

FBT-CV15-6048103-S

DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO et al.	:	SUPERIOR COURT
	:	
Plaintiffs,	:	JUDICIAL DISTRICT OF FAIRFIELD
	:	
v.	:	AT BRIDGEPORT
	:	
BUSHMASTER FIREARMS INTERNATIONAL, LLC, et al.	:	APRIL 22, 2016
	:	
Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS
CAMFOUR, INC.’S AND CAMFOUR HOLDING, INC.’S MOTION
TO STRIKE THE FIRST AMENDED COMPLAINT**

Defendants Camfour, Inc. and Camfour Holding, Inc. s/h/a Camfour Holding, LLP a/k/a Camfour Holding, Inc. (collectively referred to as “Camfour”) respectfully submit this memorandum of law in support of their motion to strike plaintiffs’ First Amended Complaint pursuant to Practice Book § 10-39(a)(1) and the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901, *et seq.* (“PLCAA”).

I. BACKGROUND

Plaintiffs commenced this action in the Connecticut Superior Court for the Judicial District of Fairfield at Bridgeport on December 13, 2014. Defendants Remington Arms Company, LLC and Remington Outdoor Company, Inc. (collectively referred to as “Remington”) removed this case to the U.S. District Court for the District of Connecticut on January 14, 2015. Plaintiffs’

motion to remand was granted, and this case was returned to this Court on or about October 21, 2015. Plaintiffs filed a First Amended Complaint on October 29, 2015. During a November 17, 2015 status conference, this Court directed that motions to dismiss pursuant to Practice Book § 10-31 be filed by December 11, 2015. Defendants filed their motions to dismiss on December 11, 2015 and, after briefing was fully completed, this Court denied the motions to dismiss in an Order dated April 14, 2016, based on its conclusion that the arguments raised addressed the legal sufficiency of the complaint, not subject matter jurisdiction, and should therefore be raised through a motion to strike. Apr. 14, 2016 Order at 14, 18. During an April 19, 2016 status conference, the defendants informed this Court that they would file motions to strike pursuant to Practice Book § 10-39 by April 22, 2016.

According to the allegations in the First Amended Complaint, which are assumed to be true for purposes of this motion only, Remington manufactured a Bushmaster XM15-E2S rifle (“Bushmaster Rifle”) and sold it to Camfour, a federally licensed wholesale distributor of firearms, sometime prior to March of 2010. Am. Compl. ¶¶ 14-30, 176. Camfour sold the Bushmaster Rifle to Riverview Gun Sales, Inc.¹ / David LaGuercia (collectively referred to as “Riverview”), a federally licensed retail dealer of firearms, sometime prior to March of 2010. *Id.* ¶¶ 31-36, 178. Riverview then sold the Bushmaster Rifle to Nancy Lanza on March 29, 2010. *Id.* ¶¶ 182, 223-24.

¹ The First Amended Complaint variously refers to this entity as “Riverview Sales, Inc.,” “Riverview Gun Sales, Inc.” and “Riverview Gun Sales.”

On December 14, 2012, more than two and a half years after Camfour sold the Bushmaster Rifle to Riverview, Adam Lanza “retrieved” the Bushmaster Rifle and used it to intentionally shoot twenty-eight people, killing twenty-six of them, at the Sandy Hook Elementary School. Am. Compl. ¶¶ 1-3, 187, 201-05. Plaintiffs, representatives of the estates of nine of the people Adam Lanza killed, one person he injured, and the spouse of one of the persons he killed, seek compensatory and punitive damages, as well as unspecified injunctive relief, against Camfour pursuant to the Connecticut wrongful death statute, C.G.S. § 52-555(a), raising causes of action based on negligent entrustment, and violation of the Connecticut Unfair Trade Practices Act, C.G.S. §§ 42-110a, *et seq.* (“CUTPA”).

II. SUMMARY OF THE ARGUMENT

There is no question that the events of December 14, 2012 were tragic. Rather than accepting that Adam Lanza, the person who caused the injuries of which they complain, bears sole responsibility for the shooting, however, plaintiffs have brought suit against the wholesale distributor of the Bushmaster Rifle that he used when committing his crimes. Plaintiffs do not allege that Camfour violated any federal or state laws applicable to the sale or marketing of the Bushmaster Rifle, or even that it sold or transferred the Bushmaster Rifle to Adam Lanza. The allegations they have raised, however, form the basis of a claim that is explicitly prohibited by federal law. More than a decade ago, Congress decided that federally licensed manufacturers and sellers of firearms should not be held liable for claims arising from the criminal use of a firearm and enacted the PLCAA to provide them with immunity from such claims. There is no valid basis

upon which to blame Camfour for the crimes that Adam Lanza committed on December 14, 2012; this action should never have been filed.

Plaintiffs' First Amended Complaint against Camfour must be immediately dismissed pursuant to the PLCAA because their claims against it constitute a "civil action . . . against a seller . . . of [a firearm that has been shipped or transported in interstate commerce] . . . for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief resulting from the criminal or unlawful misuse of [the firearm] by . . . a third party," 15 U.S.C. § 7903(5)(A), which federal law states "may not be brought in any Federal or State court, *id.* § 7902(a). Plaintiffs' allegations against Camfour fail to satisfy any of the narrow exceptions to the definition of a prohibited qualified civil liability action that is barred by the PLCAA.

Plaintiffs' claims for negligent entrustment must be independently dismissed because they fail to state a claim upon which relief can be granted against Camfour pursuant to Connecticut law. Camfour is alleged to have negligently entrusted the Bushmaster Rifle to Riverview, but Riverview is not alleged to have used the Bushmaster Rifle in a manner that directly created an unreasonable risk of injury to others and caused plaintiffs' injuries, despite plaintiffs' conclusions about the propriety of selling it to the civilian market. Further, the Complaint does not allege that Riverview was incompetent to possess the Bushmaster Rifle, but rather affirmatively alleges that it was a federally licensed firearms dealer.

Plaintiffs' claims against Camfour for violation of CUTPA must also be independently dismissed for failure to state a claim upon which relief can be granted. The First Amended

Complaint does not plead factual allegations that Camfour engaged in “unfair methods of competition” or “unfair or deceptive acts or practices” in the conduct of its business. Plaintiffs’ CUTPA claims must also be dismissed because CUTPA does not apply to claims for wrongful death or personal injury arising from the use of a product, and because the allegations in the First Amended Complaint establish that the applicable statute of limitations for a claim against Camfour has already expired. Plaintiff Natalie Hammond’s negligence based claims must also be dismissed because they are barred by the statute of limitations.

III. ARGUMENT

A. PLAINTIFFS’ CLAIMS MUST BE IMMEDIATELY DISMISSED PURSUANT TO THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

1. Purpose of the Protection of Lawful Commerce in Arms Act

The Protection of Lawful Commerce in Arms Act (“PLCAA”), which was enacted on October 26, 2005, prohibits the institution of a “qualified civil liability action” in any state or federal court, and states that any such “action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.” 15 U.S.C. §§ 7902(a) & (b). One of the stated purposes of the PLCAA is to “prohibit causes of action against . . . dealers of firearms . . . for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.” *Id.* § 7901(b)(1).

The following are among several findings that Congress made regarding the necessity to enact the PLCAA:

- Lawsuits have 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 the misuse of firearms by third parties, including criminals.
- The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.
- Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

15 U.S.C. §§ 7901(a)(3)-(5). Based upon the above findings, and to achieve the above purpose, the PLCAA states that a “qualified civil liability action may not be brought in any Federal or State court,” *id.* § 7902(2), and requires the immediate dismissal of this case.²

2. This Case is a Qualified Civil Liability Action

As defined by the PLCAA, and subject to six limited exceptions, 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, or penalties or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. . .

² The claim for loss of consortium by William D. Sherlach (Count Eleven) must be dismissed for the same reasons as the claim for wrongful death he is bringing as the executor of the estate of Mary Joy Sherlach. C.G.S. §§ 52-555a-c.

15 U.S.C. § 7903(5)(A). Based on the allegations in the First Amended Complaint, this case is a civil action or proceeding brought by persons (the named plaintiffs) against a seller of a qualified product (Camfour) for damages and other relief resulting from the criminal use (the intentional shooting of twenty-eight people at Sandy Hook Elementary School on December 14, 2012) of a qualified product (the Bushmaster Rifle) by a third party (Adam Lanza). Am. Compl. ¶¶ 1-3, 18, 26-34, 201-02, 204-05.

3. Camfour is a Seller

The PLCAA defines a “seller,” with respect to a qualified product, 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)(B). Chapter 44 of Title 18, in turn, defines a “dealer” as “any person engaged in the business of selling firearms at wholesale or retail.” 18 U.S.C. § 921(a)(11)(A). As a federally licensed wholesale firearms distributor, Camfour is a “seller” pursuant to the terms of the PLCAA. Am. Compl. ¶¶ 27-28, 30.

4. The Bushmaster Rifle is a Qualified Product

The PLCAA defines a qualified product as “a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of Title 18) . . . that has been shipped or transported in interstate or foreign commerce.” 15 U.S.C. § 7903(4). Pursuant to 18 U.S.C. §§ 921(a)(3)(A), a firearm is defined as “any weapon . . . which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” According to the allegations in the First Amended Complaint, Natalie Hammond and the other plaintiffs’ decedents were shot with the Bushmaster Rifle, which is a

qualified product pursuant to the terms of the PLCAA. Am. Compl. ¶¶ 1-3, 201-02, 204-05. Further, because the Bushmaster Rifle is alleged to have been manufactured in Maine, transferred to a wholesale distributor in Massachusetts, and then transferred to a retail dealer in Connecticut, it has been shipped or transported in interstate commerce. *Id.* ¶¶ 14-15, 17-18, 26-29, 31-34.

5. **Plaintiffs' Alleged Injuries Resulted from the Criminal Use of a Qualified Product by a Third Party**

According to the allegations in the First Amended Complaint, Adam Lanza intentionally shot Natalie Hammond and the other plaintiffs' decedents with the Bushmaster Rifle. Am. Compl. ¶¶ 1-3, 201-02, 204-05. Accordingly, plaintiffs' injuries resulted from the criminal use (the intentional shooting of Natalie Hammond and the other plaintiffs' decedents) of a qualified product (the Bushmaster Rifle) by a third party (Adam Lanza). *Id.* Plaintiffs' claims against Camfour therefore constitute a qualified civil liability action and the PLCAA requires their immediate dismissal unless they fall within one or more of six narrow exceptions.

6. **The PLCAA is an Immunity Statute that Protects Firearm Sellers from Having to Defend Against a Qualified Civil Liability Action, Not Merely from Being Held Liable**

The PLCAA prohibits a qualified civil liability action from being brought in any federal or state court, 15 U.S.C. §§ 7902(a), and is therefore an immunity statute, intended to prevent a firearms seller from even having to defend itself from such an action, not merely to protect it from liability. “[S]tatutory immunity involves immunity from suit and is intended to permit courts expeditiously to weed out suits which fail the test without requiring a defendant who rightfully claims qualified immunity to engage in expensive and time consuming preparation to defend the

suit on its merits.” *Kelly v. Albertsen*, 970 A.2d 787, 790 (Conn. App. Ct. 2009). *See also Manifold v. Ragaglia*, 891 A.2d 106, 122 (Conn. App. Ct. 2006) (holding that statutory immunity protects a defendant from having to even defend against a lawsuit, not just from liability). The allegations in the First Amended Complaint establish that plaintiffs’ claims against Camfour constitute a qualified civil liability action and the PLCAA therefore provides Camfour with immunity from having to defend itself against the plaintiffs’ claims. Allowing the First Amended Complaint to survive a motion to strike and forcing Camfour to engage in discovery to defend itself against the alleged “merits” of plaintiffs’ claims would deprive Camfour of the very immunity that Congress provided to it by enacting the PLCAA.

There is a reason why only one other similar case³ has been filed against a federally licensed firearms manufacturer or wholesale firearms distributor seeking damages resulting from the criminal use of a firearm by a third party since the PLCAA was enacted more than a decade ago. That is because the PLCAA categorically bars such claims and there is no good faith argument that can be made to the contrary. The factual basis of that one other case, *Jeffries v. District of Columbia*, is similar to plaintiffs’ allegations here, and involved claims against ROMARM, the manufacturer of an “AK-47 assault rifle” that was used to fire indiscriminately into a crowd of mourners gathered at a funeral. 916 F. Supp. 2d 42, 43 (D.D.C. 2013).

³ A case in which the manufacturer or distributor had lawfully sold the firearm to a federally licensed firearms dealer who, in turn, lawfully sold it to a consumer, where the firearm was later criminally used by a third party.

The court in the *Jeffries* case, acting *sua sponte*, dismissed the claims against the manufacturer of the “AK-47 assault rifle” with prejudice and without ROMARM even having entered an appearance, holding that the “law is very clear: The Protection of Lawful Commerce in Arms Act . . . explicitly bars this kind of suit.” 916 F. Supp. 2d at 43. The court continued to explain that the “PLCAA unequivocally bars plaintiff’s claims against ROMARM [because it] is uncontroverted that a third party discharged the assault rifle during the commission of a criminal act. The PLCAA explicitly and clearly prohibits this kind of suit.” *Id.* at 46 (“The Court finds that the law here is so clear that it is appropriate to dismiss the claims against ROMARM *sua sponte*, and with prejudice.”).

Nothing about the present case distinguishes plaintiff’s claims against Camfour based on its sale of the Bushmaster Rifle from *Jeffries*’s claims against ROMARM based on its sale of an “AK-47 assault rifle.” Both cases involve the same general type of firearm and both cases involve defendants that are not alleged to have done anything wrong other than lawfully selling those firearms to the civilian market. As the U.S. District Court for the District of Columbia held, “Plaintiff wants to sue ROMARM because it manufactured the assault rifle used in her daughter’s murder. Congress, through the Protection of Lawful Commerce in Arms Act has explicitly and unequivocally prohibited this kind of suit.” *Jeffries*, 916 F. Supp. 2d at 47. In the present case, plaintiffs want to sue Camfour because it lawfully sold at wholesale the Bushmaster Rifle used by Adam Lanza to intentionally shoot and injure Natalie Hammond and murder the other plaintiffs’ decedents. Plaintiffs’ claims are “explicitly and unequivocally prohibited” by the PLCAA and must be immediately dismissed.

B. NONE OF THE EXCEPTIONS TO THE DEFINITION OF A QUALIFIED CIVIL LIABILITY ACTION IS APPLICABLE TO THIS CASE

There are six limited exceptions to the definition of a qualified civil liability action that is barred by the PLCAA:

(i) an action brought against a transferor convicted under section 924(h) of Title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(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 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;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(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 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; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of Title 18 or chapter 53 of Title 26.

15 U.S.C. §§ 7903(5)(A)(i-vi). Based on the allegations in the First Amended Complaint, the only exceptions that could even remotely be applicable to plaintiffs' claims against Camfour are 15 U.S.C. §§ 7903(A)(ii)⁴ and (iii). As set forth below, however, neither of these limited exceptions to the PLCAA applies to plaintiffs' claims.

1. The Negligent Entrustment Exception to the Protection of Lawful Commerce in Arms Act is Inapplicable

One of the exceptions to the definition of a qualified civil liability action in the PLCAA is “an action against a seller for negligent entrustment. . . .” 15 U.S.C. § 7903(5)(A)(ii). Negligent entrustment is defined in the PLCAA as:

the supplying of a qualified product by a seller for use by another person when the seller⁵ knows, or reasonably should know, the person to whom the product is supplied⁶ is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

⁴ In their January 25, 2016 Omnibus Objection to Defendants' Motions to Dismiss, plaintiffs represented that they do not contend that their claims fall within the negligence per se exception to the PLCAA. *Id.* at 34 n.17.

⁵ The PLCAA provides that the negligent entrustment exception applies only to sellers and not manufacturers. Although the legislative history to the PLCAA indicates that the negligent entrustment exception is intended to apply only to retail dealers who sell firearms directly to the ultimate consumer, and not wholesale distributors who sell firearms to retail dealers for purposes of wholesale, *see, e.g.*, 151 Cong. Rec. S9071, 151 Cong. Rec. S9374, the operative provision of the negligent entrustment exception simply refers to “sellers,” 15 U.S.C. § 7903(6)(B), a term that encompasses both wholesale distributors and retail dealers, 18 U.S.C. § 921(a)(11)(A).

⁶ The negligent entrustment exception to the PLCAA only applies when the person to whom the seller directly supplied the firearm is the one who actually uses it in a manner involving unreasonable risk of physical injury to himself or another, not subsequent parties to whom the firearm may later be entrusted. *See* 151 Cong. Rec. S9229. As discussed in Section III(B)(2), this prohibition on liability based on successive entrustments is consistent with Connecticut law.

Id. § 7903(5)(B) (emphasis added).

As alleged in the First Amended Complaint, Camfour sold the Bushmaster Rifle to Riverview, a federally licensed firearms dealer, for purposes of resale. Am. Compl. ¶ 223.⁷ The First Amended Complaint further alleges that Riverview transferred the Bushmaster Rifle to Nancy Lanza on March 29, 2010, *id.* ¶ 224 (Count 3), and that it was Adam Lanza, not Nancy Lanza who used the Bushmaster Rifle in a manner involving unreasonable risk of physical injury to others on December 14, 2012. *Id.* ¶¶ 187-90, 201-02, 204-06. The allegations in the First Amended Complaint accordingly establish that the negligent entrustment exception to the PLCAA does not apply to plaintiffs' claims against Camfour because Riverview, the party to which Camfour entrusted the Bushmaster Rifle, did not use it in a manner involving unreasonable risk of physical injury to others.

The negligent entrustment exception has been held not to apply to a distributor selling a firearm to a retail dealer for purposes of resale:

The negligent entrustment exception cannot lie as against a seller unless there is a knowing sale to a person who cannot legally possess it of whom the seller has reason to believe will use the firearm for a purpose other than intended. A review of the legislative history supports a narrow and limited exception to the general protections afforded manufacturers and sellers of firearms under the PLCAA. ****

As is conceded herein, defendant MKS [a wholesale distributor of firearms, like Camfour] did not sell the subject firearm to defendant Caldwell, the ultimate shooter. Instead, defendant MKS sold the firearm to a retailer possessed of a valid federal firearms license [Brown]. Thus, by the definition of negligent entrustment found in the PLCAA, a negligent entrustment cause of action is only actionable

⁷ The First Amended Complaint contains numerous paragraphs numbered 213 through 230. Unless otherwise noted, references to paragraphs in this number range are to Count Two of the First Amended Complaint.

herein if defendant MKS sold directly to the person misusing the product. There can be no negligent entrustment cause of action by virtue of MKS' sale to defendant Brown. Therefore, the negligent entrustment cause of action against defendant MKS must be dismissed, as it is not an exception to application of the PLCAA.

Williams v. Beemiller, Inc., No. 7056/2005, at *15 (N.Y. Sup. Ct. Erie Cnty. Apr. 25, 2011),⁸ *rev'd on other grounds*, 952 N.Y.S.2d 333, 339 (App. Div. 4th Dep't 2012).

The Connecticut Superior Court for the Hartford Judicial District has also dismissed a case against a firearms seller on the pleadings pursuant to the PLCAA based on its determination that the requirements for the negligent entrustment exception had not been satisfied. *Gilland v. Sportsmen's Outpost, Inc.*, No. X04CV095032765S, 2011 WL 2479693, at *16 (Conn. Super. May 26, 2011) (holding that the PLCAA applies to "cases where it is alleged that gun sellers negligently cause harm" unless an exception applies). In *Gilland*, plaintiffs alleged that a retail firearms dealer showed a customer, Scott Magnano, a handgun and then left him unattended and alone with it, during which time he "removed" the handgun from the store. *Id.* at *1-*2. More than five weeks later, Magnano used the handgun to shoot his estranged wife. *Id.* In response to defendants' motion to dismiss pursuant to the PLCAA, plaintiffs argued that their claims should not be dismissed because they fell within the negligent entrustment exception to the PLCAA. *Id.* at *2, *12. The court granted the motion to dismiss, holding that the negligent entrustment exception did not apply because defendants had not supplied the handgun to Magnano for his use, based on the allegations in the complaint that he took it without permission when he was left alone with it. *Id.* at *12-*13.

⁸ A copy of the unpublished decision is attached hereto as Exhibit A.

In *Bailey v. United States*, the Supreme Court interpreted a previous version of 18 U.S.C. § 924(c)(1), which imposed specific penalties if a criminal defendant “during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm,” and unanimously held that the term “use of a firearm” applies only to the “active employment of the firearm.” 516 U.S. 137, 144-51 (1995). In their original Complaint, plaintiffs alleged that Adam Lanza obtained the Bushmaster Rifle by “retrieving” it from an unlocked closet in the house he shared with his mother. Compl. ¶ 154.⁹ The Supreme Court has specifically rejected an argument that storing a firearm constitutes “use” of a firearm, noting that the phrase:

“I use a gun to protect my house, but I’ve never had to use it”—shows that “use” takes on different meanings depending on context. In the first phrase of the example, “use” refers to an ongoing, inactive function fulfilled by a firearm. It is this sense of “use” that underlies the Government’s contention that “placement for protection”—i.e., placement of a firearm to provide a sense of security or to embolden—constitutes a “use.” It follows, according to this argument, that a gun placed in a closet is “used,” because its mere presence emboldens or protects its owner. We disagree. Under this reading, mere possession of a firearm by a drug offender, at or near the site of a drug crime or its proceeds or paraphernalia, is a “use” by the offender, because its availability for intimidation, attack, or defense would always, presumably, embolden or comfort the offender. But the inert presence of a firearm, without more, is not enough to trigger § 924(c)(1). Perhaps the nonactive nature of this asserted “use” is clearer if a synonym is used: storage. A defendant cannot be charged under § 924(c)(1) merely for storing a weapon near drugs or drug proceeds. Storage of a firearm, without its more active employment, is not reasonably distinguishable from possession.

⁹ In their Amended Complaint, Plaintiffs tellingly omitted the fact that Nancy Lanza had been storing the Bushmaster Rifle in a closet and simply alleged that Adam Lanza “retrieved” it. Am. Compl. ¶ 187.

Bailey, 516 U.S. at 148-49 (emphasis added). Based on the Supreme Court’s decision in *Bailey*, the sale of a firearm between a wholesale distributor and retail dealer, like the storage of a firearm, does not constitute the “use” of a firearm.

The Supreme Court further held that it is important to “consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme. The meaning of statutory language, plain or not, depends on context.” *Bailey*, 516 U.S. at 145 (citations and punctuation omitted). Camfour’s lawful sale of the Bushmaster Rifle to Riverview for purposes of resale, and Riverview’s subsequent lawful sale of the Bushmaster Rifle to Nancy Lanza, cannot be considered the “use” of the Bushmaster Rifle by Riverview¹⁰ “in a manner involving unreasonable risk of physical injury to the person or others,” 15 U.S.C. § 7903(5)(B), without violating the very purpose for which the PLCAA was enacted.

Accordingly, for purposes of the PLCAA, the negligent entrustment exception only applies when the factual allegations, as opposed to legal conclusions, in a complaint demonstrate that the seller of the firearm: (1) knew, or reasonably should have known that the person to whom it directly sold the firearm is likely to use the firearm in a manner involving unreasonable risk of physical injury to the person or others; and (2) the person who directly received the firearm from the seller actually does use it in a manner involving unreasonable risk of physical injury to himself or others.

¹⁰ Similarly, based on the allegations in the Amended Complaint, Nancy Lanza did not use the Bushmaster Rifle “in a manner involving unreasonable risk of physical injury to the person or others,” 15 U.S.C. § 7903(5)(B), because she was storing it in a closet, *Bailey*, 516 U.S. at 148-49. The only person who actually used the Bushmaster Rifle in a “in a manner involving unreasonable risk of physical injury to the person or others” was Adam Lanza on December 14, 2012.

Based on the purpose of the word “use” in the statutory scheme of the PLCAA, there is no good faith basis to argue that the requirements for the negligent entrustment exception are satisfied by the lawful sale of a legal firearm by a federally licensed wholesale distributor, to a federally licensed retail dealer for purposes of lawful resale. *Bailey*, 516 U.S. at 145. Further, the lawful sale of a firearm by a federally licensed firearms retail dealer to the “civilian population” cannot be considered using a firearm in a manner involving unreasonable risk of physical injury to others for purposes of the negligent entrustment exception without violating the very purpose for which the PLCAA was enacted. 15 U.S.C. §§ 7901(a)(3)-(5). Accordingly, plaintiffs’ claims do not fall within the negligent entrustment exception to the PLCAA.

2. The First Amended Complaint Fails to State a Valid Claim for Negligent Entrustment Pursuant to Connecticut Law

The PLCAA states that the exceptions to it do not create any causes of action that do not independently exist. 15 U.S.C. § 7903(5)(C) (“no provision of this chapter shall be construed to create a public or private cause of action or remedy”); *Philips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1225 (D. Colo. 2015); *Noble v. Shawnee Gun Shop, Inc.*, 409 S.W.3d 476, 480-82 (Mo. App. W. Dist. 2013) (affirming the dismissal of claims that fell within the PLCAA’s exception for a negligent entrustment action because Missouri state law does not recognize an action against a product seller for negligent entrustment); *Bannerman v. Mountain State Pawn, Inc.*, No. 3:10-CV-46, 2010 WL 9103469, at *9 (N.D.W.V. Nov. 5, 2010). Accordingly, even if the allegations in the First Amended Complaint met the requirements for the negligent entrustment exception to the PLCAA (which they do not), plaintiffs would still have to satisfy the requirements for a negligent

entrustment claim pursuant to Connecticut law. The factual allegations in the First Amended Complaint demonstrate that plaintiffs do not have a valid negligent entrustment claim against Camfour based on applicable Connecticut law.

Pursuant to Connecticut law, liability for negligent entrustment requires that the defendant provide the chattel for the use of another “when he knows or ought reasonably to know that the one to whom he entrusts it is so incompetent to operate it, by reason of inexperience or other cause, that the owner ought reasonably to anticipate the likelihood that in its operation injury will be done to others.” *Greeley v Cunningham*, 165 A. 678, 679 (Conn. 1933) (emphasis added) (addressing the alleged negligent entrustment of an automobile). A “principle feature of a cause of action for negligent entrustment is the knowledge of the entrustor with respect to the dangerous propensities and incompetency of the entrustee.” *Johnson v. Amaker*, No. CV075013242S, 2008 WL 441842, at *3 (Conn. Super. Jan. 29, 2008).

Connecticut law also provides that a defendant can only be held liable for negligent entrustment if the actions of the person to which the chattel was entrusted directly causes the injury to plaintiff. *Greeley*, 165 A. at 680;¹¹ *Mesner v. Cheap Auto Rental*, No. CV075009039S, 2008 WL 590495, at *4 (Conn. Super. Feb. 13, 2008) (“Connecticut law is clear that liability can only be imposed if the defendant entrusts the vehicle to the driver.”); *Johnson*, 2008 WL 441842, at *4

¹¹ “When the evidence proves that the owner of an automobile knows or ought reasonably to know that one to whom he entrusts it is so incompetent to operate it upon the highways that the former ought reasonably to anticipate the likelihood of injury to others by reason of that incompetence, and such incompetence does result in such injury, a basis of recovery by the person injured is established.” *Greeley*, 165 A. at 680 (emphasis added).

(holding that negligent entrustment liability only arises if the defendant directly entrusts the product to the person who uses it to harm plaintiff); *Bryda v. McLeod*, No. CV030285188S, 2004 WL 1786822, at *2 (Conn. Super. July 12, 2004) (quoting Restatement (Second) of Torts § 390).

The Connecticut's Supreme Court's requirements for a negligent entrustment claim as set forth in the *Greeley* decision are similar to the requirements described in Section 390 of the Restatement (Second) of Torts. *Angione v. Bloom*, No. FSTCV085006850S, 2011 WL 5223043, at *8 (Conn. Super. Oct. 6, 2011). Section 390 provides that:

One 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.

Restatement (Second) of Torts § 390. As explained in the *Johnson* decision, Comment b to Section 390 states that it is a special application of Section 308, which provides that:

It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

2008 WL 441842, at *5 (quoting Restatement (Second) of Torts § 308 (1965)) (emphasis added)).

Comment a to Section 308 explains that the “words ‘under the control of the actor’ are used to indicate that the third person is entitled to possess or use the thing or engage in the activity only by the consent of the actor, and that the actor has reason to believe that by withholding consent he can prevent the third person from using the thing or engaging in the activity.” Restatement (Second) of Torts § 308, cmt. a.

Based on the allegations in the First Amended Complaint, Camfour sold the Bushmaster Rifle to Riverview, but it was Adam Lanza, who was two steps removed from Riverview, who used it to cause harm to Natalie Hammond and the other plaintiffs' decedents. Accordingly, the First Amended Complaint fails to state a valid claim for negligent entrustment against Camfour pursuant to Connecticut law because it does not allege that Camfour had reason to believe that Riverview was incompetent to possess the Bushmaster Rifle. Rather the First Amended Complaint affirmatively alleges that Riverview was a federally licensed firearms dealer. Am. Compl. ¶¶ 31-32, 34, 36. Further, the actions of Riverview, the party to which Camfour sold the Bushmaster Rifle, did not directly cause the harm of which plaintiffs complain. The First Amended Complaint also fails to meet the requirements for a cause of action for negligent entrustment based on Connecticut law because the Bushmaster Rifle was used by Adam Lanza to cause harm to plaintiffs, and he did not obtain possession and control over it through the consent of Camfour, but rather by "retrieving" it from an unlocked closet in the house he shared with his mother. Compl. ¶ 154.¹²

3. **Plaintiffs' First Amended Complaint Fails to State a Valid CUTPA Claim**

The operative provision of CUTPA simply states that "[n]o person shall engage in unfair methods of competition and unfair¹³ or deceptive acts or practices in the conduct of any trade or

¹² The corresponding allegation in the First Amended Complaint, paragraph 187, simply alleges that Adam Lanza "retrieved" the Bushmaster Rifle.

¹³ The Connecticut Supreme Court has adopted the Federal Trade Commission's "cigarette rule" for determining whether a practice is unfair for purposes of CUTPA: "(1) [W]hether the practice,

commerce.”¹⁴ C.G.S. § 42-110b(a). Preliminarily, it should be noted that the First Amended Complaint does not contain any factual allegations of conduct by Camfour that constitute either “unfair methods of competition” or “unfair or deceptive acts or practices” in the conduct of its wholesale firearms distribution business. Therefore, plaintiffs have failed to allege that Camfour violated CUTPA beyond their *ipse dixit*.

An action for an alleged violation of CUTPA may only be brought by a “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” CUTPA therefore applies only to financial injuries to consumers, competitors, or other businesses resulting from business related activities, such as deceptive advertising, unfair competition, agreements not to compete, etc. *Bernbach v. Timex Corp.*, 989 F. Supp. 403, 412 (D. Conn. 1996) (holding that “CUTPA liability

without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise-whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers [(competitors or other businessmen)].” *McLaughlin Ford, Inc. v. Ford Motor Co.*, 473 A.2d 1185, 1191 (Conn. 1984) (citations omitted).

¹⁴ 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.” C.G.S. § 42-110c(a). As specifically alleged in the First Amended Complaint, the alleged violation of CUTPA by Camfour, a federally licensed wholesale distributor of firearms, is based on its sale of the Bushmaster Rifle to Riverview, a federally licensed retail dealer of firearms, as specifically authorized by statutory authority of the United States as administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Am. Compl. ¶¶ 27, 30-36. In addition, although Connecticut law was subsequently amended, at the time that the Bushmaster Rifle was sold by Camfour, sale of the Bushmaster Rifle was authorized by Connecticut law. C.G.S. § 53-202a-i. Accordingly, CUTPA is facially inapplicable to plaintiffs’ factual allegations against Camfour.

can only arise when there is some form of commercial nexus—business competition, consumer relationships, or similar connections—linking the parties”); *Larsen Chelsey Realty Co. v. Larsen*, 656 A.2d 1009, 1017-20 (Conn. 1995); *McLaughlin Ford, Inc. v. Ford Motor Co.*, 473 A.2d 1185, 1190-91 (Conn. 1984); *Gersich v. Enterprise Rent A Car*, No. 3:95CV01053 AHN, 1995 WL 904917, at *5-*6 (D. Conn. Nov. 20, 1995) (holding that persons injured in a car accident “are not within the class of persons that CUTPA intended to protect”).

The Connecticut Supreme Court has accordingly limited CUTPA standing to plaintiffs who are consumers or competitors of, or in some other type of business relationship with, defendant, and only when their claim arises from that relationship. *Ventres v. Goodspeed Airport, LLC*, 275 Conn. 105, 157-58, 881 A.2d 937, 970 (2005) (rejecting the argument that a “CUTPA plaintiff is not required to allege any business relationship with the defendant”); *see also Pinette v. McLaughlin*, 96 Conn. App. 769, 775-78, 901 A.2d 1269, 1274-76 (2006); (relying on *Ventres* for the fact that “plaintiff must have at least some business relationship with the defendant in order to state a cause of action under CUTPA”). Based on the allegations in the First Amended Complaint, plaintiffs are not consumers of the Bushmaster Rifle and are not customers or competitors of Camfour, or in any other type of business relationship with it. Accordingly, they lack standing to raise a claim against Camfour for an alleged violation of CUTPA.

CUTPA is also not a valid cause of action when plaintiffs seek to recover damages for personal injuries, including death, alleged to have been caused by a product, because the exclusive remedy in such cases is a product liability claim pursuant to C.G.S. § 52-573m *et seq.* *Johannsen v. Zimmer, Inc.*, No. 3:00CV2270(DJS), 2005 WL 756509, at *9 (D. Conn. Mar. 31, 2005);

Mountain W. Helicopter, LLC v. Kaman Aerospace Corp., 310 F. Supp. 2d 459, 462-64 (D. Conn. 2004); *Gerrity v. R.J. Reynolds Tobacco Co.*, 818 A.2d 769, 773-76 (Conn. 2003) (noting that if a “party brings a CUTPA claim and seeks to use that statutory scheme when the claim is, in reality, one falling within the scope of the product liability act, then the exclusivity provision applies”). Accordingly, plaintiffs’ First Amended Complaint fails to state a claim against Camfour upon which relief can be granted for an alleged violation of CUTPA.

4. Plaintiffs’ CUTPA Claims are Barred by the Statute of Limitations

Even assuming that plaintiffs had a valid CUTPA claim, the statute of limitations applicable to their CUTPA claims expired well before this action was commenced. An action based on an alleged violation of CUTPA “may not be brought more than three years after the occurrence of a violation of this chapter.” C.G.S. § 42-110g(f); *In re Trilegiant Corp.*, 11 F. Supp. 3d 82, 121 (D. Conn. 2014); *Argus Research Group, Inc. v. Argus Media, Inc.*, 562 F. Supp. 2d 260, 279-80 (D. Conn. 2008); *Willow Springs Condo. Ass’n., Inc. v. Seventh BRT Dev. Corp.*, 717 A.2d 77, 100-01 (Conn. 1998) (holding that if the defendant’s actions that “form the basis of the CUTPA claim occurred more than three years prior to the commencement of the action, that claim is time barred” regardless of when plaintiffs discovered the violation); *Fichera v. Mine Hill Corp.*, 541 A.2d 472, 475-76 (Conn. 1988) (holding that the start of the statute of limitations to bring a CUTPA claim is not delayed “until the cause of action has accrued or the injury has occurred”).

According to the allegations in the First Amended Complaint, the act of Camfour that allegedly violated CUTPA was its sale of the Bushmaster Rifle to Riverview, sometime before Riverview sold the Bushmaster Rifle to Nancy Lanza on March 29, 2010. Accordingly, the statute

of limitations for a potential CUTPA claim against Camfour expired no later than March 29, 2013. Since plaintiffs did not commence this action until December 13, 2014, their CUTPA claims against Camfour are barred by the statute of limitations.

5. **The Exception to the Protection of Lawful Commerce in Arms Act Based on the Knowing Violation of a State or Federal Statute Applicable to the Sale or Marketing of Firearms is Inapplicable**

Another of the exceptions to the definition of a qualified civil liability action in the PLCAA is “an action in which a . . . seller of a [firearm or ammunition] knowingly violated a State or Federal statute applicable to the sale or marketing of [firearms or ammunition], and the violation was a proximate cause of the harm for which relief is sought. . . .” 15 U.S.C. § 7903(5)(A)(iii) (“predicate exception”). The PLCAA provides two examples of the narrow types of knowing violations of statutes applicable to the sale or marketing of firearms that are required to justify the application of the predicate exception:

(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 [firearm], 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 [firearm]; 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 [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited

from possessing or receiving a firearm . . . under subsection (g)¹⁵ or (n)¹⁶ of section 922 of Title 18. . . .

Id. §§ 7903(5)(A)(iii)(1) & (II).

The only statute that the First Amended Complaint alleges Camfour to have violated is CUTPA. Am. Compl. ¶ 226. As discussed above, the PLCAA states that the exceptions to it do not create any causes of action that do not independently exist. 15 U.S.C. § 7903(5)(C). Accordingly, because plaintiffs do not have a valid CUTPA claim, they cannot use it to satisfy the

¹⁵ “It shall be unlawful for any person — (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; (2) who is a fugitive from justice; (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); (4) who has been adjudicated as a mental defective or who has been committed to a mental institution; (5) who, being an alien — (A) is illegally or unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26))); (6) who has been discharged from the Armed Forces under dishonorable conditions; (7) who, having been a citizen of the United States, has renounced his citizenship; (8) who is subject to a court order that — (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” 18 U.S.C. § 922(g).

¹⁶ “It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” 18 U.S.C. § 922(n).

predicate exception to the PLCAA. Even if plaintiffs did have a valid CUTPA claim against Camfour, however, it would still not satisfy the predicate exception to the PLCAA.

The operative provision of CUTPA simply states that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” C.G.S. § 42-110b(a). The U.S. Court of Appeals for the Second Circuit has interpreted the predicate exception to the PLCAA as applying only to statutes that either “expressly regulate firearms,” or “clearly can be said to implicate the purchase and sale of firearms.” *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 403 (2d Cir. 2008) (holding that the “predicate exception was meant to apply only to statutes that actually regulate the firearms industry”).¹⁷ See also *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1136 (9th Cir. 2009) (holding that the predicate exception only applies to “statutes that regulate manufacturing, importing, selling, marketing, and using firearms or that regulate the firearms industry”); *Gilland*, 2011 WL 2479693, at *5; *District of Columbia v. Beretta U.S.A. Corp.*, No. 2000 CA 000428 B, 2006 WL 1892023, at *9 (D.C. Super. Ct. May 22, 2006) (holding that the predicate exception is “limited to state statutes regulating the manner in which firearms are sold or marketed”), *aff’d*, 940 A.2d 163 (D.C. 2008).

CUTPA is a statute of general applicability, not a statute applicable to the sale or marketing of firearms. The U.S. District Court for the Central District of California succinctly explained why

¹⁷ “Interpreting the word ‘applicable’ in the predicate exception to mean any State or Federal statute ‘capable of being applied’ to the sale or marketing of firearms . . . create an exception so large that it would effectively render the entire PLCAA meaningless.” *Ileto v. Glock, Inc.*, 421 F. Supp. 2d 1274, 1290 (C.D. Cal. 2006).

statutes of general applicability that do not actually regulate the firearms industry cannot serve as a predicate statute for purposes of the PLCAA:

construing the word “applicable” in the predicate exception to mean “capable of being applied” would undermine not only the PLCAA’s over-arching purpose, but also other specific statutory provisions of the PLCAA. Indeed, such an interpretation invites creative attorneys to develop novel theories under existing State and Federal statutes of general applicability to hold firearms manufacturers and dealers liable for the actions of third parties using “qualified” products. This result, however, flies in the face of Congress’s stated disdain for applying such novel theories of liability against the firearms industry:

Congress finds [that] ... [t]he 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 and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

15 U.S.C. § 7901(a)(7). This language forecloses any argument suggesting that Congress intended any provision of the PLCAA to allow, let alone encourage, the development of novel theories of liability based on violations of generally applicable State and Federal statutes. But this is precisely the result that would occur if the Court applies a literal interpretation of the word “applicable” to the predicate exception.

Ileto v. Glock, Inc., 421 F. Supp. 2d 1274, 1290 (C.D. Cal. 2006), *aff’d*, 565 F.3d 1126.

As discussed above, CUTPA prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” C.G.S. § 42-110b(a). CUTPA does not “expressly regulate firearms” and cannot “clearly . . . be said to implicate the

purchase and sale of firearms.” *City of New York*, 524 F.3d at 403. Even assuming that CUTPA could be considered a statute applicable to the sale or marketing of firearms, plaintiffs’ claims against Camfour still fail to satisfy the predicate exception because Camfour did not knowingly violate CUTPA and such alleged violation was not a proximate cause of the harm for which relief is sought. 15 U.S.C. § 7903(5)(A)(iii). Accordingly, an alleged violation of CUTPA cannot satisfy the predicate exception to the PLCAA.

6. Plaintiff Natalie Hammond’s Negligent Entrustment Claim is Barred by the Statute of Limitations

Plaintiff Natalie Hammond was injured during the shooting by Adam Lanza and survived. Am. Compl. ¶¶ 46, 202, 227-29.¹⁸ Her claim for negligent entrustment is therefore barred by the statute of limitations. C.G.S. § 52-584 provides that:

[n]o action to recover damages for injury to the person . . . caused by negligence or by reckless or wanton misconduct . . . shall be brought but within two years from the date when the injury is first sustained . . . and except that no such action may be brought more than three years from the date of the act or omission complained of . . .

(Emphasis added). “It is well established that the relevant date of the act or omission complained of, as that phrase is used in § 52-584, is the date when the negligent conduct of the defendant occurs and not the date when the plaintiff first sustains damage.” *Witt v. St. Vincent’s Medical Center*, 746 A.2d 753, 756 (Conn. 2000) (citation and punctuation omitted). *See also id.* at 757 n. 5 (referring to the three year provision in Section 52-584 as the repose section); *Vilcinskis v. Sears*,

¹⁸ This citation is to paragraphs 227-29 in Count Thirty-two of the First Amended Complaint.

Roebuck & Co., 127 A.2d 814, 815-17 (Conn. 1956); *Johnson v. Town of North Branford*, 71 A.2d 346, 350 (Conn. App. 2001) (noting that an action can be barred by 52-584 “even if no injury is sustained during the three years following a defendant’s act or omission”).¹⁹

The only act by Camfour of which she complains is its sale of the Bushmaster Rifle to Riverview sometime prior to March 29, 2010, when Riverview sold it to Nancy Lanza. Am. Compl. ¶¶ 31, 178, 223, 224 (Count 3). Accordingly, the statute of limitations for plaintiff Natalie Hammond to bring a negligent entrustment or negligence per se claim against Camfour expired no later than March 29, 2013. Since plaintiffs did not commence this action until December 13, 2014, her claim for negligent entrustment is untimely and must be dismissed.

IV. CONCLUSION

For the above reasons, Camfour respectfully requests that this Court grant its motion to strike plaintiffs’ First Amended Complaint against it in its entirety (Counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, and 32), and grant such other relief as it deems just and proper.

Dated: White Plains, New York
April 22, 2016

¹⁹ Even if the statute of limitations for an action founded upon a tort is applied, Natalie Hammond’s claims are still untimely. C.G.S. § 52-577 provides that “[n]o action founded upon a tort shall be brought but within three years from the date of the act or omission complained of.” Section 52-577 is “an occurrence statute, so the limitation period begins to run at the moment the act or omission occurs. The start of the running of the limitations period is not delayed until the cause of action has accrued or the injury has occurred. It is not delayed until the plaintiff first discovers the injury. When a court conducts its analysis, the only relevant facts are the date of the alleged wrongful conduct and the date the complaint was filed.” *Bello v. Barden Corp.*, 180 F. Supp. 2d 300, 310 (D. Conn. 2002).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of Law in Support of the Motion to Strike was served on all counsel of record on April 22, 2016 by virtue of the State of Connecticut Judicial Branch's electronic filing system as well as by first class mail, U.S. postage prepaid to the following addresses:

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