No. X06-UWY-CV15-6050025-S	:	SUPERIOR COURT
DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
BUSHMASTER FIREARMS INTERNATIONAL, LLC, ET AL.	:	JUNE 17, 2020

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STRIKE REVISED SECOND AMENDED COMPLAINT

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Defendants Remington Arms Company, LLC and Remington Outdoor Company, Inc. (collectively, "Remington") respectfully submit this memorandum of law in support of their motion to strike the Revised Second Amended Complaint filed by Plaintiffs on May 19, 2020 (the "Revised SAC") (Entry No. 301.00).

PRELIMINARY STATEMENT

The Revised SAC should be stricken because it fails to plead *facts* necessary to establish an essential element of Plaintiffs' CUTPA claim—a causal link between Remington's alleged conduct in advertising the rifle used in the shooting and Plaintiffs' damages.

The Connecticut Supreme Court allowed Plaintiffs to proceed with a CUTPA claim based on the "narrow" and "limited" theory that Remington wrongfully marketed the rifle used in the Sandy Hook Elementary School shooting by promoting its use by civilians for criminal purposes (offensive, military style attack missions) and that such marketing motivated Adam Lanza to commit his crimes. The Court affirmed dismissal of their claim that Remington violated CUTPA by merely marketing and selling the rifle for civilian use. *Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 65-66, 69-70, 74-75, 87 (2019). Thus, Plaintiffs' remaining claim is focused narrowly on the specific content of any advertisement for the rifle that was seen by Lanza and whether any such advertisement in fact caused him to commit his horrific criminal acts.

In allowing the narrow CUTPA claim to proceed, the Court considered Plaintiffs' allegations in the First Amended Complaint ("FAC") that certain specifically described firearm advertisement slogans and images inspired Lanza's criminal acts. But the Revised SAC fails to identify any advertisements at all and, importantly, fails to plead the essential factual allegations that (1) Lanza saw an offending advertisement and (2) *but for* seeing the advertisement, he would not have planned and carried out his crimes. Plaintiffs' lone allegation touching on causation is a

conclusory claim that Remington's marketing conduct was a "substantial factor" in their resulting injuries. But that allegation is plainly insufficient under the law of causation. To adequately allege and prove causation under CUTPA and Connecticut law generally, Plaintiffs must plead and prove *facts* to establish *both* "cause in fact" *and* "proximate cause." *Abrahams v. Young & Rubicam, Inc.*, 240 Conn. 300, 306-309 (1997). The Revised SAC fails to plead facts to support *either* causation element.

First, Plaintiffs have not even attempted to allege in a conclusory way that Remington's conduct was the *cause in fact* (or *but for* cause) of their damages—much less plead *facts* to support such an allegation. The Revised SAC does not allege that Plaintiffs' decedents would not been murdered by Lanza *but for* Remington's publication of advertisements for the rifle. It contains no factual allegations that Remington's advertisements in fact motivated Lanza to commit his crimes or that he even viewed Remington advertisements. Indeed, Lanza is *not even mentioned* in the Revised SAC.

Second, Plaintiffs have failed to plead *any facts* necessary to support a finding that Remington's conduct was the *proximate cause* of their damages. The Revised SAC merely states the *legal conclusion* that Remington's conduct was a "substantial factor" in their resulting injuries. But mere legal conclusions are insufficient to satisfy Plaintiffs' obligation to plead *facts* to support proximate cause, and no such facts are included in the Revised SAC. [1]

Accordingly, the Court should grant Remington's motion to strike the Revised SAC.

[1] It is now clear that Plaintiffs lacked a good-faith factual basis to assert their claim that Remington's advertisements caused their losses. Plaintiffs have admitted in their responses to Remington's discovery requests that they do not have any evidence that Lanza even saw Remington's advertisements or marketing materials—much less was inspired by them to commit murder. (*See* Ex. A.)

STATEMENT OF FACTS

I. The Connecticut Supreme Court's Decision

On March 19, 2019, the Connecticut Supreme Court issued its decision in this case affirming in part and reversing in part this Court's decision striking Plaintiffs' FAC. The Connecticut Supreme Court recognized that "[t]here is no doubt that Lanza was directly and primarily responsible for this appalling series of crimes." *Soto*, 331 Conn. at 65. The Court nevertheless permitted Plaintiffs to proceed with a CUTPA claim based solely on the single "narrow" and "limited" theory that Remington wrongfully advertised the rifle used in the shooting by promoting its criminal use by civilians to commit assaults and that such advertising was the cause of the shooting. *Id.* at 65-66, 69-70, 74-75, 87. The Court repeatedly emphasized that its decision to allow Plaintiffs to proceed with this theory was expressly based on Plaintiffs' allegations in the FAC that Remington's marketing of the rifle used in the shooting caused or motivated Lanza to commit his crimes. *Id.* at 74-75, 98-100.

After reviewing Plaintiffs' allegations in the FAC of Remington's alleged "unethical" promotion of the rifle with certain slogans and images, the Court observed that Plaintiffs had alleged that Remington's "wrongful marketing" of the rifle promoted the rifle's use by civilians "for offensive assault missions" and that the marketing of the rifle "was a substantial factor in causing plaintiffs' injuries." *Id*. at 74. The Court made clear that the FAC's allegations concerning the effect of Remington's advertisements on Lanza were necessary to plead causation on this theory and to assert a viable wrongful marketing claim:

- The Court emphasized that Plaintiffs could only establish a causal link between Remington's conduct and the alleged harm "[i]f defendants' marketing materials did in fact inspire or intensify the massacre" or if the "individuals who engage in inappropriate conduct [were] inspired by the advertisements." *Id.* at 99-100.

- The Court distinguished one of its own cases that held that the causal link between the allegedly wrongful conduct by the defendant and the injuries suffered by the plaintiffs was too attenuated by concluding that "[i]n the present case, by contrast," Plaintiffs had alleged that Remington's advertising "inspir[ed] Lanza" to commit his crimes. *Id.* at 98 (distinguishing *Ganim v. Smith & Wesson Corp*, 258 Conn. 313 (2001)).

- The Court also distinguished a California Supreme Court decision dismissing a case by noting that the plaintiffs there "expressly disavowed any claims based on the specific content of [the defendant's] advertising" and that "there was no evidence that the shooter in that case ever had seen, let alone had been inspired by, any of [the defendant's] allegedly inappropriate promotional materials." *Id.* at 108-109 (distinguishing *Merrill v. Navegar, Inc.*, 26 Cal. 4th 465 (2001)).

- The Court also cited a federal court decision holding that "a party's reliance on or inducement by the allegedly negligent marketing techniques is the only rational means on establishing a causal connection" for a wrongful marketing claim. *Bubalo v. Navegar, Inc.*, No. 96C3664, 1997 WL 337218, at *9 (N.D. Ill. June 13, 1997) (cited by *Soto*, 331 Conn. at 98 n.29).

Thus, the Connecticut Supreme Court allowed Plaintiffs' narrow "wrongful marketing" claim to proceed as alleged in the FAC and clearly recognized that Plaintiffs would be required to allege and prove that Lanza was exposed to a Remington advertisement for the rifle, the advertisement seen by Lanza promoted criminal use of the rifle, and the advertisement Lanza saw motivated him to carry out an offensive assault at Sandy Hook Elementary School.

II. Plaintiffs' Revised Second Amended Complaint

On May 19, 2020, Plaintiffs filed the Revised SAC, deleting essential factual allegations that were necessary to plead causation under the Connecticut Supreme Court's decision. (Entry No. 301.00.) The Revised SAC merely alleges in conclusory fashion that Remington's advertisements of the Bushmaster XM15-E2S rifle that was used in the shooting violated CUTPA and that "Remington's conduct as previously alleged was a substantial factor resulting in the injuries, suffering, and death of [decedents]." (*Id.* ¶¶ 14, 31-51) The Revised SAC does not identify any such advertisements, does not allege that Lanza saw a Remington advertisement,

and does not allege that any Remington's advertisement in fact caused or motivated Lanza to commit his crimes. Indeed, Lanza is *not even mentioned* in the Revised SAC.[2]

LEGAL STANDARD

A motion to strike tests the legal sufficiency of a pleading "to state a claim upon which relief can be granted." Practice Book § 10-39(a). To survive a motion to strike, a pleading must set forth a "plain and concise statement of the material facts" to support the elements of the claims asserted. *Id.* § 10-1. "A motion to strike admits all *facts* well pleaded; it does not admit *legal conclusions or the truth or accuracy of opinions* stated in the pleadings." *Faulkner v. United Techs. Corp.*, 240 Conn. 576, 588 (1997) (internal quotation marks omitted). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480 (2003) (internal quotation marks omitted).

ARGUMENT

I. The Revised SAC Must Be Stricken Because It Violates the Law of the Case

As an initial matter, the Revised SAC must be stricken because it violates the law of the case set forth in the Connecticut Supreme Court decision. The Connecticut Supreme Court's decision allowing Plaintiffs' CUTPA claim to survive was premised on the existence of factual allegations necessary to establish causation, and those essential allegations are entirely missing from the Revised SAC.

[2] Plaintiffs' failure to plead factual allegations necessary to causation in the Revised SAC is no coincidence. After this Court overruled their objections and Plaintiffs were compelled to respond to Remington's interrogatories and requests for production, Plaintiffs acknowledged that they had no factual basis to allege that Lanza viewed any Remington advertisements in the first place. (Ex. A.) As a logical corollary, Plaintiff had no factual basis to allege that *but for* Lanza's exposure to Remington's advertisements, he would not have committed his crimes.

The Connecticut Supreme Court's decision constitutes the law of the case and binds both the parties and the trial court on remand. *See Detar v. Coast Venture XXVX, Inc.*, 91 Conn. App. 263, 267 (2005) (holding that "the court, on remand, was bound by the law of the case doctrine" and that "the opinion of an appellate court, so far as it is applicable, establishes the law of the case upon a retrial, and is equally obligatory upon the parties to the action and upon the trial court") (internal quotations marks omitted).

The Connecticut Supreme Court allowed Plaintiffs to proceed with their CUTPA claim based on the factual allegations in the FAC that Remington's advertisements were causally related to the shooting because their content motivated or inspired Lanza to commit his crimes. The Connecticut Supreme Court expressly relied on the FAC's allegations concerning the effect of Remington's advertisements on Lanza in finding that Plaintiffs had alleged a viable CUTPA claim. *See Soto*, 331 Conn. at 74-75, 98-100. Yet Plaintiffs have stripped the Revised SAC of the essential factual allegations on which the Court relied in allowing that narrow remaining claim to survive. (*See* Entry No. 276, Redlined FAC ¶¶ 184-91.)

In contrast to the FAC, the Revised SAC is entirely devoid of any allegations that Lanza even saw Remington's advertisements—much less was inspired by them to commit murder. Because Plaintiffs have replaced the FAC with an improper Revised SAC that omits the factual allegations necessary to state a viable CUTPA claim under the Connecticut Supreme Court's decision, it violates the law of the case and must be stricken. *See Perugini v. Giuliano*, 148 Conn. App. 861, 877 n.10 (2014) ("Our Supreme Court has found it appropriate for a defendant to file either a motion to strike or a request to revise when an allegedly improper revised complaint replaces a stricken complaint.").

Accordingly, Plaintiffs never had a good faith basis to plead the very allegations that persuaded

II. The Revised SAC Must Be Stricken Because It Fails to State a Claim

Even apart from the law of the case doctrine, the Revised SAC fails to state a viable cause of action because it does not plead *any facts* necessary to establish causation—an essential element of Plaintiffs' CUTPA claim.

A. Connecticut Is a Fact Pleading State

"Connecticut is a fact pleading state." *Bridgeport Harbour Place I, LLC v. Ganim*, 303 Conn. 205, 213 n.7 (2011); *accord Pike v. Bugbee*, 115 Conn. App. 820, 828 n.5 (2009) ("It is a well established principle that Connecticut is a fact pleading jurisdiction."). "Each pleading shall contain a plain and concise statement of the material facts on which the pleader relies." Practice Book § 10-1.

Because Connecticut is a fact pleading state, Connecticut courts have relied upon federal standards requiring plaintiffs to plead sufficient *facts* to state a *plausible* claim for relief. *See Bridgeport Harbour Place I, LLC*, 303 Conn. at 213 & n.7 (reciting federal standards that "a formulaic recitation of the elements of a cause of action will not do" and "[f]actual allegations must be enough to raise a right to relief above the speculative level" and recognizing their pertinence to a motion to strike "because Connecticut is a fact pleading state") (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *Coleman v. Comm'r of Corr.*, 137 Conn. App. 51, 57 & n.2 (2012) (stating that "[e]ven under our permissive reading of the petition, we cannot conclude, absent speculation, that the petitioner has plausibly alleged" an entitlement to relief) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); *Edelman v. Laux*, No. CV115005710, 2013 WL 4504793, at *20 (Conn. Super. Ct. July 26, 2013) (applying federal plausibility standard to motion to strike because "[o]ur Supreme Court has recognized that a motion to strike is similar in

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the Connecticut Supreme Court to allow their sole remaining claim to survive.

purpose and in practice to the federal dismissal rule" and "the motion therefore benefits from being considered according to the same standards"); *Bonner v. City of New Haven*, No. CV156058987S, 2017 WL 6030702, at *4 n.3 (Conn. Super. Ct. Nov. 16, 2017) (striking complaint because the plaintiff's allegations, "as stated in *Iqbal*, are no 'more than an unadorned, the-defendant-unlawfully-harmed-me accusation'" and "'naked assertion[s]' devoid of 'further factual enhancement'") (quoting *Iqbal*, 556 U.S. at 678) (alteration in original).

In considering a motion to strike a complaint, the Court "cannot read additional allegations into the pleading." *Pike*, 115 Conn. App. at 828 n.5. Moreover, "essential allegations may not be supplied by conjecture or remote implication." *Cahill v. Bd. of Educ. of City of Stamford*, 198 Conn. 229, 236 (1985) (internal quotation marks omitted).

B. Plaintiffs Must Plead Facts to Support Causation

Causation is a necessary element of Plaintiffs' claims under CUTPA. *See Ward v. Greene*, 267 Conn. 539, 546–47 (2004) ("A causal relation between the defendant's wrongful conduct and the plaintiff's injuries is a fundamental element without which a plaintiff has no case.") (internal quotation marks omitted); *Abrahams*, 240 Conn. at 306 ("[I]n order to prevail in a CUTPA action, a plaintiff must establish both that the defendant has engaged in a prohibited act and that, 'as a result of' this act, the plaintiff suffered an injury. The language 'as a result of' requires a showing that the prohibited act was the proximate cause of a harm to the plaintiff."); *Haesche v. Kissner*, 229 Conn. 213, 223-24 (1994) (stating that CUTPA requires that "the plaintiff suffer an ascertainable loss that was caused by the alleged unfair trade practice").

To plead causation, Plaintiffs must allege *facts* to establish that Remington's alleged conduct was *both* (1) the *cause in fact* (or *but for* cause) and (2) the *proximate cause* of the harm suffered by Plaintiffs. *See Abrahams*, 240 Conn. at 306–09 (holding that plaintiffs must allege

both "but for causation" and proximate causation in order to state a CUTPA claim); *Coste v. Riverside Motors, Inc.*, 24 Conn. App. 109, 113 (1991) ("In order for legal causation to exist, actual cause or cause in fact, as well as proximate cause, must be present."); *Boehm v. Kish*, 201 Conn. 385, 390 (1986) ("A prerequisite to a determination of proximate causation is a finding of causation in fact."); *Builes v. Kashinevsky*, No. CV095022520S, 2009 WL 3366265, at *4 (Conn. Super. Ct. Sept. 15, 2009) (recognizing the requirement of pleading facts to establish proximate causation when asserting a CUTPA claim) (Bellis, J.).

C. **Plaintiffs Fail to Allege Causation-In-Fact**

"The first component of legal cause is causation in fact. Causation in fact is the purest legal application of legal cause." *See Paige v. Saint Andrew's Roman Catholic Church Corp.*, 250 Conn. 14, 24-25 (1999) (internal quotation marks and alteration omitted). "Cause in fact, occasionally referred to as actual cause, asks whether the defendant's conduct 'caused' the plaintiff's injury." *Stewart v. Federated Dep't Stores, Inc.*, 234 Conn. 597, 605 (1995).

Causation in fact, "or 'but for' causation, explores whether the injury would have occurred in the absence of the defendants' negligent act or omission." *Alexander v. Town of Vernon*, 101 Conn. App. 477, 488 (2007). "The test for cause in fact is, simply, would the injury have occurred were it not for the actor's conduct." *Paige*, 250 Conn. at 25. "[I]f the plaintiff's injury would not have occurred 'but for' the defendant's conduct, then the defendant's conduct is a cause in fact of the plaintiff's injury. Conversely, if the plaintiff's injury would have occurred regardless of the defendant's conduct, then the defendant's conduct was not a cause in fact of the plaintiff's injury." *Stewart*, 234 Conn. at 605; *accord Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 1014 (2020) ("It is 'textbook tort law' that a plaintiff seeking redress for a defendant's legal wrong typically must prove but-for causation. Under this

standard, a plaintiff must demonstrate that, but for the defendant's unlawful conduct, its alleged injury would not have occurred.") (internal citation omitted).[3]

A plaintiff's failure to plead and establish that it would not have suffered the alleged injury *but for* the defendant's conduct is therefore fatal to a CUTPA claim. *See Haesche*, 229 Conn. at 222, 224 (holding that defendant gun manufacturer was entitled to judgment as a matter of law on CUTPA claim because "the alleged failure to warn that the plaintiff claims is an unfair trade practice was not the cause of his injuries" and "a fair and reasonable person could not conclude that a warning would have altered [his] behavior"); *Stevenson Lumber Co.-Suffield, Inc. v. Chase Assocs., Inc.*, 284 Conn. 205, 214–15 (2007) (holding that trial court improperly found that defendant violated CUTPA because plaintiff failed to present any evidence its loss would not have occurred "but for" defendant's conduct); *Calandro v. Allstate Ins. Co.*, 63 Conn. App. 602, 612 (2001) (finding that alleged unfair trade practice did not cause any injury because plaintiffs failed to prove that its losses would not have occurred "but for" defendant's conduct).[4]

[3] Pleading and proving cause in fact in most personal injury cases is not typically difficult because in most cases a defendant's alleged tortious conduct—such as improperly maintaining premises, providing negligent medical care, or driving a car dangerously—is obviously linked to a plaintiff's injury. But in other cases, where alleged causal connections are attenuated, as is the alleged connection between an advertisement and Lanza's decision to kill and injure innocent persons, Plaintiffs must be held to their burden of pleading facts demonstrating that their injuries would not have occurred "but for" a Remington advertisement. *See Stewart*, 234 Conn. at 605. Pleading and establishing cause-in-fact is not merely a hyper-technical requirement. Indeed, a trial court *must* inform "the jury of its duty to find that the defendant's actions were a 'cause in fact' of the plaintiff's injury" in order to impose liability and instruct the jury that "it could not find that the defendant's actions were a cause in fact of the plaintiff's injury, unless it found that, in the absence of the defendant's conduct, the injury would not have occurred." *Id.* at 607.

[4] Any suggestion that the Connecticut Supreme Court in *Soto* determined that Plaintiffs need not plead cause in fact in this case based on its observation that Plaintiffs had alleged that Remington's wrongful marketing was a substantial factor in their injuries would be misplaced. The Court in *Soto* did not fundamentally change the law of causation and eliminate the burden to plead and prove cause in fact. Indeed, the Court has continued to recognize cause in fact as an

Here, Plaintiffs *do not even attempt* to plead cause in fact in the Revised SAC. Nowhere do Plaintiffs allege that their injuries would not have occurred *but for* a Remington advertisement. They do not even allege that Lanza saw a Remington advertisement, and thus they cannot allege that his exposure to advertisements inspired him to commit his crimes. Indeed, Plaintiffs have acknowledged they lack a good-faith factual basis to make such allegations. And Plaintiffs cannot meet their burden of pleading causation in fact based solely on speculation or conjecture. *See Alexander*, 101 Conn. App. at 490-91 (affirming entry of judgment in favor of defendant for failure to establish causation because "there are too many variables involved to state with any degree of certainty that the victim's murder would not have occurred in the absence of the officers' alleged negligence or recklessness" and "a determination of causation on the basis of conjecture or speculation is precisely what we cannot permit").[5]

Indeed, this Court in *Carter v. Edge Fitness Gym*, No. CV165031410S, 2017 WL 951676 (Conn. Super. Ct. Feb. 16, 2017) granted a motion to strike for precisely the same reason—the failure of the plaintiff to plead facts to support *but for* causation. This Court held that the plaintiff's conclusory allegation that it suffered harm "as a direct result" of the defendant's conduct was insufficient to allege causation in fact:

> Notwithstanding the plaintiff's conclusory allegations that the police officer violated his rights by unlawfully entering his residence without a warrant 'as a

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essential element of causation. *See Snell v. Norwalk Yellow Cab, Inc*. 332 Conn. 720, 743 (Aug. 13, 2019); *see also Barnes v. Conn. Podiatry Grp., P.C*., 195 Conn. App. 212, 241 (2020).

[5] Even if Plaintiffs had made factual allegations demonstrating cause in fact, their problem proving causation would remain, and it cannot be solved with expert opinion testimony unsupported by factual evidence that Lanza saw an offending advertisement and that but for the advertisement, Lanza would not have acted criminally. *See Aspiazu v. Orgera,* 205 Conn. 623, 632 (1987) (stating that an expert opinion cannot be based on conjecture or surmise); *Klein v. Norwalk Hosp*., 299 Conn. 241, 262-63 (2010) (rejecting expert witness testimony as nothing more than his own *ipse dixit*—an assertion made but not proven).

> direct result' of the personal information obtained from the defendant, *the plaintiff has not alleged any facts in support of this allegation*. The facts alleged do not support an inference that, but for the defendant's employee's disclosure of the plaintiff's personal information, the plaintiff would not have been arrested and subsequently incarcerated for his conduct. *No facts are alleged to demonstrate either but-for causation or proximate causation between the defendant's alleged disclosure and the alleged harm suffered*.

Id. at *6. (emphasis added) (Bellis, J.). Here, Plaintiffs have not even made conclusory allegations of *but for* causation—much less allege facts in support of that required element of their claim. Indeed, not only have Plaintiffs failed to allege facts to support causation-in-fact, they have *expressly disavowed* any obligation to plead them. (*See* Entry No. 292.00, Objections to Request to Revise at 24 n.8 (admitting that such allegations are not in the complaint and claiming that "there is no requirement to allege them")).[6]

[6] Although this Court previously denied Remington's request to revise Plaintiffs' SAC based on Plaintiffs' failure to plead causation, the denial of a request to revise has no bearing on a court's consideration of a motion to strike attacking the *legal sufficiency* of allegations in a complaint. *See Melfi v. City of Danbury*, 70 Conn. App. 679, 684 (2002) ("Although the request to revise may not ordinarily be used to substantively challenge a pleading, it may be used to delete otherwise improper allegations from a complaint. The motion to strike, on the other hand, challenges the legal sufficiency of the pleading by testing whether the complaint states a cause of action on which relief can be granted.") (internal quotation marks and ellipses omitted); *Martinez v. Oliphant-Hines*, No. CV166009002S, 2018 WL 1474960, at *1 n.1 (Conn. Super. Ct. Feb. 26, 2018) (noting "[t]he disposition of the request to revise has no bearing on the present motion to strike attacking the *legal sufficiency* of the allegations the plaintiff was not required to remove"); *Rosenlicht v. Bradley*, No. HHBCV054003001S, 2006 WL 1461096, at *4 (Conn. Super. Ct. May 8, 2006) (holding that ruling on request to revise was not the law of the case and proceeding to address the merits of a motion to strike because a "motion to strike is the proper method to challenge the legal sufficiency of a complaint" and a "request to revise is not the procedural vehicle by which to mount such a challenge"); *Ruther v. Cont'l Ins. Co.*, No. CV 960155186, 1998 WL 211953, at *1 (Conn. Super. Ct. Apr. 23, 1998) ("The court's decision regarding the request to revise the amended complaint did not address the legal sufficiency of the complaint. This court is now faced with a motion to strike which does contest the legal sufficiency of the complaint. The decision on the request to revise, therefore, has no bearing on this court.") (internal citations omitted)).

D. Plaintiffs Fail to Allege Facts In Support of Proximate Causation

"The second component of legal cause is proximate cause." *Paige*, 250 Conn. at 25 (1999) (internal quotation marks omitted). "[T]he legal construct of proximate cause serves to establish how far down the causal continuum tortfeasors will be held liable for the consequences of their actions." *Snell v. Norwalk Yellow Cab, Inc.*, 332 Conn. 720, 744 (2019) (internal quotation marks omitted). "Proximate cause establishes a reasonable connection between an act or omission of a defendant and the harm suffered by a plaintiff." *Stewart*, 234 Conn. at 606. "[P]roximate cause results from a sequence of events unbroken by a superseding cause, so that its causal viability continued until the moment of injury or at least until the advent of the immediate injurious force." *Snell*, 332 Conn. at 744–45 (internal quotation marks omitted).

"[P]roximate cause is an actual cause that is a substantial factor in the resulting harm." *Abrahams*, 240 Conn. at 306 (internal quotation marks omitted). "The question to be asked in ascertaining whether proximate cause exists is whether the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's act." *Id.* (internal quotation marks omitted). "Yet, more than abstract foresee-ability is necessary to justify imposing liability on the defendants for their acts and omissions. Satisfaction of the proximate cause element requires proof that the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's negligence." *Alexander*, 101 Conn. App. at 486 (internal quotation marks omitted). "As a general rule, the act of a third person in committing an intentional act or crime is a superseding cause of harm to another resulting therefrom. In such a case, the third person has deliberately assumed control of the situation, and all responsibility for the consequences of his act is shifted to him." *Suarez v. Sordo*, 43 Conn. App. 756, 762–63 (1996) (internal quotation marks and citations omitted). "[A] finding that conduct constitutes a

superseding cause renders the original negligence so insignificant in relation to that superseding cause that the original negligence cannot be deemed to be a proximate cause of the injuries." *Snell*, 332 Conn. at 754 n.11.

Allegations of proximate cause "must be based upon more than conjecture and surmise." *Paige*, 250 Conn. at 26 (1999) (internal quotation marks omitted); *accord Kumah v. Brown*, 130 Conn. App. 343, 351–53 (2011) (holding that plaintiff could not establish proximate cause because "connecting [defendant's] alleged negligent acts to the harm suffered by the plaintiffs would require similar conjecture"); *D'Angelo Dev. & Constr. Corp. v. Cordovano*, 121 Conn. App. 165, 181–84 (2010) (finding that "CUTPA violation was not the proximate cause of any ascertainable loss to the [plaintiffs]" because that determination "would require speculation"); *Coste.*, 24 Conn. App. at 114–15 ("The allegations of the complaint must equate to a damage to the plaintiff that is not overly remote to the conduct of the defendant and establishes a causal relationship between the harm and the conduct that is not conjectural.").

Even assuming that Plaintiffs have alleged causation in fact in the Revised SAC (they do not), their conclusory allegation that Remington's conduct was a "substantial factor" in the resulting harm to Plaintiffs is plainly insufficient to plead proximate cause. (*See* Entry No. 301.00, Revised SAC ¶ 51.) Pleading that Remington's conduct was a substantial factor in the harm suffered by Plaintiffs harm is a *legal conclusion* that is unsupported by facts or an explanation of *how* Remington's conducted contributed to Plaintiffs' harm. Without pleading such facts, Plaintiffs cannot establish the necessary causal connection between Remington's alleged conduct and Plaintiffs' injuries. Indeed, there can be *no* plausible causal connection between the publication of an advertisement and the deaths of Plaintiffs' decedents in the absence of such factual allegations.

The Connecticut Supreme Court has held that conclusory allegations similar to those found in the Revised SAC are insufficient to survive a motion to strike a CUTPA claim. In *Abrahams*, the Connecticut Supreme Court concluded that the plaintiff could not state a cause of action under CUTPA because it failed to allege *facts* to support proximate causation:

> *The plaintiff has not alleged, nor can it be reasonably inferred from the plaintiff's allegations,* that [the defendant] either intended or could have foreseen that, as a result of its attempt to bribe the plaintiff, he would be injured by an erroneous indictment for bribery or by publication of the incorrect accusations therein. In other words, [the defendant's] conduct in attempting to bribe the plaintiff was not a substantial factor reasonably foreseeable as likely to bring about the plaintiff's indictment on false charges and his resulting damages. The plaintiff was neither the intended target nor victim of [defendant's] illegal activities.

240 Conn. at 307 (emphasis added) (internal quotation marks omitted). Similarly, the Connecticut Appellate Court has concluded that a complaint should be stricken where "[t]he plaintiff's complaint is riddled with proximate cause gaps because the allegations of the complaint leave breaks in the chain of causation" and "[t]he defendant's conduct is too inconsequential to the ultimate harm to the plaintiff, considering the many other variables, to rise to the level of proximate cause." *Coste*, 24 Conn. App. at 115.

Many courts have similarly held that the bare legal conclusions of the Revised SAC are insufficient to allege the causation element of a CUTPA claim. *See Travelers Indem. Co. v. Cephalon, Inc.*, 620 F. App'x 82, 87 (3d Cir. 2015) ("Here, the allegations in the Amended Complaint fail to establish proximate cause. Indeed, Plaintiffs did not allege that any doctor relied on Defendants' alleged misrepresentations in prescribing [medications], or that these prescriptions would not have been written if these physicians had not received the allegedly fraudulent information from [defendant]. Thus, Plaintiffs have not sufficiently pleaded causation, as required by CUTPA, and we will affirm the District Court's dismissal of the CUTPA claims."); *Nwachukwu v. Liberty Bank*, 257 F. Supp. 3d 280, 303 (D. Conn. 2017)

(holding that an allegation that plaintiff suffered economic loss "as a result" of the bank account's closing was insufficient to state a CUTPA claim because "[t]he proposed pleading contains no allegations describing how the bank's conduct caused Plaintiff an economic loss") (internal quotation marks omitted)); *Von Pein v. Magic Bristles, LLC*, No. CV126008266S, 2013 WL 453048, at *7 (Conn. Super. Ct. Jan. 8. 2013) (holding that plaintiffs "merely state the legal conclusion that this violation caused their injury" and failed to "allege facts demonstrating any type of causal relationship between this violation of the Home Improvement Act" and their alleged injury); *Patterson v. Sullo*, No. CV116008633S, 2012 WL 4040259, at *6 (Conn. Super. Ct. Aug. 20, 2012) (holding that "[t]he allegation that the plaintiffs suffered monetary losses and damages 'as a direct and proximate result of the defendant's acts' is a legal conclusion that lacks the factual support to establish an ascertainable loss by or as a result of the alleged misrepresentation itself"); *Buchanan v. Greenwich Hosp.*, No. X06CV106007415S, 2011 WL 7064250, at *3 (Conn. Super. Ct. Dec. 28, 2011) (granting motion to strike CUTPA claim because the acts "alleged in the complaint lack any causal connection between the hospital's alleged wrongdoing and any resulting harm, beyond pure speculation"); *Podesser v. Lambert & Barr, LLC*, No. CV065000689S, 2007 WL 2363310, at *1–2 (Conn. Super. Ct. July 25, 2007) (concluding that "the plaintiff has failed to plead sufficient facts to support the causation element of her claims that the defendants violated CUTPA"); *Hull v. Nicholas*, No. FSTCV030194538, 2005 WL 2741845, at *2 (Conn. Super. Ct. Oct. 7, 2005) (striking CUTPA claim because plaintiffs "have not alleged facts to establish a causal link between Coldwell Banker's action or inaction and the plaintiff's failure to be compensated"); *Heath v. Micropatent*, No. CV 97401481, 1999 WL 1328140, at *3 (Conn. Super. Ct. Dec.30, 1999) (holding that plaintiffs failed to allege specific facts showing a causal nexus between defendant's conduct and their alleged economic

injuries); *Kent v. Sartiano*, No. 386702, 1998 WL 661520, at *6 (Conn. Super. Ct. Sept. 11, 1998) (granting motion to strike CUTPA claim because "the proximate cause of the plaintiff's losses was not [defendant's] fraud and illegal insurance practices").

Plaintiffs' conclusory "substantial factor" allegation therefore is not a sufficient substitute for factual allegations and subsequent proof that a Remington advertisement was the proximate cause of their damages. This Court, however, need not even consider the adequacy of Plaintiffs' proximate cause allegation because Plaintiffs have completely failed to make any allegation—conclusory or factual—supporting their initial burden of pleading that *but for* a Remington advertisement that was seen by Lanza, the shooting would not have occurred.

CONCLUSION

For the reasons set forth above, the Court should grant Remington's motion to strike the Revised SAC in its entirety.

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EXHIBIT A

NO. UWY-CV15 6050025 S	:	**SUPERIOR COURT**
	:	
DONNA L. SOTO, ADMINISTRATRIX	:	
OF THE ESTATE OF	:	**COMPLEX LITIGATION**
VICTORIA L. SOTO, ET AL	:	**DOCKET**
	:	
V.	:	**AT WATERBURY**
	:	
BUSHMASTER FIREARMS	:	**MAY 26, 2020**
INTERNATIONAL, LLC, ET AL	:	

PLAINTIFFS' RESPONSES TO DEFENDANTS'
INTERROGATORIES AND SECOND REQUESTS FOR PRODUCTION

Pursuant to Practice Book §§ 13-7 and 13-10, plaintiffs hereby respond to defendants' Interrogatories and Second Requests for Production of Documents dated December 11, 2019.

INTERROGATORIES

3. Identify each Bushmaster advertisement, marketing activity and promotional activity that was seen by Adam Lanza. With respect to each such advertisement, marketing activity and promotional activity, identify the following:

   (a) When did Adam Lanza see the advertisement, marketing activity and promotional activity; and
   (b) Where, how or in what medium did Adam Lanza see the advertisement, marketing activity and promotional activity.

COURT'S RULING: **"[Plaintiffs' Objections to] #3 and 7 overruled in part; they must be responded to for those documents that are not part of the shared, governmental agency documents."**

ANSWER: **Interrogatory #3 asks plaintiffs to identify when and how the shooter saw the Remington defendants' "advertisement[s], marketing activity and promotional activity." The Court's order limits this Interrogatory to documents that are "not part of the shared, governmental agency documents." Plaintiffs are unable to identify any such documents at this time.**

7. Identify each document demonstrating that Adam Lanza saw a Bushmaster advertisement, marketing activity and promotional activity.

COURT'S RULING: **"[Plaintiffs' Objections to] #3 and 7 overruled in part; they must be responded to for those documents that are not part of the shared, governmental agency documents."**

ANSWER: Interrogatory #7 asks plaintiffs to identify documents demonstrating the shooter "saw a Bushmaster advertisement, marketing activity and promotional activity." The Court's order limits this Interrogatory to documents that are "not part of the shared, governmental agency documents." Plaintiffs are unable to identify any such documents at this time.

REQUESTS FOR PRODUCTION

3. Each Bushmaster advertisement, marketing activity and promotional activity that was seen by Adam Lanza.

COURT'S RULING: "See rulings above."

ANSWER: Not applicable.

THE PLAINTIFFS,

By: */s/ Joshua D. Koskoff*

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Dated: May 26, 2020

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