast, under § 7903(5)(A)(iii), there must be proof that the predicate statute was “knowingly violated” by the defendant. Recognition of CUTPA and its expansive business/consumer remedial scheme as a predicate statute under § 7903(5)(A)(iii) would directly undermine congressional intent to provide broad immunity to firearm manufacturers who have not “knowingly violated” a statute applicable to the sale or marketing of firearms.

5. The PLCAA prohibits a product liability action where the discharge of the firearm was the result of a volitional criminal act.

The Connecticut Product Liability Act (“CPLA”) provides the exclusive remedy for all “claims or actions brought for personal injury, death or property damage caused by the manufacture, construction, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging or labeling of any product.” Conn. Gen. Stat. § 52-572m. Although Plaintiffs have denied doing so (to try and avoid “exclusivity”; *see* Arg. B.4., *infra*), they have plainly pleaded a product liability claim against Remington. They allege Remington wrongfully marketed and sold the rifle to the civilian market with knowledge that it posed an unreasonable risk of physical injury to others. (*See, e.g.*, FAC at Count One, ¶ 213.) Plaintiffs further allege that the utility of the rifle for lawful use was outweighed by the risk of its unlawful

use. (*Id.* at Count One, ¶ 217.) And Plaintiffs allege that Remington’s conduct in marketing the firearm for civilian use was a “substantial factor resulting in” their damages. (*Id.* at Count One, ¶ 227.) Under Connecticut law, these are product liability allegations, and if brought at all, must be brought under the CPLA. *See Fraser v. Wyeth, Inc.*, 857 F.Supp.2d 244, 258 (D.Conn. 2012); *Hurley v. Heart Physicians, P.C.*, 278 Conn. 305, 326, 898 A.2d 777, 789 (2006).

Although an exception to PLCAA immunity exists for a product liability action against a firearms manufacturer, such an action is *not* available “where the discharge of the [firearm] was caused by a volitional act that constituted a criminal offense.” 15 U.S.C. § 7903(5)(A)(v). Under such circumstances, the volitional criminal act is “considered the sole proximate cause of the resulting death, personal injuries or property damage.” *Id.* Here, Plaintiffs have clearly alleged Adam Lanza intentionally discharged the firearm. (*See* FAC at ¶¶ 201-07.) His actions were undeniably criminal. *See Adames v. Sheahan*, 909 N.E.2d 742, 761-62 (Ill. 2009) (holding that a criminal conviction is not required to find that the volitional discharge of a firearm prohibits a product liability action under the PLCAA). In accordance with the plain terms of the PLCAA exception regarding product liability suits, Adam Lanza’s criminal actions were the “sole proximate cause” of deaths and injuries he inflicted. Claims that Remington’s design, marketing and sale of the firearm used by Lanza caused Plaintiffs’ damages are prohibited by the PLCAA.¹³

¹³ Remington would have a defense to these types of claims even in the absence of the immunity provided by the PLCAA. Before the PLCAA was enacted, courts routinely dismissed cases against firearm manufacturers for damages resulting from the criminal discharge of firearms that *functioned as they were designed and intended to function*. *See Delahanty v. Hinckley*, 564 A.2d 758 (D.C. 1989) (dismissing claim alleging that “Saturday Night Special” was useful for criminal purposes and manufacturer’s marketing of firearm was an abnormally dangerous activity); *Linton v. Smith & Wesson*, 469 N.E.2d 339 (Ill. App. 1984) (finding no duty on the part of manufacturer of non-defective firearm to control distribution to the general public); *Riordan v. International Armament Corp.*, 477 N.E.2d 1293 (Ill. App. 1985) (dismissing claim alleging that manufacturer of concealable, inexpensive handgun was strictly liable because the gun “served no useful social purpose”); *Perkins v. F.I.E. Corp.*, 762 F.2d 1250 (5th Cir. 1985) (holding that manufacture of small caliber handguns is not an ultra-hazardous activity); *Mavilia v. Stoeger Industries*, 574 F.Supp. 107 (D. Mass. 1983) (dismissing claim against manufacturer based on negligent marketing and distribution of an alleged inherently defective product); *Patterson v. Gesellschaft*, 608 F.Supp. 1206 (N.D. Tex. 1985)

B. Plaintiffs' CUTPA claims against Remington fail under Connecticut law.

Plaintiffs fail to allege that they had a business relationship with Remington or suffered financial injuries, and their CUTPA claims are barred by the three-year statute of limitations, the “exclusivity” clause of the CPLA and the § 42-110c(a) exemption.

1. Plaintiffs do not have the requisite relationship with Remington.

CUTPA does not provide protection for persons who do not have a consumer or commercial relationship with the alleged wrongdoer. While a plaintiff need not allege a “consumer relationship” with a defendant in order to assert a CUTPA claim, *see Larsen Chelsey Realty Co. v. Larsen*, 232 Conn. 480, 498 (1995), the Connecticut Supreme Court has rejected the proposition that “a CUTPA plaintiff is not required to allege *any* business relationship with the defendant.” *Ventres v. Goodspeed Airport, LLC*, 275 Conn. 105, 157 (2005) (emphasis added); *see also Pinette v. McLaughlin*, 96 Conn. App. 769, 778 (2006) (“Although 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.”) (internal citation omitted).

Connecticut courts have recognized only three categories of persons who have suffered financial injury to have standing under CUTPA: (1) consumers, (2) competitors, and (3) other business persons with a consumer or commercial nexus to the alleged wrongdoer. *Provost-Daar v. Merz N. Am., Inc.*, No. CV136037872S, 2014 Conn. Super. LEXIS 411, *7-8 (Conn. Super. Ct. Feb. 24, 2014); *Caltabiano v. L&L Real Estate Holdings II, LLC*, No. CV074019729S, 2009 Conn. Super. LEXIS 817, *19-20 (Conn. Super. Ct. Mar. 20, 2009), *aff'd sub nom.*, *Caltabiano v. L & L*

(dismissing claim alleging that handguns pose risks of injury and death that outweigh social utility); *Martin v. Harrington & Richardson, Inc.*, 743 F.2d 1200 (7th Cir. 1984) (dismissing claim alleging that sale of handguns is an ultra-hazardous activity); *Armijo v. Ex Cam, Inc.*, 843 F.2d 406 (10th Cir. 1988) (same).

Real Estate Holdings II, LLC, 128 Conn. App. 84, 15 A.3d 1163 (2011). Plaintiffs do not fall into any of the categories. They were not “consumers” of Remington’s products, nor were they business competitors or in any type of commercial relationship with Remington. Put simply, Plaintiffs do not allege a relationship with Remington that provides an actionable CUTPA claim.

2. Plaintiffs do not seek financial damages against Remington.

Plaintiffs do not seek the sort of relief CUTPA affords. CUTPA may be used to recover damages for financial injury, but not damages flowing from personal injury or wrongful death. *Gerrity v. R.J. Reynolds Tobacco Co.*, 263 Conn. 120, 129-30 (2003); *cf. Haynes v. Yale-New Haven Hospital*, 243 Conn. 17, 34 (1997) (although “entrepreneurial and commercial” aspects of medical profession are covered by CUTPA, medical negligence claims for personal injury damages are not covered). Plaintiffs’ claims against Remington seek personal injury and wrongful death damages wholly unconnected to a business relationship, and therefore should be stricken. *See Vacco v. Microsoft Corp.*, 260 Conn. 59, 88 (2002) (“[W]e previously have 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.’”).

3. Plaintiffs’ CUTPA claims are barred by the statute of limitations.

Even if Plaintiffs had the requisite commercial relationship with Remington and alleged financial losses, their claims are time-barred by the applicable three-year statute of limitations. Conn. Gen. Stat. § 42-110g(f). The three-year limitation period applicable to CUTPA claims begins to run upon the occurrence of defendant’s alleged violation, not its discovery. *Fichera v. Mine Hill Corp.*, 207 Conn. 204, 213, 541 A. 2d (1988). Here, Plaintiffs filed their original Complaint on December 13, 2014, more than three years after they allege that Remington manufactured and sold the firearm, *i.e.*, “sometime prior to March 2010.” (FAC at ¶ 176.)

Because the Complaint makes clear that these alleged acts occurred more than three years before this lawsuit was commenced, Plaintiffs' CUTPA claims are time-barred.

Reliance on *Pellecchia v. Conn. Light & Power Co.*, 52 Conn. Supp. 435, 445, 54 A.3d 1080, 1089 (Conn. Super. Ct. 2011), for the proposition that the Wrongful Death statute's limitations period trumps the CUTPA statute of limitations is misplaced. In *Pellecchia*, the defendant moved to dismiss a wrongful death claim, brought under various theories of liability, including CUTPA, because the plaintiff's lawsuit was untimely under the Wrongful Death statute's two-year limitation. To avoid dismissal, the plaintiff invoked the limitations period found in "accidental failure of suit statute, § 52-592." The trial court rejected plaintiff's argument, finding that the wrongful death statute's two-year limitation period was a "jurisdictional prerequisite" that had to be satisfied. *Id.* at 444-45. The court did not need to address whether the CUTPA "jurisdictional prerequisite" limitation period (three-years from the act complained of) also needed to be satisfied. Logically, to the extent that wrongful death damages are somehow recoverable under CUTPA, the jurisdictional prerequisite of both statutory actions would have to be met.¹⁴

4. The CPLA "exclusivity" provision bars Plaintiffs' CUTPA claim against Remington for personal injury and wrongful death damages.

Under the CPLA, a "product liability claim" includes all "claims or actions brought for personal injury, death or property damage caused by the manufacture, construction, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging

¹⁴ There is a superior court split as to whether CUTPA survives death. Compare *Touchette v. Smith*, 1993 Conn. Super. LEXIS 2644 (Conn. Supr. Ct. 1993), with *Abbi v. AMI*, 1997 Conn. Super. LEXIS 1523 (Conn. Supr. Ct. 1997). In any event, courts have applied the three-year statute of limitations to bar CUTPA claims pleaded as part of a wrongful death lawsuit. See, e.g., *Wilson v. Midway*, 198 F. Supp. 2d 167 (Dist. Conn. 2002) (holding that a parent of a deceased minor's CUTPA claim based on "marketing" practices of the defendant video game maker allegedly caused minor's stabbing death was time barred by CUTPA's 3-year limitation). Regardless, there can be no dispute that Plaintiff Natalie Hammond's CUTPA claim for personal injury damages is time barred.

or labeling of any product.” Conn. Gen. Stat. § 52-572m. Further, a product liability claim brought under the CPLA “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.” Conn. Gen. Stat. § 52-572n; see *Gerrity v. R.J. Reynolds Tobacco Co.*, 263 Conn. 120, 126, 818 A.2d 769, 773 (Conn. 2003) (“The exclusivity provision makes the product liability act the exclusive means by which a party may secure a remedy for an injury caused by a defective product.”).

In *Gerrity*, the plaintiff sued a “light” cigarette manufacturer, claiming both wrongful death and financial damages under product liability and CUTPA theories. 263 Conn. at 123. Plaintiff alleged defendant’s deceptive marketing of the “light” cigarettes caused “financial” losses because her decedent paid more for cigarettes. 263 Conn. at 130. The court in *Gerrity* held that to the extent plaintiff alleged wrongful death, personal injury or property damage from defendant’s deceptive marketing of “light” cigarettes, such claims fell under the CPLA exclusivity provision. *Id.* at 126-28. But the plaintiff’s CUTPA claim was “not one for personal injuries death or property damage” traditionally sought in product liability actions. *Id.* at 131-32. Instead, “[t]he *financial injury* ... for which the plaintiff seeks to use CUTPA to provide a remedy, cannot reasonably be construed to be a claim for ‘personal injury, death or property damage’[.]” *Id.* at 130-31 (emphasis in original). On that basis, the court held that the plaintiff’s CUTPA claim for financial losses was not barred by the CPLA exclusivity provision.

In contrast, Plaintiffs here seek wrongful death and personal injury damages allegedly resulting from product design and marketing, not “financial” losses resulting from a consumer/business relationship with Remington. As a result, Plaintiffs’ CUTPA claims against Remington are barred by the CPLA’s exclusivity provision.¹⁵

¹⁵ See *Fraser v. Wyeth, Inc.*, 857 F.Supp.2d 244, 258 (D.Conn. 2012) (holding that the CPLA’s exclusivity provision barred “CUTPA claims that assert that a defendant’s product is defectively designed”); *Hurley v.*

5. Section 42-110c(a) exempts Remington’s “transaction” from CUTPA liability.

CUTPA does not apply to “[t]ransactions 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.” Conn. Gen. Stat. § 42-110c(a); *Connelly v. Hous. Auth. of New Haven*, 213 Conn. 354, 361-65 (1990) (applicability of CUTPA, including § 42-110c exemption, is a question of law, not fact). Plaintiffs allege a violation of CUTPA by Remington, a federally-licensed and regulated manufacturer of firearms, based on its sale of the XM-15 rifle to Camfour, a federally-licensed and regulated wholesale distributor of firearms. The rifle was then sold to Riverview Sales, a federally-licensed and regulated retailer of firearms, which, in turn, sold it to Nancy Lanza, a civilian in Connecticut. (See FAC at ¶¶ 29-36, 176-178, 182.) Each of these sales transactions were permitted under federal law and were governed by regulations promulgated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). (See FAC at ¶¶ 107, 159, 162, 176-178.) In addition, the sale of the firearm to Nancy Lanza was expressly permitted by the Federal Bureau of Investigation (“FBI”), which performed a background check as required by ATF regulations, and approved the sale. Plaintiffs do not allege that the sales between the licensed manufacturers and sellers, or the FBI’s approval of the sale to Nancy Lanza, were not permitted transactions under regulatory law. (See FAC at ¶¶ 159, 162, 176-178, 182, 29-36.) Based on what Plaintiffs have pleaded, their CUTPA claims fit squarely within the exemption and should be stricken.

CONCLUSION

For the above-stated reasons, Remington respectfully requests that Court strike Counts 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, and 31 of Plaintiffs’ First Amended Complaint.

Heart Physicians, P.C., 278 Conn. 305, 326, 898 A.2d 777, 789 (2006) (finding that plaintiffs’ CUTPA claim fell “within the scope of the liability act and thus [was] barred by the exclusivity provision).

Dated: April 22, 2016.

THE DEFENDANTS,

REMINGTON ARMS CO., LLC and
REMINGTON OUTDOOR COMPANY, INC.

BY: /s/ Scott M. Harrington/#307196

Jonathan P. Whitcomb
Scott M. Harrington
DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP #102036
One Atlantic Street
Stamford, CT 06901
(203) 358-0800
jwhitcomb@dmoc.com
sharrington@dmoc.com

James B. Vogts (pro hac vice #437445)
Andrew A. Lothson (pro hac vice #437444)
SWANSON, MARTIN & BELL, LLP
330 North Wabash, Suite 3300
Chicago, IL 60611
(312) 321-9100
jvogts@smbtrials.com
alothson@smbtrials.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed on April 22, 2016 to the following counsel:

Koskoff Koskoff & Bieder, PC
350 Fairfield Avenue
Bridgeport, CT 06604
jkoskoff@koskoff.com
asterling@koskoff.com
khage@koskoff.com

Renzulli Law Firm LLP
81 Main Street
Suite 508
White Plains, NY 10601
crenzulli@renzullilaw.com
sallan@renzullilaw.com

Peter M. Berry, Esq.
Berry Law LLC
107 Old Windsor Road, 2nd Floor
Bloomfield, CT 06002
firm@berrylawllc.com

/s/ Scott M. Harrington/#307196
Scott M. Harrington