

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota by its Attorney General,
Keith Ellison,

Court File No.: 27-CV-24-18827
Case Type: Other Civil

Plaintiff,

v.

**DEFENDANT GLOCK, INC.’S
REPLY MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION TO STAY
DISCOVERY**

Glock, Inc. and Glock Ges.m.b.H.,

Defendants.

ARGUMENT

The State seeks to hold GLOCK, Inc. and an Austrian company, GLOCK Ges.m.b.H., liable for the criminal conduct of individuals using Glock pistols that have been unlawfully modified by third-party criminals with machinegun conversion devices (“MCDs”). GLOCK, Inc. moved to dismiss the Complaint for failure to state a claim, on the basis that the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901-03 (“PLCAA”), a federal immunity statute, prohibits the State from even filing its Complaint, and as a violation of GLOCK, Inc.’s Constitutional rights. Despite GLOCK, Inc.’s pending motion to dismiss pursuant to the immunity provided by the PLCAA, the State seeks to conduct broad merits-based discovery. This Court should stay all discovery until it has decided whether the State’s claims are barred by the immunity provided to GLOCK, Inc. by the PLCAA. Notably, the only other court to hear this exact issue raised by GLOCK, Inc.’s motion ruled in favor of a stay until the court determines whether the government’s claims are barred by the immunity provided by the PLCAA. *See City of Chicago v. Glock, Inc., et al.*, No. 2024CH06875, Order Mot. to Stay (Ill. Cook County Cir. Ct., Jan 29, 2025)

(Declaration of Shamus P. O’Meara in Further Support of Glock, Inc.’s Motion to Stay Discovery at Exhibit 1 (Index 56)).

I. The PLCAA Demands Dismissal and Warrants a Stay of Discovery

This case directly involves an immunity statute (*i.e.*, the PLCAA) which must be considered before discovery is permitted. *See, e.g., Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 321 (2007) (observing that a stay of discovery pending resolution of a motion to dismiss pursuant to the Private Securities Litigation Reform Act is warranted); *see also Lovelace v. Delo*, 47 F.3d 286, 287 (8th Cir. 1995) (holding that a stay of discovery may be appropriate while resolving entitlement to qualified immunity, as such immunity exists to protect government from litigation). The purpose of the PLCAA was to ultimately protect Second Amendment rights by preventing plaintiffs from bankrupting the industry through frivolous lawsuits. Such immunity is effectively lost if GLOCK, Inc. is required to engage in costly discovery before the court decides its motion to dismiss. Based on its positions in the March 3 Joint Discovery Plan, the State intends to seek extensive discovery – including discovery of electronically stored information – on virtually all aspects of GLOCK, Inc.’s products and business operations, on an expedited schedule. Thus, staying discovery is warranted under the circumstances of this case.

The State asserts that according to the statement of purpose contained in its preamble, the “PLCAA provides only limited immunity from liability for the ‘harm *solely* caused by the criminal or unlawful misuse of firearms products . . . by others.’ 15 U.S.C. § 7901(b)(1) (emphasis added).” State’s Memorandum of Law in Opposition to Defendant Glock, Inc. Motion to Stay Discovery at p. 1 (Index No. 54) (February 28, 2025) (“State’s Opposition Memorandum”). To the contrary, claims that the PLCAA only applies when plaintiffs allege that their harm was “solely” caused by the criminal misuse of firearms by third parties and not also by alleged wrongdoing by a

manufacturer or seller have been resoundingly rejected by the courts. *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 322 (Mo. 2016) (the “statement of purpose does not overcome the fact that the specific substantive provisions of the PLCAA expressly preempt all qualified civil liability actions against firearms sellers, including claims of negligence”); *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 387 (Alaska 2013) (unanimously rejecting plaintiffs’ argument on the basis that it would “elevate the preamble over the substantive portion of the statute, giving effect to one word in the preamble at the expense of making the enumerated exceptions meaningless”); *Travieso v. Glock, Inc.*, 526 F.Supp.3d 533, 541-43 (D. Ariz. 2021) (noting that accepting the solely caused argument would make the PLCAA’s exceptions unnecessary); *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1223-24 (D. Colo. 2015) (rejecting plaintiffs’ argument that the PLCAA only protects defendants against claims for harm “solely caused” by the criminal or unlawful misuse of firearms for the reasons stated in the *Estate of Kim* case); *Gilland v. Sportsmen’s Outpost, Inc.*, 2011 WL 2479693, at*15-16 (Conn. Super. Ct. May 26, 2011) (the PLCAA “includes cases where it is alleged that gun sellers negligently cause harm” despite the reference to “solely caused” in § 7901(b)(1)). The State’s reliance on 15 U.S.C. § 7901(b)(1) cannot be squared with the rest of the PLCAA as it would allow the preamble to swallow the PLCAA’s clear rule, which is that a qualified civil liability action like this case “may not be brought in any Federal or State court.” *Id.* § 7902(a). Thus, the substantive provisions of the PLCAA apply to this case and precludes the State’s claims.

Additionally, the State incorrectly asserts that GLOCK, Inc.’s PLCAA arguments are “unlikely to succeed” and cites various cases, but none that specifically permitted discovery while

a motion to dismiss predicated on the PLCAA was pending.¹ The State’s reliance on those decisions are inapposite because they address the applicability of the PLCAA under the unique factual circumstances at issue in those cases, and say nothing about whether discovery should be stayed pending resolution of a motion to dismiss pursuant to the PLCAA.²

II. GLOCK, Inc. Has Shown Good Cause For a Stay Pursuant to Minnesota Law

The State cites several cases which purportedly support their argument that a dispositive motion does not constitute “good cause” for the issuance of a discovery stay. However, the State relies almost entirely on federal law while ignoring several Minnesota cases where courts stayed discovery pending a motion to dismiss. Indeed, the State does not even attempt to distinguish this case from the Minnesota cases cited by GLOCK, Inc. because they cannot reasonably do so.

First, the State cites *United Healthcare Servs., Inc. v. Fremont Industries, Inc.*, No. 27-CV-17-16231, 2018 WL 11000608, *2 (Minn. 4th Jud. Dist. Ct., Mar. 5, 2018), for its argument that “Good cause must be shown for a court to grant a motion to stay discovery” and that “the ‘time and expense’ required of Glock to perform its ordinary discovery obligations ‘are not a sufficient basis to stay discovery while the motion to dismiss is pending.’” However, this case is entirely

¹ On March 4, 2025, the Supreme Court heard oral argument in *Smith & Wesson Brands, Inc., et al. v. Estados Unidos Mexicanos*, Case No. 23-1141. Contrary to the State’s apparent contentions regarding the viability of PLCAA immunity, the Supreme Court’s forthcoming decision is widely expected to uphold the PLCAA and lend further support to GLOCK, Inc.’s likelihood of success on its Motion to Dismiss.

² For example: *Minnesota v. Fleet Farm LLC*, 679 F.Supp.2d 825 (D. Minn. 2023) involved a motion to remand in an action where the State alleged the defendant engaged in “straw sales” in violation of federal and state statutes that are directly applicable to the sale or marketing of firearms; *New York v. Arm or Ally, LLC*, 718 F.Supp.3d 310 (S.D.N.Y. 2024) involved a motion to remand; *Getz v. Sturm, Ruger & Co.*, No. 3:23-CV-1338(RNC), 2024 WL1793670 (D. Conn. Apr. 25, 2024), involved a motion to remand; and *Estados Unidos Mexicanos v. Diamondback Shooting Sports Inc.*, No. 4:22-cv-00472-RM, 2024 WL 1256038 (D. Ariz. Mar. 25, 2024), involved a motion to dismiss.

different. *United Healthcare Servs.* concerned allegations of professional negligence and breach of contract allegedly arising from the design and construction of a technology center. In contrast, this case is predicated on the criminal use of modified Glock pistols by third parties where the State seeks sweeping declaratory and injunctive relief and compensatory and exemplary damages—all of which are prohibited by a federal immunity statute (the PLCAA).

The State also relies on the federal court's decision in *TE Connectivity Networks, Inc. v. All Systems Broadband, Inc.*, No. 13-1356 ADM/FLN, 2013 WL 4487505, at *2 (D. Minn., Aug. 20, 2013). In that case, the court denied the defendant's motion to stay discovery because the only "good cause" for a stay that the defendant presented was the otherwise normal time and expense of discovery in any litigation, and the court determined: "[t]his case does not involve a statute or doctrine of law which requires the resolution of motions to dismiss before discovery begins." *Id.* Unlike *TE Connectivity Networks*, this case involves a statute – the PLCAA – that requires resolution before discovery, if any, can begin.

Finally, the State argues that *Christopherson v. Cinema Ent. Corp.*, No. 23-cv-3614, 2024 WL 1120925, at *2 (D. Minn., Mar. 6, 2024) is "instructive" for interpreting the Minnesota Rules of Civil Procedure. However, that case concerned a defendant who could not show a likelihood of success on the merits of its dispositive motion because other courts had previously rejected the same argument that it proffered regarding its classification as a "video tape service providers" under the VPPA. In contrast to this case, GLOCK, Inc. is unequivocally a manufacturer and seller of "qualified products" under the PLCAA, and the State's claims arise from the criminal and unlawful misuse of qualified products by third parties. This is clearly a "qualified civil liability action" that "may not be brought in any Federal or State court." 15 U.S.C. § 7902(a). GLOCK, Inc. has shown a likelihood of success on the merits of its Motion to Dismiss pursuant to the

PLCAA and good cause exists under Minnesota law to stay discovery pending resolution of GLOCK, Inc.'s dispositive motion.

CONCLUSION

For the reasons set out above, GLOCK, Inc. respectfully requests that the Court enter an Order pursuant to Minn. R. Civ. P. 26 staying all discovery until after the Court decides its pending Motion to Dismiss.

Respectfully Submitted,

O'MEARA WAGNER, P.A.

Dated: March 5, 2025.

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