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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 MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS

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

Defendants.

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Defendant Glock, Inc. respectfully submits this memorandum of law in support of its motion to dismiss the Complaint filed by the State of Minnesota, by its Attorney General, Keith Ellison (the "State") because it is barred by the immunity provided by the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901-03 ("PLCAA"), and fails to state a claim upon which relief can be granted pursuant to Minnesota law.

SUMMARY OF THE ARGUMENT

Glock, Inc. manufactures and sells the most popular pistols in America, used by both law enforcement and private citizens. The popularity of Glock pistols is due in part to the simplicity of the design of their operating system, which has remained consistent since they were invented in the 1980s and results in the utmost reliability. Like all semi-automatic firearms, Glock pistols can be illegally converted to fire fully automatic through the installation of a machine gun conversion device ("MCD"), referred to by the State in its Complaint as an auto sear or "Glock switch." MCDs are considered to be machine guns under federal and Minnesota law and are illegal for private individuals to manufacture, import, and possess. Although MCDs for Glock pistols have been around almost as long as the pistols themselves, in recent years, the Complaint alleges an increasing number of criminals in Minnesota have been illegally modifying some Glock pistols by installing MCDs to make them fully automatic ("Modified Glock Pistols") and using them to commit crimes.

The State blames Glock, Inc. for crime involving the use of Modified Glock Pistols. The State does not claim Glock pistols fail to function properly when they are sold by Glock, Inc. and, in light of their popularity and reliability, does not seek to restrict their sale to, or use by, law enforcement. Through this lawsuit, however, the State seeks to have this Court issue an injunction prohibiting Glock, Inc. from selling Glock pistols – the most popular handgun in

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America – to the public. The basis for the State's lawsuit is succinctly summarized in paragraph 12 of its Complaint: "Glock's design, manufacture, and sale of semi-automatic handguns that are easily converted into illegal machine guns, coupled with Glock's refusal to fix this known hazard, violates Minnesota law and must be stopped."

The State claims that because certain Glock pistols are illegally modified through the installation of an MCD, Glock, Inc. has a duty to change the design of the most popular pistol in America to make it more difficult for criminals to illegally modify them. The State contends that by simply continuing to sell its pistols with their original, proven design, Glock, Inc. has acted unlawfully, created and contributed to a nuisance in Minnesota, and violated several statutes barring fraudulent and deceptive acts, and engaged in false advertising.

The State's attempt to hold Glock, Inc. liable for the actions of criminal third parties is precisely the kind of action that prompted Congress in 2005 to enact the PLCAA. With limited exceptions, the PLCAA bars actions that seek to hold firearm manufacturers like Glock, Inc. liable for alleged injuries "resulting from the criminal or unlawful misuse" of a firearm by a third party. 15 U.S.C. § 7903(5)(A). One exception to the PLCAA's grant of immunity is for an action in which the defendant knowingly violated a state or federal statute "applicable to the sale or marketing of the product," where such violation was the proximate cause of the alleged harm. *Id.* § 7903(5)(A)(iii) (the "predicate exception"). While the Complaint alleges Glock, Inc. violated several Minnesota statutes, none of them satisfy the predicate exception because they are statutes of general applicability rather than statutes specifically applicable to the sale or marketing of firearms.

The Complaint also fails to state a claim under Minnesota state law, because the conduct of which it complains does not constitute a violation of the statutes referenced or any duty owed.

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Based both upon the PLCAA and Minnesota law, the Complaint must be dismissed.

The relief the State seeks violates Glock, Inc.'s First Amendment right to free speech by punishing it for commercial speech that is not false, deceptive, or otherwise misleading, and not affirmatively disseminating content desired by the State. It also violates the Second Amendment right to keep and bear arms by prohibiting citizens from acquiring new Glock pistols and thereby preventing them from keeping and bearing the most popular handgun in America.

BACKGROUND

Based on the allegations in the Complaint, which are taken as true for purposes of this motion only, Glock pistols are the most popular handgun in America, accounting for 65% of the market for handgun sales. Compl. ¶ 27. Glock pistols are semi-automatic, and fire only one round each time the trigger is pulled. *Id.* ¶ 4, 10. Glock pistols have a simple design, using only thirty-four component parts. *Id.* ¶¶ 67, 69. Glock pistols can be illegally modified by installing an MCD to make them fire fully automatic ("Modified Glock Pistols"). *Id.* ¶¶ 1, 39-46. Other brands of semi-automatic pistols can also be modified to fire fully automatic by installing an MCD, but the simple design of the Glock pistol makes them "easier to convert." *Id.* ¶ 97. Glock, Inc. does not manufacture MCDs. Compl. ¶ 3. Most MCDs are illegally manufactured overseas and sold online, or printed using 3D printers. *Id.* ¶¶ 54-57. Glock pistols have been sold in the United States for decades and their basic operating mechanism has remained the same. *Id.* ¶¶ 58-60. An MCD for Glock pistols was invented as early as 1987, but Modified Glock Pistols only became an issue in Minnesota in recent years. *Id.* ¶¶ 9-10, 116, 120, 165-69.

The installation of an MCD to convert a semi-automatic Glock pistol to a machine gun is illegal. Compl. ¶ 1. Machine guns are illegal in Minnesota. *Id.* ¶ 1, 33-34, 37. MCDs themselves are considered to be machine guns and are also illegal in Minnesota. *Id.* ¶¶ 35-36. Modified

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Glock Pistols have been used to commit crimes in Minnesota. *Id.* ¶¶ 5-11, 159-214. The Minneapolis Police Department recovered three times as many Modified Glock Pistols in 2023 compared to 2021, when it began tracking them. *Id.* ¶ 9. Incidents of "fully automatic gunfire" (from any source, not just Modified Glock Pistols) in Minneapolis increased from 16 in 2020 to 194 in in 2021, 283 in 2022, and 257 in 2023. *Id.* ¶¶ 10, 166. The Complaint asserts Glock, Inc. should be held liable for selling its semi-automatic pistols to the public because they can be illegally modified by third parties to fire fully automatic, and because it "could fix this problem by changing its handgun design to prevent the easy conversion of legal handguns into illegal machine guns." *Id.* ¶ 4 (emphasis added).

Glock, Inc. also sells a full-automatic Glock 18 pistol, which can be changed from semi-automatic or full-automatic fire using a selector switch on the rear of the slide. *Id.* ¶¶ 2, 61. Glock, Inc. only sells the Glock 18 pistol to government agencies. *Id.* ¶ 65. In an Instagram post dated September 8, 2018, Glock, Inc. showed one of its sponsored professional shooters firing a Glock 18 pistol with the caption "the only thing more fun than a GLOCK is a full-auto GLOCK." *Id.* ¶ 2, 106-07 (emphasis added).[1] In a video posted on YouTube by The Firearm Blog TV on August 17, 2017, the "Glock USA Rangemaster" is shown shooting a Glock 18 at Glock, Inc.'s headquarters, and refers to the "selector switch that turns the gun to fully automatic" as the "'fun switch.'" *Id.* ¶ 111 (emphasis added).

In the Instagram posts and remark by the "Glock USA Rangemaster" in the above video, Glock, Inc. did not include a disclaimer stating that machine guns are generally illegal, the Glock

[1] In another Instagram post dated May 27, 2015, Glock, Inc. showed a picture of a Glock 18 and a Glock 18C (the compensated version of the Glock 18), with the caption "Double your pleasure. Double your fun." *Id.* ¶¶ 2, 110 (emphasis added). In a January 1, 2023 Instagram post, Glock, Inc. showed someone firing a semi-auto Glock pistol and then a full-auto Glock 18 with the caption "Here's to ringing in the New Year!" *Id.* ¶ 109.

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18 pistol is not available to civilian consumers, and MCDs are illegal. Compl. ¶¶ 108-09, 113-15. The State claims that Glock, Inc. "advertised the 'fun' of fully automatic gunfire to the public and omitted material facts about the illegality of machine guns from its representations about its handguns." *Id.* ¶ 153. The State further claims that Glock, Inc. "failed to tell the public that gun buyers were not allowed to purchase, possess, or use the fully automatic weapons that Glock advertised" and "failed to consistently tell the public that the use of Glock switches with its Glock handguns was illegal." *Id.* ¶¶ 154-55. The State claims that Glock, Inc.'s "representations . . . to the public glorifying Glock fully automatic handguns were so incomplete regarding the illegality of automatic weapons as to be confusing, deceptive, and misleading." *Id.* ¶ 153.

The Complaint raises seven causes of action against Glock, Inc.: (1) creation of a public nuisance in violation of Minn. Stat. § 609.74; (2) aiding and abetting negligence per se based on violation of Minn. Stat. § 609.67; (3) violation of the Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69 ("CFA"); (4) violation of the Deceptive Trade Practices Act, Minn. Stat. § 325D.44 ("DTPA"); (5) violation of the False Statement in Advertisement Statute, Minn. Stat. 325F.67 ("FSAS); (6) negligence; and (7) products liability. *Id.* ¶¶ 2163-02. The State seeks various forms of relief against Glock, Inc., including injunctive relief requiring Glock, Inc. to "modify the design of [Glock pistols] that are sold to the public and can be converted with a Glock switch, including the Glock 17 and Glock 19, so that [they] cannot be easily converted into fully automatic machine guns"; compensatory damages, abatement, fines, restitution, disgorgement of profits, attorneys' fees, costs, and interest. Compl. at 75-76, ¶¶ 1-10.

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ARGUMENT

I. STANDARD OF REVIEW

The PLCAA provides substantive immunity from being sued for a qualified civil liability action, not just a defense from liability, and, therefore, whether its immunity applies must be decided at the earliest available opportunity. *In re Academy, Ltd.*, 625 S.W.3d 19, 35-36 (Tex. 2021) (unanimously granting petition for mandamus and holding that requiring defendant to present a defense on the merits to a case barred by the PLCAA would defeat the substantive immunity provided by the statute). In considering a motion to dismiss under Rule 12.02,[2] a court is only required to accept factual allegations as true, not legal conclusions. *Halva v. Minnesota State Colleges & Universities*, 953 N.W.2d 496, 500 (Minn. 2021); *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014).

II. THE COMPLAINT MUST BE DISMISSED PURSUANT TO THE PLCAA

A. The PLCAA Provides Immunity to Firearm Manufacturers

The PLCAA, which was enacted on October 26, 2005, prohibits the institution of a "qualified civil liability action" in any state or federal court. 15 U.S.C. § 7902(a). One of the stated purposes of the PLCAA is to "prohibit causes of action against manufacturers . . . for the harm solely caused by the criminal or unlawful misuse of firearm[s] . . . by others when the product functioned as designed and intended." *Id.* § 7901(b)(1). Congress made a number of findings regarding the necessity for the PLCAA, including:

- 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.

[2] Rule 12.02 is the proper basis for dismissal pursuant to a federal immunity statute. *Steele v. Mengelkoch*, No. A07-1375, 2008 WL 2966529, at *1-*2 (Minn. Ct. App. Aug. 5, 2008).

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- 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 its findings and the purposes stated therein, Congress enacted the PLCAA to prohibit qualified civil liability actions, such as this case, from being "brought in any Federal or State court." *Id.* § 7902(a).

1. 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 . . . .

15 U.S.C. § 7903(5)(A). Based on the allegations in the Complaint, this case is a civil proceeding brought by a person (the State)[3] against a manufacturer (Glock, Inc.) of qualified products (Glock pistols) for damages and other relief based on the criminal use (the illegal conversion of Glock pistols to machine guns by the installation of MCDs and the use of the Modified Glock Pistols to commit crimes) of the qualified products (Glock pistols) by third parties (criminals who illegally modify them into machine guns through the installation of MCDs and use them to commit crimes). *See generally* Compl.

[3] The term "person" includes "any governmental entity." 15 U.S.C. § 7903(3).

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2. Glock, Inc. is a Manufacturer

The PLCAA defines a "manufacturer," with respect to a qualified product, as "a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code." 15 U.S.C. § 7903(2). Chapter 44, in turn, defines a manufacturer as "any person engaged in the business[4] of manufacturing firearms . . . for purposes of sale or distribution; and the term 'licensed manufacturer' means any such person licensed under the provisions of this chapter." 18 U.S.C. § 921(a)(10). As a federally licensed manufacturer of firearms, Glock, Inc. is a "manufacturer" pursuant to the terms of the PLCAA. Compl. ¶¶ 15, 17.

3. Glock Pistols are Qualified Products

The PLCAA defines a "qualified product," in relevant part, as "a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code) . . . 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) & (B), 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" or "the frame or receiver of any such weapon. . . ." Pursuant to the allegations in the Complaint, Glock pistols are qualified products pursuant to the terms of the PLCAA. *See generally* Compl.

4. The State is Seeking Damages and Other Relief Resulting from the Criminal Use of Qualified Products by Third Parties

According to the allegations in the Complaint, the State seeks damages and other relief arising from the criminal use of Glock pistols by third parties who illegally convert semi-

[4] The PLCAA defines the term "engaged in the business" with reference to 18 U.S.C. § 921(a)(21). The term "engaged in the business," relative to a manufacturer of firearms, is defined as "a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured." 18 U.S.C. § 921(a)(21)(A).

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automatic Glock pistols into fully automatic Modified Glock Pistols and use them to commit various crimes including intentional shootings resulting in death and injuries, robbery, and illegal possession of firearms. Compl. ¶¶ 5-11, 159-214. Such actions by third parties in creating the Modified Glock Pistols and using them violate numerous criminal laws.[5] Thus, the Complaint constitutes a qualified civil liability action, from which the PLCAA grants Glock, Inc. immunity by prohibiting this action from being "brought in any Federal or State court," unless one of the statute's narrow exceptions applies.

B. The Complaint Does Not Meet the Requirements for Any of the Exceptions to the PLCAA

There are six narrow categories of claims the PLCAA does not bar because they are excluded from the definition of a qualified civil liability action. 15 U.S.C. §§ 7903(5)(A)(i)-(vi). The PLCAA does not provide an exception for, and therefore prohibits, any claims based on general negligence. *See Ileto v. Glock, Inc.*, 565 F.3d 1126, 1135 (9th Cir. 2009) (PLCAA bars general negligence claims); *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 322 (Mo. 2016) ("PLCAA expressly preempts all general negligence actions seeking damages resulting from the criminal or unlawful use of a firearm"); *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 386 (Alaska 2013) ("reading a general negligence exception into the statute would make the negligence per se and negligent entrustment exceptions a surplusage"). There is no exception for the State's sixth claim for general negligence and it must be dismissed pursuant to the PLCAA.

[5] The laws that would be violated by the third parties using the Modified Glock pistols, include, but are not limited to: first degree murder, Minn. Stat. § 609.185(a); second degree murder, *id.* § 609.19(1)-(2); third degree murder, *id.* § 609.195(a); first degree manslaughter, *id.* § 609.20; second degree manslaughter, *id.* § 609.205; first degree assault, *id.* § 609.221(1); second degree assault, *id.* §§ 609.222(1)-(2); third degree assault, *id.* § 609.223(1); fourth degree assault, *id.* § 609.2231(1); fifth degree assault, *id.* §§ 609.224(1)-(3); unlawful possession of a dangerous weapon, *id.* § 609.66(1); unlawful possession of a machine gun, *id.* § 609.67(2); unlawful possession of firearms, *id.* § 624.713; and carrying a weapon without a permit, *id.* § 624.714(1a).

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Based on the allegations in the Complaint, the only three exceptions potentially relevant to the State's remaining claims are the exception for negligence per se, the predicate exception, and the product defect exception. 15 U.S.C. §§ 7903(5)(A)(ii), (iii), & (v). The PLCAA states the negligence per se exception does not "create a public or private cause of action or remedy. *Id.* § 7903(5)(C). Thus the viability of that exception is based on whether such claim is valid pursuant to Minnesota law. The predicate exception is defined as an "action in which a manufacturer [of firearms] 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 . . . ." 15 U.S.C. § 7903(5)(A)(iii). The product defect exception is defined as 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." *Id.* § 7903(5)(A)(v).

1. The Complaint Does Not Satisfy the Negligence Per Se Exception

The State's second cause of action is for "Aiding and Abetting Negligence Per Se." Compl. at 63. This cause of action is nonsensical and is raised for the express purpose of attempting to satisfy the negligence per se exception to the PLCAA. The claim fails because the statute on which the State relies does not meet the requirements for negligence per se, and the alleged actions by Glock, Inc. do not meet the standard for aiding and abetting liability.

Minnesota law makes it illegal to own, possess, or operate a machine gun, "trigger activator," or "machine gun conversion kit." Minn. Stat. § 609.67(2)(a). The Complaint alleges the MCDs are both "trigger activators" and "machine gun conversion kits," and the Modified Glock Pistols are machine guns. Compl. ¶ 230. The Complaint further contends "Minnesotans owe a duty of care to their fellow citizens" that includes "compliance with Minnesota's ban on the possession and use of machine guns and machine gun conversion devices" and that when

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they possess an MCD or Modified Glock Pistol, or convert a Glock pistol to a machine gun by installing an MCD, they "violate Minnesota Statutes section 609.67, which constitutes a breach of that person's duty of care under section 609.67 and, therefore, is negligence per se." *Id.* ¶¶ 231, 234.

The State claims Glock, Inc. "aided and abetted the tort of negligence per se" based on violations of Section 609.67(2)(a) by Minnesotans by: (1) its "'simple' semi-automatic handgun design"; (2) "promotion of customizing Glock semi-automatic handguns"; (3) "refusing to change the design of Glock handguns despite knowledge that the handguns can easily be converted to illegal machine guns by equipping them with Glock switches"; and (4) "promotion of fully automatic Glock handguns including that they are 'fun' and desirable . . . even though such machine guns are illegal for ordinary consumers to possess." *Id.* ¶¶ 237-38, 240.

a. Section 609.67 Cannot Be Used as the Basis for Negligence Per Se

Pursuant to Minnesota law "breach of a statute gives rise to negligence per se if the persons harmed by that violation are within the intended protection of the statute and the harm suffered is of the type the legislation was intended to prevent." *Pacific Indemnity Co. v. Thompson-Yaeger, Inc.,* 260 N.W.2d 548, 558 (Minn. 1977). The Minnesota Supreme Court has adopted Section 286 of the Restatement (Second) of Torts regarding which statutes the violation of which may be used as the basis for a negligence per se claim.[6] Statutes "designed to protect the public at large rather than a particular class of individuals" do not satisfy the requirements for adoption of the relevant duty of care for purposes of negligence per se. *Kronzer*, 305 Minn.at 423-24. Section 609.67(2)(a) is not designed for the protection of a specific class of persons,

[6] *Kronzer v. First. Nat. Bank of Minneapolis,* 305 Minn. 415, 423 (1975); *Lynghaug v. Payte,* 247 Minn. 186, 195 (1956) (noting that for negligence per se under Section 286, "Plaintiff must be within the class for whose protection the statute was passed"); *Cooper v. Hoeglund*, 221 Minn. 446, 451 (1946) (referencing Section 286 in connection with a negligence per se claim).

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separate from the public at large, and therefore cannot be used as the basis for a negligence per se claim pursuant to Minnesota law. The second cause of action therefore cannot be used to satisfy the negligence per se exception to the PLCAA.

b. The Requirements for Aiding and Abetting Liability are Not Satisfied

An alleged violation of Section 609.67(2)(a) cannot be used to satisfy the negligence per se exception to the PLCAA for the additional reason that the State does not allege Glock, Inc. itself violated that provision, but rather that it aided and abetted unidentified third persons to do so. Assuming that aiding and abetting negligence per se is a cognizable legal theory,[7] the factual allegations in the Complaint do not rise to the standard required for liability based on an aiding and abetting theory.

Liability for aiding and abetting a crime committed by another only arises under Minnesota law "if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05(a). Accordingly, a defendant can only be held liable for aiding and abetting a crime when it "actively played a role in the crime." *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). *See also State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007) (explaining that liability for aiding and abetting requires that "defendant played a knowing role in the commission of the crime"). Similarly, in the context of aiding and abetting the commission of a tort, three elements must be satisfied: "(1) the primary tort-feasor must commit a tort that causes an injury to the plaintiff; (2) the defendant must know that the primary tort-feasor's conduct constitutes a breach of duty; and (3) the defendant must

[7] Aiding and abetting liability is "based on proof of a scienter—the defendants must know that the conduct they are aiding and abetting is a tort." *Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 186 (Minn. 1999). It is therefore not feasible to aid and abet negligence, as opposed to an intentional tort, as a result of which the cause of action for aiding and abetting negligence per se is not a viable legal theory.

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substantially assist or encourage the primary tort-feasor in the achievement of the breach." *Bren Rd. LLC v. Talon OP, LP*, No. A23-0248, 2024 WL 545150, at *5 (Minn. Ct. App. Feb. 12, 2024). The knowledge and substantial assistance requirements are considered together, such that if "there is a minimal showing of substantial assistance there must be a greater showing of scienter." *Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 187 (Minn. 1999).

Minnesota law regarding the requirements for aiding and abetting liability is consistent with federal law. In *Twitter, Inc. v. Taamneh*, 598 U.S. 471, (2023), the U.S. Supreme Court unanimously held that social media companies could not be held liable for aiding and abetting terrorists who used their services. The Court explained that a person may be liable for aiding and abetting the commission of a crime if "he helps another to complete its commission," but that the "legal system generally does not impose liability for mere omissions, inactions, or nonfeasance . . . ." *Id.* at 488-89 (citation and quotation marks omitted). It further noted that "if aiding-and-abetting liability were taken too far, then ordinary merchants could become liable for any misuse of their goods and services, no matter how attenuated their relationship with the wrongdoer," and for that reason, "courts have long recognized the need to cabin aiding-and-abetting liability to cases of truly culpable conduct." *Id.* at 489.

Aiding and abetting liability is limited to the "conscious, voluntary, and culpable participation in another's wrongdoing," and therefore requires that the defendant "associate himself with the venture, that he participate in it as something that he wishes to bring about, [and] that he seek by his action to make it succeed." *Twitter*, 598 U.S. at 490, 493. In sum, to be held liable on an aiding and abetting theory, Glock, Inc. would need to have provided "knowing and substantial assistance" to persons illegally modifying Glock pistols into machine guns through the installation of an MCD, but the "mere creation of" Glock pistols is not a sufficient

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basis on which to hold Glock, Inc. liable for their subsequent criminal misuse by third parties. *Id.* at 497, 499. Nor does referring to shooting Glock 18 pistols (that Glock, Inc. does not sell to consumers) as being "fun" remotely constitute providing knowing and substantial assistance to third parties illegally manufacturing machine guns by installing MCDs on Glock pistols and using them in crimes.

Based on the factual allegations in the Complaint, Glock, Inc. did not even have knowledge of any particular Minnesotan illegally possessing an MCD or Modified Glock pistol, and therefore could not have knowingly taken an active role in aiding and abetting them to violate Section 609.67(2)(a). The State's second cause of action therefore fails to state a claim upon which relief can be granted and thus cannot satisfy the negligence per se exception to the PLCAA.

2. The Complaint Does Not Satisfy the Predicate Exception to the PLCAA

The Complaint alleges that Glock, Inc. violated four separate Minnesota statutes in an effort to satisfy the predicate exception. The statutes upon which the State relies, however, are statutes of general applicability, the alleged violation of which do not satisfy the predicate exception.

The predicate exception applies only when a defendant "knowingly violated a state or federal statute applicable to the sale or marketing of [firearms], and the violation was a proximate cause of the harm for which relief is sought . . . ." 15 U.S.C. § 7903(5)(A)(iii). The PLCAA gives specific examples of the types of statutes applicable to the sale or marketing of firearms that can be used to satisfy 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 qualified product, or aided,

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> 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[.]

Id. § 7903(5)(A)(iii). Based on the examples provided in the PLCAA, as well as its purpose, federal appellate courts have held that the predicate exception may only be satisfied by the violation of statutes that specifically regulate the firearms industry, not statutes that are simply applicable to the firearms industry, along with everyone else.

In *Ileto*, the Ninth Circuit Court of Appeals held that alleged violations of California Civil Code Sections 1714(a) and 3479-80 could not be used to satisfy the predicate exception to the PLCAA. 565 F.3d at 1132-38. California had codified its common law regarding negligence and public nuisance. *Id.* at 1132-33. Section 1714(a), regarding negligence, states that "[e]veryone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person . . . ." Section 3479, regarding nuisance, stated that "[a]nything which is injurious to health . . ., or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property . . . is a nuisance." The court of appeals held that only "statutes that regulate manufacturing, importing, selling, marketing, and using firearms or that regulate the firearms industry—rather than general tort theories that happened to have been codified by a given jurisdiction" can be used to satisfy the predicate exception. *Ileto*, 565 F.3d at 1136.

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Similarly, in *City of New York v. Beretta U.S.A. Corp.*, the Court of Appeals for the Second Circuit held that an alleged violation of a nuisance statute, N.Y. Penal Law § 240.45(1), could not satisfy the predicate exception to the PLCAA. 524 F.3d 384 (2d Cir. 2008). New York's nuisance statute states that a "person is guilty of criminal nuisance in the second degree when . . . [b]y conduct either unlawful in itself or unreasonable under all the circumstances, he knowingly or recklessly creates or maintains a condition which endangers the safety or health of a considerable number of persons." N.Y. Penal Law § 240.45(1). The court held that Section 240.45(1) is a "statute of general applicability that does not encompass the conduct of firearms manufacturers," and therefore could not be used to satisfy the predicate exception. *City of New York*, 524 F.3d at 400. The court explained that the predicate exception can be satisfied only by the violation of statutes that: (1) "expressly regulate firearms"; (2) "courts have applied to the sale and marketing of firearms"; or (3) "clearly can be said to implicate the purchase and sale of firearms." *Id.* at 404. Simply stated, the "predicate statute must regulate the firearms industry specifically." *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 839 (D. Minn. 2023) (holding that the predicate exception was satisfied based on the alleged knowing sale of firearms to straw purchasers in violation of the Gun Control Act).

The State claims that Glock, Inc. violated four statutes. First, it claims that Glock, Inc. created a public nuisance in violation of Minn. Stat. § 609.74 by "manufacturing, marketing, distributing, and selling firearms" and by "dissemination of advertisements containing material assertions, representations, omissions, or statements of fact that are untrue, deceptive, or misleading, as described throughout this Complaint." Compl. ¶¶ 220, 224. Minn. Stat. § 69.74 states that:

> Whoever by an act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

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> (1) maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public; or
>
> * * * *
>
> (3) is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.

Second, the State claims that Glock, Inc. violated the CFA, Minn. Stat. § 325F.69 ("CFA"), which states:

> The act, use, or employment by any person of any fraud, unfair or unconscionable practice, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoinable as provided in section 325 F. 70.

The third statute that the State alleges that Glock, Inc. violated is the DTPA, Minn. Stat. § 325F.69, which states, in relevant part:

> A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:
>
> (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
>
> * * * *
>
> (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
>
> * * * *
>
> (13) engages in (i) unfair methods of competition, or (ii) unfair or unconscionable acts or practices; or
>
> (14) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

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The fourth statute that the Complaint alleges Glock, Inc. to have violated is the FSAS, Minn. Stat. § 325.67 ("FSAS"), which states that:

> Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise . . . offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution . . . makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state . . . an advertisement of any sort regarding merchandise . . . which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

(Emphasis added).

The public nuisance statute the State alleges that Glock, Inc. violated is substantively no different than the public nuisance statutes of California and New York, which have been held not to be capable of satisfying the predicate exception to the PLCAA. The CFA, DTPA and FSAS are also statutes of general applicability that have no particular connection to and, upon information and belief, have never before been applied to the sale and marketing of firearms in a similar context. Accordingly, none of the four statutes upon which the State relies is capable of satisfying the predicate exception to the PLCAA.

There is nothing in the text of the public nuisance statute, the CFA, the DTPA, or the FSAS that prohibits the otherwise lawful manufacture and sale of semi-automatic pistols, even if they can be illegally modified after the sale to fully automatic machine guns through the installation of an MCD. Allowing an alleged violation of such statutes to satisfy the predicate exception would directly conflict with the purpose of Congress in enacting the PLCAA. Congress enacted the PLCAA based in part on its findings that lawsuits were being commenced against manufacturers of "firearms that operate as designed and intended, which seek money

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damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals," and that the manufacturers "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). Congress further found that such lawsuits 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," and that they are an:

> attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

Id. §§ 7901(a)(7)-(8).

Even if a statute upon which the State relies could be considered capable of satisfying the predicate exception to the PLCAA, it could not serve that purpose based on the State's allegations against Glock, Inc. in this case. In order to satisfy the predicate exception to the PLCAA, the knowing violation of the state or federal statute applicable to the sale or marketing of firearms must be a "proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). The Supreme Court has held that proximate cause requires a "direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992).[8] As explained in Section III.C.2., the actions of Glock, Inc. at issue in

[8] *See also Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457 (2006). The direct relationship test bars liability when a "new and independent cause interven[es] between the wrong and the injury." *Milwaukee & St. Paul Ry. Co. v. Kellogg*, 94 U.S. 469, 475 (1876). "[F]oreseeability alone does not ensure the close connection that proximate cause requires." *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 202 (2017). Instead, a plaintiff must show a "sufficiently 'direct relationship'" between the defendant's conduct and the alleged injury. *Hemi Group, LLC v. City of New York*, 559 U.S. 1, 12 (2010) (2010) (plurality).

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the Complaint not only do not constitute a violation of the statutes at issue, they are not the proximate cause of the harm for which relief is sought.

3. The Complaint Does Not Satisfy the Product Defect Exception

The final exception to the PLCAA that the State is apparently attempting to satisfy through its Complaint is the product defect exception. The State's seventh cause of action is for product liability based on design defect and failure to warn. The PLCAA contains an exception for product defect claims, excluding from the definition of a prohibited qualified civil liability action 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." 15 U.S.C. § 7903(5)(A)(v). The product defect exception applies only to design defect and manufacturing defect claims, and therefore cannot be satisfied by the failure to warn claim in the State's product liability cause of action. In addition, the product defect exception contains an exception, stating 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." *Id.*[9] Based on the allegations in the

[9] This exception has been repeatedly confirmed to prevent application of the product defect exception under similar circumstances. *Adames v. Sheahan*, 909 N.E.2d 742, 761–63 (Ill. 2009) (product defect exception does not apply even where shooter did not intend to discharge the firearm or injure another person); *Ryan v. Hughes-Ortiz*, 959 N.E.2d 1000, 1008–09 (Mass. Ct. App. 2012) ("relevant volitional act that caused the gun's discharge was Milot's unlawful possession of the Glock pistol," which "constituted a criminal offense"); *Travieso v. Glock Inc.*, 526 F. Supp. 3d 533, 546–48 (D. Ariz. 2021) (product defect exception did not apply to the plaintiff's claims because the "shooter's actions consisted of a criminal offense for purposes of the PLCAA," and the "fact [that] the Shooter did not *intentionally* shoot the Plaintiff or fire the gun does not mean she did not act *volitionally*") (emphasis added); *Santos v. City of Providence*, No. CV 23-221 WES, 2024 WL 1198275, at *4 (D.R.I. Mar. 20, 2024) ("product liability exception . . . [i]nquiry centers on the criminal nature of the volitional act"); *Gustafson v. Springfield, Inc.*, 282 A.3d 739, 734 (Pa. Super. Ct. 2022) ("[w]henever a defective gun causes harm and a crime is involved," the PLCAA's product defect "exception . . . cannot apply"), *appeal pending*, 296 A.3d 560 (Pa. 2023).

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Complaint, all of the discharges of the Modified Glock Pistols were the result of volitional acts that constituted criminal offenses, specifically intentionally pulling the trigger to discharge bullets in connection with shooting at other persons, and therefore the product defect exception to the PLCAA does not apply to the State's design defect claims. Accordingly, none of the State's claims fall within an exception to the PLCAA, and they should be immediately dismissed pursuant to the federal statutory immunity it provides to Glock, Inc.

III. THE STATE'S CLAIMS FAIL TO STATE A CLAIM UNDER STATE LAW

While the federal statutory immunity provided by the PLCAA requires the immediate dismissal of the State's claims against Glock, Inc., they should also be dismissed for the independent and additional reason that they fail to state a claim upon which relief can be granted pursuant to Minnesota law.

A. The Complaint Fails to Allege a Proper Public Nuisance Claim

Violation of Minnesota's public nuisance statute requires that the defendant "intentionally . . . maintain[] or permit[] a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public . . . ." Minn. Stat. § 609.74 (emphasis added). The "word 'intentionally' was added to [Section 609.74 to] 'eliminate those cases where there is a good faith claim on the part of the defendant that he has a right to continue with the activity in which he is engaged,'" and violation of the statute "requires some criminal intent." *Myers v. Becker Cnty.*, 833 F. Supp. 1424, 1433 (D. Minn. 1993) (quoting the Advisory Committee Comment).

The State contends that Glock, Inc. violated the public nuisance statute by:

(1) "Designing semi-automatic handguns in such a manner that they can be easily converted into illegal, fully automatic machine guns";

(2) "Promoting the desirability of fully automatic Glock handguns";

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> (3) "Promoting the ease of customizing Glock handguns by accessing internal parts and systems and attaching accessories based on their 'simple' and 'easy' design";
>
> (4) "Failing to acknowledge that Glock switches are illegal and dangerous when Glock features fully automatic Glock handguns in its advertising, and failing to denounce the use of Glock switches or warn the public that Glock switches are not Glock products"; and
>
> (5) "Failing to correct the design of Glock semi-automatic handguns to prevent their simple or easy conversion into fully automatic machine guns."

Compl. ¶¶ 220(a)-(e). None of the specific factual allegations against Glock, Inc. constitute the required intentional creation of a public nuisance with criminal intent. They fall comfortably within the scope of conduct excluded from the public nuisance statute based on a good faith claim by Glock, Inc. that it can continue to engage in the activities of which the State complains. As the Complaint specifically concedes, Glock pistols are legal. Compl. ¶ 4. Thus, the State's public nuisance claim should be dismissed as it fails as a matter of law.

B. The Complaint Fails to Allege a Valid Claim for Violation of the CFA, DTPA, or FSAS

The State alleges that Glock, Inc. violated the CFA, DTPA, and FSAS based on the same conduct. Because relevant law requires the dismissal of these claims for the same reasons, they will be discussed together. Accepting the factual allegations in the Complaint, as opposed to the State's legal conclusions, Glock, Inc. did not violate any of these three statutes. This is because referring to firing a Glock 18 as being "fun," Compl. ¶¶ 106-07, 109-11, is a subjective statement of opinion not capable of being proven false; statements about Glock pistols being "easy to customize," *id.* ¶¶ 251, 265, 276, are not alleged to be false or misleading; and Glock, Inc. is under no obligation to advise consumers not to violate Minnesota criminal law.

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Minnesota enacted the CFA "to help protect consumers against the unequal bargaining power present in consumer transactions." *State v. Minnesota Sch. of Bus., Inc.*, 935 N.W.2d 124, 133 (Minn. 2019). *Wiegand v. Walser Auto. Groups, Inc.*, 683 N.W.2d 807, 809 (Minn. 2004). To state a claim for violation of the CFA, a plaintiff must plead that the defendant engaged in fraud by making an "intentional misrepresentation relating to the sale of merchandise." *Higgins v. Harold-Chevrolet-Geo, Inc.*, No. A04-596, 2004 WL 2660923, at *3 (Minn. Ct. App. Nov. 23, 2004). To state a claim for violation of the DTPA, a plaintiff "must identify the defendant's false, deceptive, or misleading conduct." *Glob. Commodities, Inc. v. Cap. Distributors LLC*, No. 24-CV-00216 (JMB/DJF), 2024 WL 3823003, at *3 (D. Minn. Aug. 14, 2024). The FSAS similarly prohibits "any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading." Minn. Stat. § 325F.67). In interpreting the above statutes the "words and phrases" used by the defendant are "construed according to rules of grammar and according to their common and approved usage." *Lifespan of Minnesota, Inc. v. Minneapolis Pub. Sch. Indep. Sch. Dist. No. 1*, 841 N.W.2d 656, 663 (Minn. Ct. App. 2014).

In order to violate the above statutes, a statement must be literally false, or true but likely to mislead "a large segment of its audience." *Ott v. Target Corp.*, 153 F. Supp. 2d 1055, 1069 & n.10 (D. Minn. 2001) (interpreting the DTPA and FSAS). To meet this standard, a statement must constitute a "specific and measurable claim, capable of being proved false or of being reasonably interpreted as a statement of objective fact." *Am. Italian Pasta Co. v. New World Pasta Co.*, 371 F.3d 387, 390-91 (8th Cir. 2004) (citation and quotation marks omitted). Based on these requirements, "puffery," such as "exaggerated statements of bluster or boast upon which no reasonable consumer would rely" or "vague or highly subjective claims of product superiority, including bald assertions of superiority" do not constitute an actionable violation of

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these statutes. *Laughlin v. Target Corp.*, No. 12–489 (JNE/JSM), 2012 WL 3065551, at *2 (D. Minn. July 27, 2012) (citation and quotation marks omitted). *See also LensCrafters, Inc. v. Vision World, Inc.*, 943 F. Supp. 1481, 1489 (D. Minn.1996) (explaining that only "descriptions of specific or absolute characteristics of a product" are actionable, not "generalized statements of product superiority" that amount to puffery). An omission or misrepresentation through silence is actionable if the information is both material and there is a duty to disclose based on a relationship of trust or confidence or an unequal access to information. *Cashman v. Allied Prods. Corp.*, 761 F.2d 1250, 1255 (8th Cir.1985) (interpreting the CFA).

The State contends Glock, Inc. violated the CFA and the DTPA in connection with its "manufacture, marketing, and sale of firearms" by:

> (1) "advertising fully automatic handguns as desirable and 'fun'"; and
>
> (2) "promoting Glock handguns as particularly easy to customize by accessing internal *parts and systems* and attaching accessories based on Glock's 'simple' and 'easy' design, without disclosing that it is illegal under Minnesota law for civilians to purchase, possess, or use fully automatic weapons and *without disclosing* that it is illegal for anyone to equip a Glock handgun with a switch."

Compl. ¶¶ 250-51, 264-65. The Complaint further alleges Glock, Inc.'s "design, manufacture, and sale of handguns that are easily converted into illegal and highly dangerous machine guns is also unethical, oppressive, and unscrupulous" for purposes of the CFA and DTPA. *Id.* ¶ 254, 268. The State alleges that Glock, Inc. violated the FSAS by:

> (1) "advertising fully automatic handguns as desirable and 'fun'"; and
>
> (2) "promoting Glock handguns as particularly easy to customize by accessing internal *mechanics or* attaching accessories based on Glock's "simple" and "easy" design, without disclosing that it is illegal under Minnesota law for civilians to purchase, possess, or use fully automatic weapons and that it is illegal for anyone to equip a Glock handgun with a *Glock* switch."[10]

[10] Other than a few changed words (shown in italics), this is almost exactly the same manner in which the State alleges that Glock, Inc. also violated the CFA and DTPA.

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Compl. ¶ 276.

None of these purported facts amounts to a violation of the CFA, DTPA, or FSAS as a matter of law. Whether or not shooting a fully automatic handgun, such as the Glock 18, is "fun" is completely subjective and therefore falls into the category of non-actionable "puffery," as opposed to a statement of objective fact capable of being proven true or false. In addition, the references to shooting a Glock 18 pistol being fun were not made with an "intent to sell or in anywise dispose of" Glock 18 pistols to consumers, and therefore cannot constitute a violation of the FSAS. Minn. Stat. § 325.67; Compl. ¶ 65 (noting that Glock, Inc. only sells the Glock 18 to "law enforcement and the military").

Promoting Glock pistols as being "easy to customize" based on their simple design, is not alleged to be false or misleading, but is expressly alleged to be true in the Complaint, which seeks to use that as the basis to impose liability on Glock, Inc. Glock, Inc. is under no obligation to expressly disclose that it is illegal "for civilians to purchase, possess, or use fully automatic weapons" or that it is illegal to "equip a Glock handgun with a Glock switch" for several reasons. First, such statements are not material to Glock, Inc.'s legal sale of semi-automatic pistols, which the State does not dispute may be legally sold to, and possessed by, civilians. Second, based on the facts pled, there is no "relationship of trust or confidence" between Glock, Inc. and persons in Minnesota illegally converting Glock pistols to machine guns through the installation of an illegal MCD made and sold by third parties. *Cashman*, 761 F.2d at 1255. Third, Glock, Inc. does not have "unequal access to information" because the information at issue alleged by the State is prohibitions in Minnesota's criminal statutes, which Minnesotans are presumed to know and required to follow.

Based on the well pled factual allegations in the Complaint, as opposed to the legal

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conclusions by the State, Glock, Inc. did not violate the CFA, DTPA, or FSAS as a matter of law, and the third, fourth, and fifth causes of action should therefore be dismissed.

C. The Complaint Fails to Allege a Valid Negligence Claim

To state a valid claim for negligence, a plaintiff must allege: "(1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of the duty being the proximate cause of the injury." *Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002). The State's negligence claims fail because it has failed to allege facts to support duty, breach of duty, and causation.

1. Glock, Inc. Did Not Owe (or Breach) a Duty to the State.

"Duty is a threshold question [b]ecause a defendant cannot breach a nonexistent duty." *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 581-82 (Minn. 2012). Further, "whether there exists a duty is a legal issue for court resolution." *Id.* "Generally, a defendant has no duty to control the conduct of a third person to prevent that person from causing injury to another." *Lundgren v. Fultz*, 354 N.W.2d 25, 27 (Minn. 1984). A duty in such a circumstance will only exist if both: (1) there was "a 'special relationship' . . . between the defendant and the third person" such that the defendant had "the ability to control another's conduct"; and (2) "the harm is foreseeable." *Id.* The rationale for this is that "[i]n law, we are not our brother's keeper unless a special relationship exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct." *Id.* If an ability to control exists, then the court must still determine foreseeability, which is a "question . . . of policy: Is the [defendant's] conduct so closely connected with the tragedy . . . that the law may allow a cause of action?" *Id.*

Here, it is incontrovertible that Glock, Inc. had no "ability to control" the independent behavior of third-party criminals, with whom it had no "special relationship." *Lundgren*, 354

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N.W.2d at 27. The criminals that illegally converted Glock pistols into machine guns through the installation of an MCD are not alleged to have had any association with Glock, Inc. that would give it the ability to could control their actions. Thus, the law is clear that Glock, Inc. owed no duty to the State to prevent those third-party criminals from illegally converting Glock pistols into machine guns and/or committing crimes using the Modified Glock Pistols. *Id.*

2. Third-Party Criminals Were the Sole Cause of the State's Harm.

The State's negligence claim should also be dismissed because it has failed to allege facts to support proximate causation. "The proximate cause of an injury is the act or omission which causes the injury directly or immediately, or through a natural sequence of events, without the intervention of another independent and efficient cause." *Lennon v. Piper*, 411 N.W.2d 225, 228 (Minn. App. 1987). "A negligent act is the proximate cause of an injury only (1) where the negligent conduct was a substantial factor in bringing about the harm . . .; or (2) where the party ought, in the exercise of ordinary case, to have anticipated that the act was likely to result in injury to others. *Id.* (citing *Ponticas v. K.M.S. Investments*, 331 N.W.2d 907, 915 (Minn. 1983)).

A "superseding, intervening cause of harm acts as a limitation on a defendant's liability for his negligent conduct. It breaks the chain of causation set in operation by a defendant's negligence, thereby insulating his negligence as a direct cause of the injury." *Lennon*, 411 N.W.2d at 228. "An intervening act is not superseding unless (1) its harmful effects must have occurred after the original negligence; (2) it has not been brought about by the original negligence; (3) it actively worked to bring about a result which would not otherwise have followed from the original negligence; and (4) it was not reasonably foreseeable by the original wrongdoer." *Rieger v. Zackoski*, 321 N.W.2d 16, 21 (Minn. 1982). "As a general rule, a criminal act of a third person is an intervening efficient cause sufficient to break the chain of causation."

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Hilligoss v. Cross Companies, 228 N.W.2d 585, 586 (Minn. 1975) (noting that the "question of foreseeability of an intervening act is normally one for the trial court").

Here, any action or inaction by Glock, Inc. is not a proximate cause of the harm for which the State seeks to recover in this case. As alleged in the Complaint, Glock pistols are legal and semi-automatic in the condition in which they are manufactured and sold by Glock, Inc. The harm of which the State complains is the direct result of criminals who intentionally convert Glock pistols into machine guns through the installation of an illegal MCD, and then use the Modified Glock Pistols to commit crimes. Such actions constitute a superseding act that breaks the chain of causation between any conceivable negligent conduct by Glock, Inc. and the harm alleged by the State as a matter of law. *Lennon*, 411 N.W.2d at 228 (noting that proximate cause and superseding, intervening cause can be decided as a matter of law when "reasonable minds can arrive at only one conclusion as to their existence or nonexistence"). Thus, this Court should dismiss the State's negligence claim for lack of causation.

D. <u>The Complaint Fails to Allege a Valid Products Liability Claim</u>

"For a products liability claim, the plaintiff must demonstrate that a product was defective at the time it left the defendant's control and that the defect caused injury to the plaintiff." *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 387 (Minn. Ct. App. 2004). In cases in which a design defect is alleged, the plaintiff must elect either strict liability or negligence, but not both.[11] In design defect cases, the Minnesota Supreme Court has adopted a "reasonable care" balancing test. *Bilotta*, 346 N.W.2d at 621-22. A manufacturer is obligated to exercise that degree of care in its product design so as to avoid any unreasonable risk of harm to anyone who

[11] *Hauenstein v. Loctite Corp.*, 347 N.W.2d 272, 275 (Minn. 1984); *Bilotta v. Kelley Co.*, 346 N.W.2d 616, 623 (Minn. 1984). For product liability cases based on negligence, plaintiff must prove the same four elements required for a standard negligence claim. *Glorvigen*, 816 N.W.2d at 581-82.

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is likely to be exposed to the danger when the product is used in the manner for which the product was intended, as well as an unintended yet reasonably foreseeable use. *Id.* at 621. What constitutes reasonable care involves balancing the likelihood of harm, and the gravity of the harm if it happens, against the burden on the manufacturer of preventing the harm *Id.* at 621-22.

The State's seventh cause of action is for product liability, and is based on a negligence theory, alleging that Glock, Inc. has a "duty to use reasonable care to design handguns that are not unreasonably dangerous to those exposed to the product when the product is used as intended or in a way that Glock could reasonably have anticipated," and a "duty to keep up with scientific knowledge and advances in the field of gunsmithing and firearm design." Compl. ¶¶ 289-90. The Complaint contends that Glock, Inc. breached these duties by:

> (1) "unreasonably designing and manufacturing Glock handguns in such a way to facilitate their straightforward and easy modification by Glock switches into fully automatic machine guns that are unreasonably dangerous to those potentially exposed to the handguns, including members of the public that are put at risk by the uncontrollable nature of fully automatic weapon fire"; and
>
> (2) "unreasonably refusing to modify the design of Glock handguns to prevent the substantial and foreseeable likely harm posed by Glock's handguns equipped with Glock switches."

Id. ¶¶ 291-92. In addition to failing to meet the requirements to state a valid negligence claim for the reasons explained in Section III.C., the State fails to allege that Glock pistols are defectively designed based on the factual allegations in the Complaint. The State explicitly pleads that in the condition in which they are manufactured and sold by Glock Inc., Glock pistols are semi-automatic. Compl. ¶¶ 4, 10. There is no allegation that Glock pistols are defective in the condition in which they leave Glock, Inc.'s control, rather the allegation is that Modified Glock Pistols are defective because of the "uncontrollable nature of fully automatic fire." *Id.* ¶ 291. Based on the allegations in the Complaint, the alleged defect will not come into existence unless

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Glock pistols are illegally modified through the installation of an MCD to convert them to machine guns, and the danger posed by such defect will not manifest unless the Modified Glock pistol is being criminally misused. When the above is compared to the State's demand that Glock, Inc. change the design of the most popular and proven handgun in America, the balancing test makes it clear that Glock, Inc. has exercised reasonable care in connection with the design of Glock pistols as a matter of law. *Bilotta*, 346 N.W.2d at 621-22. This is confirmed by the fact that the State does not seek to require any changes to be made in the design of the Glock pistols sold to law enforcement.

In addition, the Complaint raises an additional claim that Glock, Inc. is liable for "failing to warn about the dangers and illegality of converting Glock semi-automatic handguns with Glock switches, thereby making Glock semi-automatic handguns unreasonably dangerous to their users and the public at large." Compl. ¶ 293. To prevail on a failure to warn claim, a plaintiff must show that: (1) the defendant had a duty to warn, (2) the defendant breached that duty because warnings were absent or inadequate, and (3) the absence of an adequate warning caused plaintiff's injury. *Huggins v. Stryker Corp.*, 932 F. Supp. 2d 972, 986 (D. Minn. 2013). Whether the defendant had a duty to warn is a question of law for the court.[12] A manufacturer has a duty to provide instructions for safe use of a product and a duty to warn of foreseeable dangers inherent in the proper use or foreseeable improper use of a product. *Kallio v. Ford Motor Co.*, 407 N.W.2d 92 (Minn. 1987); *see also Germann v. F.L. Smithe Machine Co.*, 395 N.W.2d 922 (Minn. 1986). A "manufacturer has no duty to warn when the product user is aware of the risk." *Drager by Gutzman v. Aluminum Indus. Corp.*, 495 N.W.2d 879, 884 (Minn. Ct. App.

[12] *Germann v. F.L. Smithe Machine Co.*, 395 N.W.2d 922, 924 (Minn. 1986) ("In determining whether the duty exists, the court goes to the event causing the damage and looks back to the alleged negligent act. If the connection is too remote to impose liability as a matter of public policy, the courts then hold there is no duty, and consequently no liability.").

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1993). To state a valid failure to warn claim, a plaintiff must establish causation on the basis that the product user would have acted differently if warned.[13] Minnesota has not adopted a presumption that an adequate warning would have been heeded. *Kallio,* 407 N.W.2d at 99-100.

As a matter of law, Glock, Inc. did not have a duty to advise not to illegal modify its semi-automatic pistols into machine guns, or use them to commit crimes. Based on the very nature of the criminal misuse alleged in the Complaint, there is no reason to believe third party criminals illegally modifying Glock pistols into machine guns with MCDs would not have committed these crimes if Glock, Inc. had told them their conduct is illegal. Taken to its extreme, such an argument would apply to claims criminal third parties would stop using Modified Glock Pistols to intentionally shoot persons if Glock, Inc. had advised them that murder, manslaughter, assault, and other such crimes are illegal. Therefore, because Glock, Inc. did not have a duty to warn about the dangers and illegality of illegally converting Glock pistols to machine guns through the installation of an MCD, the Complaint fails to state a products liability claim based on a failure to warn theory as a matter of law.

IV. THE RELIEF SOUGHT IS UNCONSTITUTIONAL

A. <u>The Relief Sought Violates the First Amendment</u>

Through its Complaint, the State seeks to punish Glock, Inc. for: (1) referring to shooting a full-auto Glock 18 pistol as being "fun"; (2) "[p]romoting the ease of customizing Glock handguns by accessing internal parts and systems and attaching accessories based on their 'simple' and 'easy' design; (3) "not include[ing] disclosures on its handguns, instruction manuals, or marketing materials warning purchasers that converting a semi-automatic handgun

[13] *Erickson by and through Bunker v. American Honda Motor Co.*, 455 N.W.2d 74, 77-78 (Minn. Ct. App. 1990); *Krein v. Raudabough,* 406 N.W.2d 315, 320 (Minn. Ct. App. 1987); *Tuttle v. Lorillard Tobacco Co.*, 377 F.3d 917, 924 (8th Cir. 2004) (applying Minnesota law).

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to a fully automatic machine gun is illegal"; (4) "[f]ailing to acknowledge that Glock switches are illegal and dangerous [when] feature[ing] fully automatic Glock handguns in its advertising"; and (5) "failing to denounce the use of Glock switches or warn the public that Glock switches are not Glock products." Compl. ¶¶ 2, 115, 152, 220, 265, 276. *See also id.* ¶¶ 67, 69-70, 72, 106-07, 110-11, 152, 220, 238, 251, 254, 256, 268. As noted in the Complaint itself, Glock, Inc. only sells legal, semi-auto pistols to members of the public, and does not manufacture or sell MCDs. Compl. ¶¶ 3-4, 10.

The First Amendment does not prohibit liability based on false, deceptive, or otherwise misleading commercial speech. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 563 (1980). The well-pled factual allegations, as opposed to the State's legal conclusions and labels, do not establish any of Glock, Inc.'s representations are false, deceptive, or otherwise misleading. In addition, the regulations allowed by *Central Hudson* apply only to *purely commercial* speech, which does nothing more that propose a commercial transaction, such as descriptions of price or quantity. *See 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 499 (1996); *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 554 (2001). In contrast, strict scrutiny applies to the restrictions on mixed commercial and noncommercial speech. *See, e.g., Riley v. Nat'l Fed'n of the Blind of N.C., Inc.,* 487 U.S. 781, 796 (1988). Simply labeling speech as "commercial" does not make it so. *See NAACP v. Button*, 371 U.S. 415, 429 (1963). There is no basis for imposing liability based on noncommercial speech, even if it is labeled as being "misleading." *See Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 791-2 (2011); *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964). The speech by Glock, Inc. at issue is not "commercial" and the State's efforts to regulate it are therefore subject to strict scrutiny.

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The State seeks to punish Glock, Inc. for the content of its speech, and its Complaint heavily relies on the content of Glock, Inc.'s marketing and advertising of its legal products. Compl. ¶¶ 23, 29-30, 69, 72, 97, 111, 115, 151-52, 154-55. 173, 220, 224, 241, 250-51, 256, 264-65.[14] The Supreme Court has held that the "mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it absent some showing of a direct connection between the speech and imminent illegal conduct." *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002). Similarly, it is well-settled that the First Amendment prohibits states from punishing truthful speech about lawful products, even if the products are dangerous, capable of being criminally misused by third parties, and/or the state disapproves of the content of the speech.[15] Laws that impose liability based on the content or viewpoint disseminated are subject to the strictest scrutiny and are almost always unconstitutional.[16]

Whether shooting a full-auto Glock 18 pistol is "fun" is a subjective, content-based opinion, which is not capable of being proven false, deceptive or otherwise misleading. Similarly, while the State seeks to punish Glock, Inc. for advertising and marketing Glock pistols as having a "simple" and "easy" design, it affirmatively represents that such statements are true, and seeks to impose liability on Glock, Inc. on the basis that it facilitates their illegal conversion to machine guns by third parties through the installation of an MCD.

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[14] One of the reasons why Congress enacted the PLCAA was to "protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products . . . to speak freely . . . ." 15 U.S.C. § 7901(b)(5).

[15] *See, e.g., Lorillard Tobacco*, 533 U.S. at 555; *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173, 184-85 (1999); *44 Liquormart*, 517 U.S. at 504; *Bigelow v. Virginia*, 421 U.S. 809, 818-25 (1975).

[16] *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163-64 (2015); *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 790-91, 799 (2011); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995) ("Discrimination against speech because of its message is presumed to be unconstitutional.").

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The First Amendment also prohibits a state from compelling a "person to speak its own preferred messages." *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023). It does not "matter whether the government seeks to compel a person to speak its message when he would prefer to remain silent or to force an individual to include other ideas with his own speech that he would prefer not to include. All that offends the First Amendment just the same." *Id.* at 586-87 (internal citations omitted). The State's effort to punish Glock, Inc. for not affirmatively advertising that MCDs, products that it does not even manufacture and sell, are illegal, or that it is illegal to manufacture machineguns using MCDs seeks to compel Glock, Inc. to communicate its message in violation of its First Amendment rights. The First Amendment does not allow the State to impose liability on Glock, Inc. for not "denounce[ing]" MCDs or require it to affirmatively notify the public that it does not make and sell MCDs. Through the relief sought in its Complaint, the State is attempting to force Glock, Inc. to change its speech to confer only the content of which the State approves and, by doing so, it violates Glock, Inc.'s First Amendment right to freedom of Speech.

B. <u>The Relief Sought Violates the Second Amendment</u>

The State seeks injunctive relief requiring Glock, Inc. to "modify the design of [Glock pistols] that are sold to the public and can be converted with a Glock switch, including the Glock 17 and Glock 19, so that [they] cannot be easily converted into fully automatic machine guns." Compl. at 76, ¶ 4. Stated differently, the State seeks an order from this Court prohibiting Glock, Inc. from selling what it concedes to be the most popular handgun in the United States to the public. Compl. ¶ 27 (alleging that Glock pistols account for "65% of the market for handgun sales"). The relief requested by the State would prohibit individuals anywhere in the United States from being able to acquire new Glock pistols, despite them being legal pursuant to both

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federal and Minnesota law, and accounting for approximately twice as many handguns sold as all other handguns combined. Such relief would violate the Second Amendment.

The "Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). Lawful commerce in firearms is also protected by the Second Amendment because it is necessary for individuals to acquire the firearms necessary to exercise their right to keep and bear arms.[17] Laws regulating the right to keep and bear arms pursuant to the Second Amendment are unconstitutional unless they are "consistent with this Nation's historical tradition." *Bruen*, 597 U.S. at 17; *see also United States v. Rahimi*, 602 U.S. 680, 689 (2024). The State seeks to effectively ban the sale and, by necessity, the right to acquire to keep and bear, all new Glock pistols that can be illegally converted to a machine gun through the installation of an MCD using the public nuisance statute, CFA, DTPA, and FSAS, as well as common law negligence and product liability. There is no historical tradition of using such laws to regulate the sale of firearms, or of prohibiting the sale of otherwise legal firearms simply because they may be criminally misused by third parties. The State's request for injunctive relief barring the sale of Glock pistols to the public is therefore barred by the Second Amendment.

CONCLUSION

For the above reasons, Glock, Inc. respectfully requests this Court grant its Motion to Dismiss, dismiss the State's Complaint and all claims against Glock, Inc. with prejudice and on the merits, and grant such other relief as it deems just and equitable.

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[17] *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017); *Radich v. Guerrero*, No. 1:14-CV-00020, 2016 WL 1212437, at *7 (D. N. Mar. I. Mar. 28, 2016) ("If the Second Amendment individual right to keep and bear a handgun for self-defense is to have any meaning, it must protect an eligible individual's right to purchase a handgun, as well as the complimentary right to sell handguns."); *Andrews v. State*, 50 Tenn. 165, 178 (1871) (explaining that the right to keep arms "necessarily involves the right to purchase" them)).

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Respectfully submitted,

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