Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

State of Minnesota by its Attorney General, Keith Ellison,

Plaintiff,

vs.

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

Defendants.

Court File No. 27-CV-24-18827
Hon. Christian M. Sande

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS BY GLOCK, INC. AND GLOCK GES.M.B.H

Machine guns have been outlawed in Minnesota for nearly a century due to their potential to rapidly cause great harm. But Glock has facilitated the return of machine guns to Minnesota by making and selling semi-automatic handguns that are easily converted into illegal fully automatic weapons by attaching "Glock switches"—small devices that allow Glock handguns to fire continuously with a single trigger pull.

Glock's handgun design aids the conversion of its handguns into illegal machine guns. The very feature that Glock promotes in the marketplace and in Glock's motion to dismiss—the gun's simple design—is exactly what makes the gun uniquely vulnerable to quick and easy conversion into a machine gun. Glock has known about this vulnerability in its handgun design for decades, and Glock knows that its handguns are frequently and increasingly being turned into illegal machine guns with Glock switches. Moreover, Glock encourages such conversion by marketing Glock machine guns to the public—going so far as to call them "fun"—even though the public cannot buy such guns.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

Glock seeks to avoid responsibility for its misconduct with its motion to dismiss. But Glock's arguments have no merit.

First, the Protection of Lawful Commerce in Arms Act ("PLCAA") does not bar the State's action against either Defendant.[1] Glock Ges.m.b.H. ("Glock Austria") concedes that PLCAA does not apply to limit the State's action against Glock Austria.

With respect to Glock, Inc., the State's action is expressly permitted under PLCAA. PLCAA limits some actions against certain firearms manufacturers and sellers while also expressly permitting other types of actions. The State's lawsuit fits within three types of actions permitted under PLCAA. The State's action is "an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). This action alleges knowing violations of multiple state statutes applicable to the sale or marketing of firearms—including three consumer protection laws and Minnesota's statutory prohibition on machine guns—and that Glock's violation of these statutes was a proximate cause of the harm to Minnesota resulting from Glock handguns converted into illegal machine guns with Glock switches. PLCAA's express exceptions permitting actions for negligence per se and some product defect actions also apply to the State's action.

Second, the State has sufficiently pled its claims under Minnesota law. The State's public nuisance claim adequately alleges that Glock intentionally created or contributed to the public nuisance of Glock switches in Minnesota. The State's three consumer protection claims sufficiently plead Glock's deceptive conduct, and Glock does not contest the State's allegations that Glock acted unfairly in violation of two of these three laws. For the State's negligence and

[1] The State refers collectively to Defendants Glock, Inc. and Glock Ges.m.b.H. as "Glock."

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

products liability claims, the State has cognizably pled that Glock has a duty of care, breached that duty of care, and that there is proximate cause. The State also sufficiently pleaded that Glock's conduct satisfies the elements of aiding and abetting the tort of negligence per se via equipping Glock handguns with switches in violation of Minnesota's prohibition on machine guns.

Third, Glock's constitutional arguments are meritless. The First Amendment does not protect Glock's misleading commercial speech that promotes illegal activity. Similarly, the Second Amendment protects individuals' right to bear arms—not Glock's desire to sell a particular model of a firearm with a design and marketing that promotes its conversion into a machine gun.

For all these reasons, and those set forth below, the Court should deny Glock's motion to dismiss.

BACKGROUND

The State filed this action on December 12, 2024. The State's complaint alleges in detail that Glock designs, markets, and sells semi-automatic machine guns that are easily converted into fully automatic machine guns with Glock switches. Compl. at 9–34, ¶¶ 33–111, Index No. 3. The complaint further alleges that Glock knows such conversion is happening, as evidenced by numerous facts, but that Glock has refused to change its handgun design. Glock Compl. at 34–44, ¶¶ 112–155. The complaint further alleges that Glock handguns converted into fully automatic weapons have proliferated and caused significant harm in Minnesota, including being involved in multiple identified shootings causing in death and injuries. Glock Compl. at 44–60, ¶¶ 156–215.

Based on these allegations, the State's action brings seven claims against Glock:

- Count I – Public Nuisance
- Count II – Aiding and Abetting Negligence Per Se
- Count III – Prevention of Consumer Fraud Act

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

- Count IV – Deceptive Trade Practices Act
- Count V – False Statement in Advertisement
- Count VI – Negligence
- Count VII – Products Liability

The State seeks declaratory relief, injunctive relief prohibiting Glock from further violations of Minnesota law and requiring Glock "to modify the design of [Glock's] semi-automatic handguns that are sold to the public and can be converted with a Glock switch . . . so that these handguns cannot be easily converted into fully automatic machine guns," and monetary relief, including civil penalties, abatement relief, restitution, disgorgement, and the State's costs and attorney fees.

Glock, Inc. moved to dismiss the State's complaint on February 3, 2025 and filed its supporting memorandum of law on March 20, 2025. Glock, Inc. Notice of Motion and Motion to Dismiss, Index No. 15; Glock, Inc. Mem. of Law in Supp. of Its Motion to Dismiss ("Glock Mem."), Index No. 63). On April 2, 2025, following service of the State's complaint on Glock Austria in accordance with the Hague Convention, Glock Austria joined Glock, Inc.'s motion to dismiss with respect to two of Glock, Inc.'s three arguments. Glock Ges.m.b.H. Joinder Mem. of Law in Supp. of Motion to Dismiss ("Glock Austria Joinder Mem."), Index No. 65. Glock Austria did not join Glock, Inc.'s motion to dismiss with respect to any of Glock, Inc.'s arguments based on PLCAA. *Id*. at 2, ¶ 4 ("Glock Ges.m.b.H. does not join the arguments pursuant to the Protection of Lawful Commerce in Arms Act ('PLCAA') set forth in and under Section II of Glock, Inc.'s Memorandum of Law.").

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

ARGUMENT

Glock's motion to dismiss should be denied. First, PLCAA does not bar this action against Glock Austria because PLCAA does not apply to Glock Austria. Nor does PLCAA bar the State's action against Glock, Inc. PLCAA limits what civil actions may be brought against some gun manufacturers and sellers but also has specific exceptions for actions that are expressly permitted. The State's action against Glock, Inc. is expressly permitted by PLCAA.

Second, all of the State's seven claims are sufficiently pled under Minnesota law. The State's complaint adequately alleges that Glock intentionally created or contributed to the public nuisance of Glock switches in Minnesota. The State's three consumer protection claims against Glock sufficiently plead Glock's deceptive conduct, and Glock does not contest the State's allegations that Glock acted unfairly in violation of two of these laws. For the State's negligence and products liability claims, the State has cognizably pled that Glock has a duty of care, breached that duty of care, and that proximate cause exists because the consequences of Glock's misconduct were foreseeable. The State also sufficiently pleaded that Glock's conduct fits the elements of aiding and abetting negligence per se related to violations of Minnesota's prohibition on machine guns.

Third, Glock's constitutional arguments are baseless. The First Amendment does not protect Glock's misleading commercial speech that promotes illegal activity. Similarly, the individual right to keep and bear arms guaranteed by the Second Amendment does not protect Glock's desire to sell a particular firearm model.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

I. PLCAA Does Not Bar the State's Action Against Glock Austria or Glock, Inc.

A. PLCAA Does Not Bar the State's Action Against Glock Austria Because PLCAA Does Not Apply to Glock Austria.

PLCAA does not apply to an action against Glock Austria. PLCAA limits what civil actions may be brought against only *some* gun manufacturers and sellers by defining "manufacturer" and "seller" to require licensure under United States firearms laws. 15 U.S.C. § 7903(2); 15 U.S.C. § 7903(6).

Glock Austria does not assert that it is a manufacturer or seller in accordance with PLCAA. Thus, PLCAA does not limit what types of legal actions may be brought against Glock Austria. Glock Austria concedes this conclusion by not joining any of the PLCAA arguments made by Glock, Inc. Glock Austria Joinder Mem. at 2, ¶ 4. This means that the Court's ruling as to PLCAA's impact on the State's action against Glock, Inc. will have no effect on the State's action against Glock Austria.

B. PLCAA Does Not Bar the State's Action Against Glock, Inc. Because This Action Fits Within PLCAA's Express Exceptions for Permitted Actions.

Glock, Inc. argues that PLCAA preempts the State's action. A preemption analysis starts with the "assumption that the historic police powers of the States were not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quotation omitted); *see also Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) ("[B]ecause the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action."). This presumption against preemption is especially strong in areas "traditionally occupied by the States." *United States v. Locke*, 529 U.S. 89, 108 (2000). The State's claims—ensuring consumer protection, regulating advertising, and protecting public health and safety—have been recognized

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

as areas of traditional state authority. *See, e.g.*, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 146 (1963) (historic state police powers include regulations "designed to prevent the deception of consumers"); *Packer Corp. v. State of Utah*, 285 U.S. 105, 108 (1932) (providing that the state's "police power" includes regulation of advertising); *State v. Red Owl Stores, Inc.*, 92 N.W.2d 103, 110 (Minn. 1958) (stating that, upon suit by the State, courts will enjoin "acts amounting to a public nuisance if they . . . endanger public health").

PLCAA limits some—but not all—civil actions against certain gun manufacturers and sellers. PLCAA expressly permits other civil actions against gun manufacturers and sellers via six categorical exceptions to PLCAA's limitations. This action fits within three of those exceptions and is not barred by PLCAA.

1. PLCAA Bars Some Civil Actions Against Certain Firearms Manufacturers and Sellers While Expressly Allowing Others.

PLCAA prohibits bringing "qualified civil liability actions" in federal or state court. 15 U.S.C. § 7902(a) ("A qualified civil liability action may not be brought in any Federal or State court."). PLCAA defines "qualified civil liability action" as including some types of actions and expressly excluding other types of actions.

First, before identifying the exceptions excluded from this definition, PLCAA defines "qualified civil liability action" as the following:

> The term "qualified civil liability action" means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include— . . .[2]

[2] PLCAA defines the term "qualified product" as "a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

15 U.S.C. § 7903(5)(A).

Then, PLCAA expressly provides that six types of actions are excluded from the term "qualified civil liability action." *Id*. Accordingly, civil actions against gun makers and sellers that fit within any one of these six exceptions are expressly permitted to be brought under PLCAA. Here, the second, third, and fifth exceptions from PLCAA's prohibition of certain civil actions apply to this action.

PLCAA's second exception permits actions "brought against a seller for negligent entrustment or negligence per se." 15 U.S.C. § 7903(5)(A)(ii).

PLCAA's third exception permits actions alleging violations of a statute applicable to the sale or marketing of firearms:

> an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought . . . .

15 U.S.C. § 7903(5)(A)(iii). This exception from PLCAA's limited bar on certain civil actions is known as the "predicate exception" because "its operation requires an underlying or predicate statutory violation." *City of New York v. A-1 Jewelry & Pawn, Inc.*, 247 F.R.D. 296, 351 (E.D.N.Y. 2007).

PLCAA's fifth exception permits product defect actions:

> an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.

---

part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce." 15 U.S.C. § 7903(4).

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

15 U.S.C. § 7903(5)(A)(v).

Because PLCAA applies to "actions," if any one of PLCAA's exceptions applies, the State's entire action should proceed:

> The question before the Court is whether any of the State's claims fall under the exceptions to the PLCAA. *Only one claim needs to survive the preemption analysis for the entire suit to move forward* because the PLCAA preempts "qualified civil liability actions," not claims. *See* 15 U.S.C. § 7903(5)(A) (defining "qualified civil liability action").

Minnesota v. Fleet Farm LLC, 679 F. Supp. 3d 825, 840–41 (D. Minn. 2023) (emphasis added). Several decisions have reached the same conclusion as the District of Minnesota in the Fleet Farm case.[3]

These decisions follow from PLCAA's plain language. Whether PLCAA applies turns entirely on whether a lawsuit is a "qualified civil liability *action*." 15 U.S.C. § 7903(5)(A) (emphasis added). The term "action" necessarily refers to a case as a whole. Fed. R. Civ. P. 2 ("There is one form of action—the civil action.); Minn. R. Civ. P. 2 ("There shall be one form of

[3] *See, e.g.*, *City of Kansas City, Missouri v. Jimenez Arms*, *Inc. et al.*, Case No. 2016-CV00829, slip. op. at 4–5 (Mo. Cir. Ct. Nov. 17, 2022) (Moerke Decl., Ex. 1) ("[B]ecause the Court finds the predicate exception applicable to this action, there is no need to engage in a claim-by-claim analysis"); *Ramos v. Wal-Mart Stores, Inc*., 202 F. Supp. 3d 457, 465 (E.D. Pa. 2016) (concluding that, "if the sum of the allegations made in a particular case triggers one of the Act's exceptions, the entire case is exempt from its scope"); *Corporan v. Wal-Mart Stores E., LP*, No. 16–2305, 2016 WL 3881341, at *4 n. 4 (D. Kan. July 18, 2016) ("[B]ecause the court finds the predicate exception applicable to this action, it declines to engage in the claim-by-claim analysis advanced by defendants."); *Chiapperini v. Gander Mountain Co., Inc.*, 48 Misc.3d 865, 13 N.Y.S. 3d 777, 787 (Sup. Ct. Monroe Cnty. 2014) ("[A]s long as one PLCAA exception applies to one claim the entire action continues . . . . [T]his Court finds two applicable PLCAA exceptions thereby permitting the entire Complaint to proceed through litigation, without the need for a claim-by-claim PLCAA analysis."); *Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 151, 952 N.Y.S.2d 333 (N.Y. App. Div. 2012), *op. am. on reargument*, 103 A.D.3d 1191, 962 N.Y.S.2d 834 (N.Y. App. Div. 2013) ("In light of our conclusion that this action falls within the PLCAA's predicate exception and therefore is not precluded by the Act . . . we need not address plaintiffs' further contention that this action falls within the PLCAA's negligent entrustment or negligence per se exception.").

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

action to be known as 'civil action.'"). Accordingly, if the "action" includes allegations that fit within one of PLCAA's exceptions for permitted actions, then the entire action falls outside PLCAA's definition of a "qualified civil liability action."

2. The State's Action Is Predicated on State Statutes Applicable to the Sale or Marketing of Firearms in Accordance with PLCAA's Predicate Exception.

In accordance with PLCAA's predicate exception, this action alleges knowing violations of four state statutes applicable to the sale or marketing of firearms: Minnesota Statutes sections 325F.69 (Prevention of Consumer Fraud Act), 325D.44 (Deceptive Trade Practices Act), 325F.67 (False Statement in Advertisement), and 609.67 (prohibition of machine guns).[4]

To try to escape PLCAA's predicate exception, Glock, Inc. argues that the first three of these four statutes (Minnesota Statutes sections 325F.69, 325D.44, and 325F.67) do not satisfy the predicate exception because they are "statutes of general applicability" rather than statutes "*specifically* applicable" to firearms. Glock Mem. at 2 (emphasis added); *id*. at 14. But PLCAA has no such requirement. PLCAA's predicate exception is not limited to statutes that specifically or solely regulate firearms, and the cases Glock, Inc. cites do not hold otherwise.

[4] The public nuisance claim is brought under Minnesota Statutes section 609.74 and encompasses allegations of knowingly violating and aiding and abetting the violation of Minnesota law, including Minnesota Statutes sections 325F.69 (Prevention of Consumer Fraud Act), 325D.44 (Deceptive Trade Practices Act), 325F.67 (False Statement in Advertisement), and 609.67 (prohibition of machine guns). Compl. at 60–63, ¶ 221. The aiding and abetting negligence per se claim is based on Glock's aiding and abetting the violation of Minnesota Statutes section 609.67, which prohibits machine guns. Compl. at 63–65. The Prevention of Consumer Fraud Act claim is brought under Minnesota Statutes section 325F.69 and based on the public policy established by Minnesota Statutes section 609.67. Compl. at 65–68; *id*. at ¶ 253. The Deceptive Trade Practices Act claim is brought under Minnesota Statutes section 325D.44 and is also based on the public policy established by Minnesota Statutes section 609.67. Compl. at 68–71; *id*. at ¶ 267. The False Statement in Advertisement claim is brought under Minnesota Statutes section 325F.67. Compl. at 71–72. The negligence claim is brought under Minnesota common law and alleges that Glock breached its duty by aiding and abetting the violation of Minnesota law, including Minnesota Statutes sections 325D.44, 325F.67, 325F.69, 609.67, and 609.74. Compl. at 72–73; *id*. at 283.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

These three Minnesota statutes are applicable to the sale or marketing of firearms in accordance with the plain language of PLCAA's predicate exception. All three of these statutes regulate the sale of consumer goods, including firearms, and are designed to "protect consumers from unlawful and fraudulent trade practices in the marketplace." *Ly v. Nystrom*, 615 N.W.2d 302, 308 (Minn. 2000); *see* Minn. Stat. § 325F.69 subd. 1 (prohibiting deceptive conduct "*in connection with the sale of any merchandise*") (emphasis added)[5]; Minn. Stat. § 325F.44 subd. 1 (prohibiting deceptive trade practices "*in the course of business, vocation, or occupation*") (emphasis added); Minn. Stat. § 325F.67 (prohibiting "untrue, deceptive, or misleading" representations in connection with the sale of "*merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale*") (emphasis added).

Glock, Inc. wrongly states that "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." Glock Mem. at 15. Neither of the two decisions that Glock, Inc. cites—*Ileto* and *New York v. Beretta*—held what Glock, Inc. says. Instead, both decisions show that the State's action fits squarely within PLCAA's predicate exception and thus is expressly allowed by PLCAA.

In *Ileto*, the United States Court of Appeals for the Ninth Circuit explained that PLCAA's predicate exception applies to both "statutes that regulate manufacturing, importing, selling, marketing, and using firearms"—like Minnesota Statutes sections 325F.69, 325D.44, and 325F.67—as well as statutes "that regulate the firearms industry." *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1136 (9th Cir. 2009). Thus, *Ileto* rejected the argument that "the predicate exception would

[5] Minnesota Statutes section 325F.68, subd. 2, broadly defines merchandise to include "any objects, wares, goods, commodities, intangibles, real estate, loans, or services."

be met only if a plaintiff alleged a knowing violation of a statute that pertained *exclusively* to the sale or marketing of firearms." *Id*. at 1133–35 (emphasis in original). Rather, *Ileto* held that "general tort theories that happened to have been codified" do not fit within the predicate exception. *Id.* at 1136. Unlike the California negligence and nuisance statutes addressed in *Ileto*, Minnesota's Prevention of Consumer Fraud Act (Minn. Stat. § 325F.69), the Uniform Deceptive Trade Practices Act (Minn. Stat. § 325D.44), and the False Statement in Advertisement Act (Minn. Stat. § 325F.67) do not codify general common law tort theories. *See State v. Alpine Air Prods., Inc.*, 500 N.W.2d 788, 790 (Minn. 1993) ("In passing consumer fraud statutes, the legislature clearly intended to make it easier to sue for consumer fraud than it had been to sue for fraud at common law.").

Likewise, in *City of New York v. Beretta*, the United States Court of Appeals for the Second Circuit rejected the argument that PLCAA's predicate exception requires express language regarding firearms: "We find nothing in the statute that requires any express language regarding firearms to be included in a statute in order for that statute to fall within the predicate exception." *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 399–400 (2d Cir. 2008). Thus, the Second Circuit held that PLCAA's predicate exception encompasses not only statutes "that expressly regulate firearms" but also "statutes that do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms," as well as laws of general applicability that "courts have applied to the sale and marketing of firearms." *Id.* at 404. Unlike the criminal nuisance statute addressed in *Beretta*, the Prevention of Consumer Fraud Act (Minn. Stat. § 325F.69), the Uniform Deceptive Trade Practices Act (Minn. Stat. § 325D.44), and the False Statement in Advertisement Act (Minn. Stat. § 325F.67) clearly implicate the purchase and sale of firearms.

Firearms are products bought by consumers and are within the plain reach of these consumer protection laws.

Indeed, no judicial decision has held that a consumer protection statute is not a predicate statute under PLCAA's predicate exception. Instead, multiple judicial decisions have held that consumer protection laws regulating consumer products such as firearms are precisely the types of statutes that implicate and have been applied to the sale and marketing of firearms. *See, e.g.*, *Doyle v. Combined Sys., Inc*, No. 3:22-CV-01536-K, 2023 WL 5945857, at *10 (N.D. Tex. Sept. 11, 2023) (holding that Texas's deceptive trade statutes are "applicable to firearms" despite not referring to firearms specifically because they regulate the marketing and sale of goods, "including the firearms and ammunition manufactured and sold by defendants"); *Prescott v. Slide Fire Solutions*, 410 F. Supp. 3d 1123, 1137–40 (D. Nev. 2019) ("The Court again turns to the circuit's decision in *Ileto* for guidance and finds that neither this decision nor the PLCAA's language, purpose, and legislative history foreclose the NDTPA [Nevada's Deceptive Trade Practices Act] from serving as a predicate statutory violation."); *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262, 300–24 (Conn. 2019) (holding that an action alleging violations of Connecticut's Unfair Trade Practices Act fit within PLCAA's predicate exception because "Congress did not mean to preclude actions alleging that firearms companies violated state consumer protection laws by promoting their weapons for illegal, criminal purposes").

Nonetheless, even under Glock, Inc.'s incorrect view that PLCAA's predicate exception is limited to actions alleging violations of statutes that pertain exclusively to firearms, the exception would still encompass this action. The State alleges violations of Minnesota Statutes section 609.67—which prohibits the ownership, possession, or operation of any "machine gun, or any trigger activator or machine gun conversion kit" and is therefore exclusively directed to firearms—

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

in addition to alleged violations of Minnesota consumer protection statutes.[6] Compl. at 60–63, ¶ 221; *id*. at 63–65, ¶¶ 226–44; *id*. at 67, ¶ 253; *id*. at 70, ¶ 267; *id*. at 73, ¶ 283.

For all these reasons, this is "an action in which a manufacturer or seller of [firearms] knowingly violated a State or Federal statute applicable to the sale or marketing of [firearms]." 15 U.S.C. § 7903(5)(A)(iii). This is also an action in which "the violation was a proximate cause of the harm for which relief is sought," as demonstrated next. *Id.*

3. The State's Action Alleges That Glock, Inc.'s Statutory Violations Were a Proximate Cause of Harm in Accordance with PLCAA's Predicate Exception.

This action alleges that Glock, Inc.'s violations of Minnesota statutes were "a proximate cause of the harm for which relief is sought" in accordance with PLCAA's predicate exception. 15 U.S.C. § 7903(5)(A)(iii). Glock, Inc. argues that its conduct could not possibly have been a proximate cause because the "harm of which the State complains is the direct result of criminals who intentionally convert Glock pistols into machine guns." Glock Mem. at 28; *see also id.* at 19–20 (arguing that "the actions of Glock, Inc. at issue in the Complaint . . . are not the proximate cause of the harm for which relief is sought"). In other words, Glock, Inc. argues that its conduct is not the *sole* cause of harm and cannot be a proximate cause of harm because of intervening criminal misuse of Glock handguns. Glock, Inc.'s proximate cause argument is wrong under PLCAA and wrong under the common law on proximate cause. Plus, "[w]hether proximate cause

[6] Glock, Inc. argues that the State's negligence claim (Count IV) does not fit within PLCAA's predicate exception. Glock Mem. at 9. But the State alleges that Glock, Inc. knows that it is facilitating conversion of Glock handguns into illegal machine guns, in violation of Minnesota Statute section 609.67. Compl. at 73, ¶ 283. This is encompassed by the predicate exception. *See Fleet Farm*, 679 F. Supp. 3d at 841 (holding that a negligence claim fits within PLCAA's predicate exception because "the State plausibly alleges that Fleet Farm had actual knowledge that it was facilitating straw purchases, in violation of federal and state firearm laws").

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

exists in a particular case is a question of fact for the jury to decide." *Norberg v. Northwestern Hospital Ass'n, Inc.*, 270 N.W.2d 271, 274 (Minn. 1978).

First, PLCAA's predicate exception requires only that the statutory violation was "*a* proximate cause" of harm, not *the sole* proximate cause. 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). In contrast, PLCAA's product defect exception requires that, when firing a firearm was a criminal offense, the alleged violation by the gun maker or seller must be "the sole proximate cause":

> an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered *the sole proximate cause* of any resulting death, personal injuries or property damage.

15 U.S.C. § 7903(5)(A)(v) (emphasis added). Thus, the meaning of "a proximate cause" in PLCAA's predicate exception cannot be "the sole proximate cause."

Further, Glock, Inc.'s interpretation of "proximate cause" in the predicate exception should be rejected because, if PLCAA were interpreted this way, PLCAA would serve no purpose. If the intervening criminal misuse of a firearm meant that actions by a firearm manufacturer or seller could never be a proximate cause of harm, PLCAA would not serve its purpose of limiting the liability of certain firearm manufacturers and sellers.

Glock, Inc.'s interpretation of "proximate cause" is also contrary to common law. As Glock, Inc. recognizes, proximate cause requires that a defendant's conduct was a substantial factor in causing the harm and that the harm was foreseeable. *See, e.g.*, *Lennon v. Piper*, 411 N.W.2d 225, 228 (Minn. App. 1987), *cited in* Glock Mem. at 27 ("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 care, to have anticipated that the act was likely to result in injury to others.").

The allegations in the State's complaint easily satisfy this requirement. The State alleges that Glock's handgun design allows for the easy and fast conversion of Glock guns into illegal machine guns. *See, e.g.*, Compl. at 16–30, ¶¶ 58–105 (detailing how Glock's handgun design facilitates easy conversion into illegal, fully automatic machine guns). Thus, Glock's actions were a substantial factor in causing harm from the conversion of Glock handguns into fully automatic weapons.

The State also alleges that the harm from converted Glock handguns was foreseeable. First, Glock has known for decades that the vulnerability in its handgun design could be exploited via an insertable device like the Glock switch. *See, e.g.*, *id*. at 35–36, ¶¶ 116–21 (describing Glock's knowledge that switches could be used in its handguns dating from the late 1980s). Second, Glock knows that its handguns are being converted into machine guns with Glock switches. *See, e.g.*, *id*. at 36–43, ¶¶ 122–50 (alleging Glock's knowledge of recent Glock switch usage and mass shootings involving Glock handguns equipped with Glock switches).

Glock, Inc. also argues that none of its alleged statutory violations can be a proximate cause because of a "superseding, intervening cause of harm." Glock Mem. at 27–28. As Glock admits, however, an "intervening act is not superseding unless . . . it was not reasonably foreseeable by the original wrongdoer." *Rieger v. Zackoski*, 321 N.W.2d 16, 21 (Minn. 1982), *quoted in* Glock Mem. at 27. "A defendant is liable, despite an intervening cause, if the cause is foreseeable." *Bilotta v. Kelley Co.*, 346 N.W.2d 616, 625 (Minn. 1984). This is true even for intervening criminal acts. *See id.* (holding that alleged criminal violations of OSHA "in these circumstances were reasonably foreseeable and thus do not constitute superseding cause"); *Hilligoss v. Cross Cos.*,

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

228 N.W.2d 585, 586 (Minn. 1975) ("[T]o be a legally sufficient intervening cause, the criminal act itself must not be reasonably foreseeable."); *Wallinga v. Johnson*, 269 Minn. 436, 440, 131 N.W.2d 216, 219 (1964) ("A criminal intervening force, however, cannot be a legally effective superseding cause unless it possesses the attribute of unforeseeability."). Here, the intervening act of criminals converting Glock handguns into illegal machine guns with Glock switches is not only foreseeable but also actually known to Glock. Compl. at 34–45, ¶¶ 112–58 ("Glock Knows Its Semi-Automatic Handguns Are Being Converted into Illegal Machine Guns with Glock Switches.").

Accordingly, the State's action sufficiently alleges proximate cause in accordance with PLCAA's predicate exception and in accordance with Minnesota law.

4. The State's Action Is an Action for Negligence Per Se Under Minnesota Law in Accordance with PLCAA's Negligence Per Se Exception.

In addition to fitting within PLCAA's predicate exception, the State's action also fits within PLCAA's negligence per se exception.[7] PLCAA expressly excludes actions against firearm sellers for negligence per se from its definition of "qualified civil liability action." 15 U.S.C. § 7903(5)(A)(ii).[8] As Glock, Inc. concedes, the application of the negligence per se exception turns entirely "on whether such claim is valid pursuant to Minnesota law." Glock Mem. at 10. As demonstrated below in Part II.E., the State's aiding and abetting negligence per se claim is cognizable under Minnesota law.

[7] Because the State's action fits within PLCAA's predicate exception, the Court need not reach the issue of whether the action fits within the negligence per se or products liability exceptions. Nonetheless, these PLCAA exceptions are also satisfied by the State's action.

[8] Glock, Inc. qualifies as a "seller" under PLCAA because Glock, Inc. is engaged in the business of importing and selling firearms. 15 U.S.C. § 7903(6)(A)–(B); Compl. at 5, ¶¶ 15, 17; *id*. at 8–9, ¶¶ 30–31.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

The State's action presents two different theories of negligence per se. First, the State alleges that Glock, Inc. has aided and abetted negligence per se because Glock, Inc. has aided and abetted violations of Minnesota's statute prohibiting machine guns, Minnesota Statutes section 609.67. Under aiding and abetting liability, "a defendant is vicariously liable for some tortious act committed by another." *Leiendecker v. Asian Women United of Minn*., 848 N.W.2d 224, 228 n.2 (Minn. 2014). Because the State seeks to hold Glock, Inc. vicariously liable for the negligence per se it has aided and abetted, the negligence per se exception applies.

Separately, as a part of its negligence claims, the State alleges that Glock, Inc. has violated specific Minnesota laws, including Minnesota Statutes sections 325F.69 (Prevention of Consumer Fraud Act), 325D.44 (Deceptive Trade Practices Act), and 325F.67 (False Statement in Advertisement). Compl. at 73, ¶ 283. Each of these statutes may also form the basis for negligence per se claims. *See Perry v. Bay & Bay Transp. Servs.*, 650 F. Supp. 3d 743, 754–55 (D. Minn. 2023) (denying motion to dismiss negligence per se claims arising under Section 5 of FTC Act, concluding that statutory prohibition on "unfair or deceptive acts or practices" is "not too vague to establish a fixed standard of care" under Minnesota law).

5. The State's Action Fits Within PLCAA's Product Defect Exception.

In addition to fitting within PLCAA's predicate and negligence per se exceptions, the State's action also fits within PLCAA's product defect exception. 15 U.S.C. § 7903(5)(A)(v). The complaint alleges that Glock has knowingly designed its handguns to be easily converted to fully automatic machine guns and has refused to change this defective design despite knowing about the epidemic of Glock switches. Compl. at 24–30, ¶¶ 85–105; *id*. at 35–37, 116–28.

Glock, Inc. argues the product defect exception does not apply because the exception provides 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." 15 U.S.C. § 7903(5)(A)(v); Glock Mem. at 20. But the State's action and requests for relief are not solely focused on the harm resulting from death, personal injuries, and property damage from the discharge of Glock handguns. The State's complaint is replete with allegations about Glock's misconduct prior to Glock's handguns actually being discharged. The State also seeks injunctive relief and civil penalties to address public safety and deter future misconduct—remedies available to the State that are not available to private plaintiffs. Compl. at 75, ¶ 300. Glock's reading "would effectively eliminate the exception for product design defect claims expressly provided by Congress." *Chavez v. Glock, Inc.*, 144 Cal. Rptr. 3d 326, 355 (Cal. Ct. App. 2012) (reversing trial court's grant of summary judgment in favor of defendant Glock on PLCAA's product defect exception).

II. All of the State's Claims Against Glock Are Cognizable.

Unlike in federal court, the standard for pleading in Minnesota remains notice pleading. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604–05 (Minn. 2014) ("Minnesota is a notice-pleading state."). "[A] claim is sufficient against a motion to dismiss if it is *possible, on any evidence that might be produced*, to grant the relief demanded." *Id*. at 604. "[A] pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (1963). Further, "[a]ll pleadings shall be so construed as to do substantial justice." Minn. R. Civ. P. 8.06; *see also Home Ins. Co. v. Nat'l Union Fire Ins. of Pittsburgh*, 658 N.W.2d 522, 535 (Minn. 2003) (stating that "courts are to construe pleadings liberally"). The State's complaint satisfies these requirements and should not be dismissed.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

A. The State Adequately Alleged Glock's "Intentional" Misconduct That Created a Public Nuisance.

Glock challenges the State's public nuisance claim on only one basis: whether the State adequately alleged Glock's requisite "intent" under Minnesota's public nuisance statute, Minnesota Statutes section 609.74.

Minnesota's public nuisance statute requires "intentional" conduct by the defendant. Minn. Stat. § 609.74 ("Whoever by an act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance . . . ."). In the context of the State's allegations, that means that the State must prove that Glock "intentionally" either (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 (2) "is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided."[9] Minn. Stat. § 609.74(1) and (3); *see also* Compl. at 60–63, ¶¶ 217–24. The State's complaint adequately alleges both grounds.

Under the common law,[10] "intentional" has a particular meaning in the context of public nuisance. The Restatement (Second) of Torts explains that continuing conduct after the initial nuisance is known is "intentional":

[9] The State's complaint alleges that Glock's violations of the False Statement in Advertisement Act are a public nuisance, as prescribed by that statute. *See* Minn. Stat. § 325F.67 ("[A]ny such act is declared to be a public nuisance and may be enjoined as such."); Compl. at 62–63, ¶ 224. Glock does not claim that its "intentionality" argument applies to this prong of Minn. Stat. § 609.74.

[10] Section 609.74 incorporates the common law on public nuisance. *Doe 30 v. Diocese of New Ulm*, No. 62-CV-14-871, 2014 WL 10936509, at *11, n.6 (Minn. Dist. Ct. July 30, 2014) ("Plaintiffs Complaint states a plausible public nuisance claim under [section 609.74] . . . . It is plain from the cited authorities that the present statute codified Minnesota's common law on the subject."); *see* Minn. Stat. 609.74 (Advisory Comm. Cmt.) ("Common-law principles have been on the whole pursued and read into the sections.").

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

> Most of the litigation over private nuisances involves situations in which there are continuing or recurrent invasions[11] resulting from continuing or recurrent conduct; and the same is true of many public nuisances. In these cases the first invasion resulting from the actor's conduct may be either intentional or unintentional; *but when the conduct is continued after the actor knows that the invasion is resulting from it, further invasions are intentional.*"

Restatement (Second) of Torts § 825, cmt. d. (emphasis added).

The Restatement is in accord with the only authority cited by Glock in support of its argument. In *Myers v. Becker County*, the federal district court held that a party's knowledge of the nuisance and the conditions she had created that contributed to the nuisance were sufficient to show intent under Minnesota Statutes section 609.74, particularly when the party "ignored warnings . . . and took no action to abate the problem." 833 F. Supp. 1424, 1433 (D. Minn. 1993). This conclusion is reinforced by how section 609.74 explicitly calls out the "failure to perform a legal duty" as one way in which a defendant could "intentionally" maintain or permit a public nuisance. *See Myers*, 833 F. Supp. at 1433 (focusing on the use of word "permit" in Minnesota Statutes section 609.74).

That is precisely what is alleged by the State here: that Glock has been aware of the ability for Glock handguns to be equipped with Glock switches for more than 40 years, is aware of the actual, widespread use of Glock switches on Glock handguns, "ignored warnings" to fix this problem, and "took no action to abate the problem." *Id.*; *see* Compl. at 61, ¶ 220. Indeed, the State alleges that Glock not only failed to abate the problem but also found ways to exploit the problem for profit. Because Glock has known and continued its conduct (and inaction) after learning of the

[11] The Restatement appears to use the word "invasion" synonymously with "interference with the public right" in applying this principle to both private and public nuisances. Restatement (Second) of Torts § 825.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

public nuisance that Glock created, its conduct is intentional. *See* Restatement (Second) of Torts § 825, cmt. D.

Glock's only argument is that the State failed to adequately allege "criminal intent" because Glock has a "good faith claim . . . that it can continue to engage in the activities of which the State complains," relying on the fact that Glock handguns are "legal." Glock Mem. at 22. But such a narrow focus on whether the guns are "legal" completely elides the State's many allegations about what Glock did to design and market its handguns to facilitate their use with Glock switches, and that even once Glock was aware of the problem, it refused to take reasonable steps to prevent its otherwise-legal handguns from causing a public nuisance—their use with Glock switches to harm and kill people in Minnesota.

B. The State Sufficiently Pled That Glock's Advertisements Are Unfair, Misleading, and Deceptive Under Minnesota's Consumer Protection Statutes.

The State pleaded three claims under three consumer protection statutes that are enforced by the Attorney General: the Prevention of Consumer Fraud Act (CFA), Minn. Stat. § 325F.69 (Count III), the Deceptive Trade Practices Act (DTPA), Minn. Stat. § 325D.44 (Count IV), and the False Statement in Advertisement Act (FSAA), Minn. Stat. § 325F.67 (Count V). *See* Compl. at 65–72, ¶¶ 245–78. These laws are meant "to address the unequal bargaining power often present in consumer transactions." *Ly*, 615 N.W.2d at 308. And these laws "reflect a clear legislative policy encouraging aggressive prosecution of statutory violations" and are "generally very broadly construed to enhance consumer protection." *Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 495–96 (Minn. 1996); *Humphrey v. Alpine Air Prods.*, 490 N.W.2d 888, 892 (Minn. App. 1992), *aff'd*, 500 N.W.2d 788 (1993).

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

Glock relies almost entirely on caselaw interpreting the federal Lanham Act[12] to wrongly contort the deception standard under the CFA, DTPA, and FSAA and argue that the State's claims fail to adequately allege deception. The CFA, DTPA, and FSAA "broad[ly]" target "deceitful conduct in the connection with the sale of merchandise." *Graphic Comms. Local 1B Health & Welfare Fund "A" v. CVS Caremark Corp.*, 850 N.W.2d 682, 694–95 (Minn. 2014); *Liabo v. Wayzata Nissan, LLC*, 707 N.W.2d 715, 724 (Minn. App. 2006) (stating that CFA and DTPA "are commonly read together so as to prohibit the use of deceptive and unlawful trade practices"). Accordingly, the State proves violations by showing "conduct that tends to deceive or mislead a person." *Swanson v. Am. Family Prepaid Legal Corp.*, No. A11-1848, 2012 WL 2505843, *4 (Minn. App. July 2, 2012). Proving deception under the CFA, DTPA, and FSAA does not require proof of literal falsehoods:

- The CFA proscribes any "fraud . . . false pretense, false promise, misrepresentation, misleading statement or deceptive practice." Minn. Stat. § 325F.69, subd. 1.
- The DTPA prohibits a variety of "deceptive trade practice[s]," including those that generally "create[] a likelihood of confusion or of misunderstanding." Minn. Stat. § 325D.44, subd. 1(14).
- The FSAA proscribes representations that are "untrue, deceptive, or misleading," Minn. Stat. § 325F.67.

[12] *See, e.g.*, *Am. Italian Pasta Co. v. New World Pasta Co.*, 371 F.3d 387, 389–91 (8th Cir. 2004) (analyzing the parties' Lanham Act claims without mentioning any Minnesota consumer protection statutes). And to the extent these decisions discuss Minnesota's consumer protection statutes, they are not binding precedent on this Court. *See State ex rel. Hatch v. Emps. Ins. of Wausau*, 644 N.W.2d 820, 828 (Minn. Ct. App. 2002) ("[F]ederal court interpretations of state law are not binding on state courts.").

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

In addition to affirmative representations, omissions can give rise to liability under consumer protection statutes if (1) the omission is material and (2) the concealing party had a statutory or common law duty to disclose the material information. *Graphic Commc'ns*, 850 N.W.2d at 695; *Hammerschmidt*, 2022 WL 329403, at *4. Absent a statutory duty to disclose, an omission is actionable under "special circumstance[s]" that impose a duty to disclose material facts, such as the following: (1) a confidential or fiduciary relationship; (2) a party with special knowledge of material facts to which the other party does not have access; or (3) a necessity to speak to prevent misleading the other party. *Graphic Commc'ns*, 850 N.W.2d at 695.

The State does not need to demonstrate actual consumer deception, damages, or that a consumer relied on a defendant's misleading conduct to prove a violation of the DTPA, FSAA, or CFA. Minn. Stat. §§ 325D.44, subd. 2 (eliminating need to prove "actual confusion or misunderstanding"); 325F.67 (providing for violation "whether or not pecuniary or other specific damage to a person occurs"); 325F.69, subd. 1 (eliminating need to prove "whether or not any person has in fact been misled, deceived, or damaged"); *State v. Alpine Air Prods., Inc.*, 500 N.W.2d 788, 790 (Minn. 1993) ("The legislature's intent is evidenced by the *elimination* of elements of common law fraud, such as proof of damages or reliance on misrepresentations."). Nor does the State need to prove specific intent to defraud or deceive. *301 Clifton Place L.L.C. v. 301 Clifton Place Condominium Ass'n*, 783 N.W.2d 551, 563 (Minn. Ct. App. 2010) ("Liability [under the Minnesota Consumer Fraud Act] does not require that the false statement be intentional."); *Church of the Nativity of Our Lord v. WatPro, Inc.*, 474 N.W.2d 605, 612 (Minn. Ct. App. 1991) ("Minnesota courts have held that a finding of negligent or unintentional misrepresentation violates the [Minnesota Consumer Fraud] Act.").

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

1. The State Adequately Alleges Glock's Deception by Material Omission.

The State's complaint sufficiently alleges Glock's deceptive conduct, including its material omissions, under these consumer protection statutes. Even if not outright deceptive on their own, Glock's repeated representations about the desirability and "fun" of "full-auto" Glock handguns, and the customizability of Glock handguns, become deceptive when paired with Glock's failure to disclose to consumers that Glock switches, and Glock handguns equipped with Glock switches, are illegal and incredibly dangerous. *See* Compl. at 1, 19–24, 30–34, 66–67, 69–70, 71–72, ¶¶ 2, 67–83, 106–11, 251, 265, 276.

The complaint sufficiently alleges Glock's material omissions. Glock's failure to disclose more about the illegality of machine guns—in connection Glock's advertisements about automatic weapons and customizability—are material to Glock's sale of handguns, because Glock's unmade disclosures are "basic to the transaction" and "may justifiably induce the [consumer] to act or refrain from acting." *Gerdin v. Princeton State Bank*, 371 N.W.2d 5, 8–9 (Minn. Ct. App. 1985), *aff'd*, 384 N.W.2d 868 (Minn. 1986). The complaint sufficiently alleges two "special circumstances" that render Glock liable for these omissions. *See Graphic Commc'ns*, 850 N.W.2d at 695. The complaint sufficiently alleges that Glock's special knowledge of its own handguns and how easily they could be equipped with Glock switches triggered Glock's duty to disclose the illegality of machine guns. *See* Compl. at 43, ¶¶ 151–52. The complaint also sufficiently alleges that Glock's representations were so incomplete that Glock was required to disclose more about the illegality of machine guns and Glock switches. Compl. at 43, ¶ 153. Glock does not challenge either of these allegations by the State.[13]

[13] Glock instead argues that there is no fiduciary relationship or "unequal access to information" between Glock and consumers, relying on *Cashman v. Allied Prods. Corp.*, 761 F.2d 1250 (8th Cir. 1985). Glock Mem. at 24–25. But Glock fails to analyze the actual allegations in the State's

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

2. The State Sufficiently Pled Glock's Specific Representations and Glock's Requisite Intent.

Glock's argument that its representations amount to "puffery" is unavailing. The nature of Glock's misrepresentations and material omissions here are specific and detailed. Glock advertises that "the only thing more fun than a [Glock] is a full-auto [Glock]," calls the automatic-fire toggle on one of its automatic handgun models the "fun switch," and constantly promotes how customizable its handguns' unique and "simple" design is, all while conveniently failing to warn consumers that using a Glock switch to have "fun" and take advantage of this customizability is flagrantly illegal and harmful. *See* Compl. at 1, 19, 33–34, ¶¶ 2, 69, 111. For example, Glock's website and social media posts are replete with specific representations promoting the customizability of Glock handguns as a key selling point. *See* Compl. at 19–24, ¶ 67–84. Glock's advertisements are not mere "generalized statements of product superiority" or "puffery," but instead are representations of the "specific or absolute characteristics of a product" that are actionable under Minnesota law. *Cf. LensCrafters, Inc. v. Vision World, Inc.*, 943 F. Supp. 1481, 1489 (D. Minn. 1996).

Glock also claims that some of its representations about the Glock 18 lack the requisite intent under the FSAA. Glock Mem. at 25. Under all three consumer protection statutes, however, the State does not need to establish that a defendant intended to defraud any person. Rather, the State need only show that misstatements were made "with the intent that others rely" on them. Minn. Stat. § 325F.69, subd. 1; *see also* 325D.45, subd. 1 ("Proof of . . . intent to deceive is not required."); 325F.67 (noting defendant need only have "intent to sell" to violate FSAA);

complaint under the test set forth by the Minnesota Supreme Court in *Graphic Communications*, which is binding precedent for determining when omissions are actionable under Minnesota's consumer protection statutes.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

McNamara v. Nomeco Bldg. Specialties, Inc., 26 F. Supp. 2d 1168, 1171 (D. Minn. 1998) (summarizing Minnesota case law and concluding that, "[s]imply stated, one making representations in the sale of consumer goods can be held liable, even though he had no specific intent to falsely mislead the consumer"); *see also 301 Clifton Place*, 783 N.W.2d at 563; *Nativity*, 474 N.W.2d at 612.

Glock appears to cabin this argument only to its advertisements regarding the Glock 18 and only to the FSAA, apparently conceding that the remainder of the representations alleged in the complaint meet the intent requirements of the FSAA, and that all of the representations meet the intent requirements of the CFA and DTPA. *Cf.* Glock Mem. at 25. But even the specific representations referenced by Glock about the Glock 18 promote more than the Glock 18—they are aimed at promoting the Glock brand and increasing sales of Glock handguns generally. *See* Minn. Stat. § 325F.67 (including marketing with "intent to increase the consumption thereof" in scope of FSAA). One of Glock's posts about the Glock 18 connects the Glock 18 to Glock's other handguns by claiming that "the only thing more fun than a [Glock] is full-auto [Glock]." Compl. at 31, ¶¶ 107–08. Glock even shows off the Glock 18 to visitors at its facility in Georgia, referring to the automatic-fire toggle as the "fun switch." Compl. at 33–34, ¶ 111. The complaint sufficiently alleges that Glock is making these representations with the intent that potential Glock handgun customers rely on them and are persuaded to purchase Glock semi-automatic handguns based on them.[14] Compl at 64–65, ¶¶ 236–39, 241.

[14] To the extent Glock makes a representation about its intent beyond the scope of what the State alleged in the Complaint ("the references to shooting a Glock 18 pistol being fun were not made with an 'intent to sell of in anywise dispose of' Glock 18 pistols to consumers," Glock Mem. at 25), this is also a fact question that is not appropriate for a motion to dismiss.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

3. Glock Did Not Move to Dismiss the State's Unfairness Allegations.

Finally, while Glock attacks the State's allegations of deceptive conduct alleged under the three laws, Glock completely fails to acknowledge that the State alleged more than just deception under two of these statutes. The CFA and DTPA both prohibit an "unfair or unconscionable practice," which is defined as "any method of competition, act, or practice that: (1) offends public policy as established by the statutes, rules, or common law of Minnesota; (2) is unethical, oppressive, or unscrupulous; or (3) is substantially injurious to consumers." Minn. Stat. §§ 325F.69, subds. 1 and 8; 325D.44, subds. 1 and 2(b). The State's complaint provides detailed allegations as to how Glock's conduct is unfair and unconscionable under each of these three tenets of unfairness, including by offending Minnesota's long-established public policy prohibiting machine guns. Compl. at 67–68, 70, ¶¶ 252–55, 266–69. Because Glock does not even contest the entirety of the State's CFA and DTPA claims, they must survive as a matter of law.

C. The State Has Adequately Plead Its Negligence Claim.

Glock's threadbare discussion of Minnesota negligence law omits directly applicable legal standards, ignores the relevant allegations in the complaint, and consequently, fails to demonstrate that the State's allegations, taken as true, do not state a claim for negligence. Rather, Glock reverts to its mantra that the State's injuries are caused by criminal conduct. But no party disputes that using a Glock switch to convert a Glock handgun is a crime. That fact is not dispositive, however, if the conversion of Glock handguns into machine guns and the resulting injuries and deaths are foreseeable.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

1. Glock Has a Duty of Care.

Glock incorrectly argues that there must be a "special relationship" between Glock and the State for Glock to owe a duty of care to the State. Glock Mem. at 26. Minnesota law is clear that a duty of care can arise absent a special relationship.

Regardless of the existence of a special relationship, "general negligence law imposes a general duty of reasonable care when the defendant's own conduct creates a foreseeable risk of injury to a foreseeable plaintiff." *Domagala v. Rolland*, 805 N.W.2d 14, 23 (Minn. 2011).

> In Minnesota, the duty to exercise reasonable care arises from the probability or foreseeability of injury to the plaintiff. In other words, when a person acts in some manner that creates a foreseeable risk of injury to another, the actor is charged with an affirmative duty to exercise reasonable care to prevent his conduct from harming others.

Id. at 26 (citation omitted). Minnesota law imposes such a duty when a defendant's conduct creates a dangerous situation and, in particular, recognizes that "firearms are so dangerous that extra care must be taken to guard against accidents." *Id.* (imposition of duty in dangerous situation); *Delgado v. Lohmar*, 289 N.W.2d 479, 484 (Minn. 1979) (recognizing the danger inherent in firearms). Foreseeability is determined by looking at "whether the specific danger was objectively reasonable to expect," or, in other words, whether the risk is "clear to the person of ordinary prudence." *Domagala*, 805 N.W.2d at 26–27.

The State's complaint alleges in detail that Glock has not only been aware for nearly 40 years that its handguns can be quickly and easily modified to fully automatic weapons using Glock switches, but also that Glock's founder personally demonstrated this capability in marketing the weapons. Compl. at 34–36, ¶¶ 112–21 (awareness of ease and frequency of conversion and Glock demonstration of conversion); *id.* at 36, ¶ 123 (admission to DHS agents that Glock is aware of switches featuring Glock logo); *id.* at 37, ¶ 127 (interaction with ATF regarding switches); *id.* at

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

38–40, ¶¶ 129–40 (public letters to Glock regarding switch proliferation from Congress and law enforcement and examples of widely reported shootings using converted Glocks). The complaint also alleges that, despite knowing for decades that Glock's guns are easily converted into fully automatic guns, Glock continues to manufacture and sell guns susceptible to easy conversion. Compl. at 1, ¶ 1 (continuing sale); *id.* at 29–30, ¶¶ 100–04 (current Glock 17 and 19 generation remains susceptible to easy conversion). The State further alleges the extreme danger to the public that switch-equipped Glocks present. Compl. at 13–14, ¶¶ 47–52. Finally, the State alleges that Glock refused to alter its design even after learning that its handguns were frequently being converted into fully automatic weapons. Compl. at 34–43, ¶¶ 112–50.

These allegations in the State's complaint, and others, more than adequately allege that Glock has created a risk of serious injury or death for Minnesota residents by designing, manufacturing, and selling handguns that are frequently and easily converted into fully automatic guns. The allegations of the complaint, taken as true at this stage, also establish that the risks posed by Glock's continued manufacture and sale of easily convertible handguns are foreseeable. Glock has known that its design facilitates conversion to fully automatic for nearly 40 years, and Glock is aware that, in recent years, Glock handguns are, in fact, being converted. There can be little doubt that a reasonable person in Glock's shoes would understand the danger created by Glock's conduct. Nowhere in Glock's motion to dismiss does Glock make even a conclusory assertion that the risks are not foreseeable to Glock. Glock Mem. at 26–31.

In sum, the State's complaint more than adequately alleges that Glock owes the State a duty of reasonable care due to its conduct in creating a dangerous situation with foreseeable risks to the State of Minnesota and its residents. In fact, these risks have been explicitly spelled out to Glock before this lawsuit. Compl. at 38–43, ¶¶ 129–50. The complaint, in alleging that Glock

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

continues to manufacture and sell easily convertible handguns, despite the known risks and despite Glock's ability to alter its design, also sufficiently pleads that Glock has breached its duty to the State.

2. Glock's Negligence Was a Proximate Cause.

Glock's argument that the State, as a matter of law, cannot establish that Glock's negligence was a proximate cause of the State's injuries should be rejected, as demonstrated above in Part I.B.3.

D. The State Adequately States a Claim for Product Liability.

The State's complaint adequately pleads its product liability claim on both design defect and failure to warn theories.

1. The State Adequately Pleads a Design Defect Claim.

The elements of a design defect claim under Minnesota law are that a product is defective when it leaves the manufacturer's control and the defect was the proximate cause of the injury sustained. *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 387 (Minn. Ct. App. 2004); *Drager by Gutzman v. Aluminum Indus. Corp.*, 495 N.W.2d 879, 882 (Minn. Ct. App. 1993). To determine whether a product is defective in the first place, the factfinder considers whether the manufacturer has exercised "that degree of care in his plan or design so as to avoid any unreasonable risk of harm to anyone who 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.*" *Drager*, 495 N.W.2d at 882 (emphasis in original).

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

Glock argues that the State's product liability claim is fatally flawed because the State does not allege that Glock handguns are defective when they leave Glock's control.[15] Glock Mem. at 29. Glock is wrong. The State alleges that Glock's most common handgun design unreasonably facilitates the gun's straightforward and easy conversion into a machine gun using Glock switches and that Glock's use of that design creates unreasonable risks of harm to those exposed to the product when used as intended, or in unintended but foreseeable uses. Compl. ¶¶ 288–92; *see also* Compl. ¶¶ 85–98 (discussing the specific aspects of Glock's defective design that facilitates simple conversion of its handguns to machine guns using Glock switches).

Thus, the State pleads ample facts that would allow a person of ordinary prudence to conclude that Glock's handgun design exposes the State and its residents to unreasonable risks. Glock handguns are foreseeably converted to machine guns using Glock switches, and the State and its residents have in fact been injured by Glock's implementation of its design. Glock's conclusory suggestion that the Court should conclude as a matter of law that Glock has exercised reasonable care in designing Glock handguns amounts to *ipse dixit* at this stage of the litigation, wholly unsupported by facts justifying such a conclusion.

2. The State Adequately Pleads a Failure to Warn Claim.

To bring a product liability claim based on a failure to warn theory, the State must allege three elements: (1) that Glock has a duty to warn of the dangers of converting its handguns to fully automatic, (2) that Glock breached that duty by failing to warn or providing an inadequate warning, and (3) that the State's injuries are caused by Glock's failure to warn. *Germann v. F.L. Smithe Mach. Co.*, 395 N.W.2d 922, 924 (Minn. 1986); *Huggins v. Stryker Corp.*, 932 F. Supp. 2d 972,

[15] Glock also argues that the State's product liability claim fails for the same reasons that its negligence claim fails. Glock Mem. at 29. The State adequately pled its negligence claim for the reasons demonstrated above.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

986 (D. Minn. 2013).[16] The State's complaint alleges each of these elements. Compl. ¶¶ 293–95, 300–01.

As was the case with the State's negligence claim, foreseeability remains the keystone in analyzing whether a duty exists. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 629 (Minn. 2017) ("For both design-defect and failure-to-warn claims, a manufacturer's duty 'arises from the probability or foreseeability of injury to the plaintiff.'"); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 99 (Minn. 1987) ("Even though a product may not be defectively designed so as to be dangerous to one who properly uses it, a duty to warn may exist if a manufacturer has reason to believe a user or operator of it might so use it as to increase the risk of injury.").

The State alleges in detail that Glock has, for years, promoted the "fun" of using fully automatic Glock handguns to the public, despite knowing that fully automatic Glock handguns are both illegal and dangerous for the public to use. Compl. at 1–2, 18, ¶¶ 2, 66. Glock also promoted the customizability of Glock handguns, while being aware that its customers are in fact converting its handguns into machine guns using Glock switches with regularity. Compl. at 34–36, ¶¶ 112–21 (awareness of ease and frequency of conversion and Glock demonstration of conversion); *id.* at 36, ¶ 123 (admission to DHS agents that Glock is aware of switches featuring Glock logo); *id.*

[16] Glock also argues that, "to state a valid failure to warn claim, a plaintiff must establish causation on the basis that the product user would have acted differently." Glock Mem. at 31. This argument is incorrect for at least two reasons. First, this argument misstates the State's burden at the motion to dismiss stage. As discussed above, the State need not "establish" anything as a matter of fact at the motion to dismiss stage under Minnesota's liberal notice pleading standard. Second, the Minnesota cases Glock cites for this proposition merely state that causation is an element of the claim, not that causation must be proven specifically by evidence that a user would have acted differently if warned. *Erickson By & Through Bunker v. Am. 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); *see also Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 99 (Minn. 1987) (holding that trial court properly submitted question of causation to jury in failure-to-warn case despite lack of record evidence of how plaintiff would have acted if warned).

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

at 37, ¶ 127 (interaction with ATF regarding switches); *id.* at 38–40, ¶¶ 129–40 (public letters to Glock regarding switch proliferation from Congress and law enforcement and examples of widely reported shootings using converted Glocks); *id.* at 22–23, ¶¶ 76, 80 (responses to Glock social media).

Under these circumstances, it is more than reasonable to conclude that the improper use of Glock handguns alleged by the State is foreseeable to Glock and that Glock accordingly has a duty to warn of the dangers and illegality of converting its handguns to be fully automatic weapons. Glock argues, essentially, that there can be no duty to warn here because that would cause a parade of horribles in which Glock would have to warn Glock owners not to commit murder and other violent crimes. The obvious difference between the conduct alleged in this case and Glock's hypothetical is that Glock actively promotes the fun of using fully automatic Glock pistols that civilians are prohibited from owning.

It is similarly reasonable at this stage of the litigation, taking the State's allegations as true, to conclude that Glock breached its duty to warn by providing no warning at all or inadequate warnings. Glock does not claim to have made any kind of warning about the illegality and dangerousness of Glock handguns converted into machine guns.

E. The State's Aiding and Abetting Negligence Per Se Claim Is Cognizable.

Glock makes three arguments that the State's aiding and abetting negligence per se claim (Count II) "fails."[17] Glock Mem. at 10. Glock's arguments should be rejected.

[17] Glock's motion to dismiss makes this argument in the context of PLCAA's negligence per se exception.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

First, Glock argues that Minnesota Statutes section 609.67 "cannot be used as the basis for negligence per se." Glock Mem. at 11–12. Glock's exact argument was recently made to and rejected by the United States District Court for the District of Minnesota:

> [Defendant] argues that statute protects too broad a group for violation of the statute to constitute negligence per se. But the laws at issue are specifically designed to protect Minnesotans from gun violence, rather than just to promote the general welfare of the state. The Court is not persuaded that a statute cannot be the basis for a negligence per se claim simply because it results in protection for too many people.

Fleet Farm LLC, 679 F. Supp. 3d at 847 (rejecting defendant's argument based on *Kronzer v. First Nat'l Bank of Minneapolis*, 305 Minn. 415, 424, 235 N.W.2d 187 (1975), that "negligence per se is not applicable because these statutes do not protect a group that is specific enough and thus 'within the intended protection of the statute'").

Minnesota Statutes section 609.67 is intended to protect Minnesotans from gun violence. Protecting Minnesotans from Glock's aiding and abetting of violations of Minnesota's prohibition on machine guns is precisely "the harm contemplated by the statute[s] and the class of persons the statute[s] intended to protect." *Perry*, 650 F. Supp. 3d at 754–55. Thus, violating this statute constitutes negligence per se under Minnesota law. *Seim v. Garavalia*, 306 N.W.2d 806, 810 (Minn. 1981) ("Negligence per se is a form of ordinary negligence that results from violation of a statute.").

Second, Glock argues that the requirements for aiding and abetting liability are not satisfied. Glock Mem. at 12–14. Glock begins by citing and discussing the wrong standard—that for *criminal* aiding and abetting liability—which is not applicable in this civil action. *Id*. at 12 (citing Minn. Stat. § 609.05, Liability for Crimes of Another). Glock then admits that, under Minnesota law, the knowledge and substantial assistance elements of a civil claim for aiding and abetting are evaluated "in tandem," such that if "there is a minimal showing of substantial

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

assistance there must be a greater showing of scienter" and vice versa. Glock Mem. at 13 (quoting *Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 187 (Minn. 1999)). Glock wrongly asserts, without citing any support, that "Minnesota law regarding the requirements for aiding and abetting liability is consistent with federal law."[18] Glock Mem. at 13.

The State has adequately alleged all three elements of a claim for aiding and abetting the tortious conduct of another under Minnesota law:

> (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 substantially assist or encourage the primary tort-feasor in the achievement of the breach.

Witzman v. Lehrman, Lehrman & Flom, 601 N.W.2d 179, 187 (Minn. 1999).

The State alleges that individuals who have attached Glock switches to Glock handguns have committed the tort of negligence per se via violation of Minnesota Statutes section 609.67 and caused injury to the people of Minnesota. Compl. at 64, ¶¶ 234–35. The State also alleges that Glock knows that attaching Glock switches to Glock handguns is against the law (and thus, a breach of duty via negligence per se). *Id*. at 9–11, ¶¶ 35–43. The State further alleges that, although only substantial assistance *or* encouragement is required, Glock has done both. Glock has provided substantial assistance to those who equip Glock handguns with switches by knowingly designing its handguns to be easily switchable to machine guns and not changing this design despite knowing about the proliferation of Glock switches and resulting harm. *Id*. at 2, ¶¶ 4; *id*. at 4, ¶12; *id*. at 16–

[18] The federal decision on which Glock relies, *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), does not govern the elements of aiding and abetting under Minnesota law, which are different. Rather, *Taamneh* concerned the elements for a claim under the federal Antiterrorism Act, which authorizes civil suits in limited circumstances against a person who "aids and abets . . . an act of international terrorism." 18 U.S.C § 2333.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

18, ¶ 58–66. Glock has also encouraged people to turn Glock semi-automatic handguns into machine guns with Glock switches by promoting Glock's machine gun—the Glock 18—to the public as "fun," even though the public cannot purchase this machine gun. Compl. at 30–34, ¶¶ 106–111.

Finally, Glock argues that aiding and abetting negligence per se is not "feasible" because aiding and abetting liability is limited to aiding and abetting "an intentional tort." Glock Mem. at 12 n.7. The decision Glock cites says no such thing. *See generally Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 186 (Minn. 1999). Glock appears to misunderstand the quoted language from *Witzman*, which merely states that "defendants must know that the conduct they are aiding and abetting is a tort." *Witzman*, 601 N.W.2d at 186. Negligence per se is a tort, and *Witzman* did not limit a "tort" to only an "intentional tort." Moreover, *Witzman* followed the Restatement (Second) of Torts, and "[t]he Restatement endorses aiding and abetting liability 'both when the act done is [intentional] and when it is merely a negligent act.'" *In re McKinsey & Co., Inc. Nat'l Prescription Opiate Litig.*, MDL No. 3084, 2024 WL 2261926, at *16 (N.D. Cal. May 16, 2024) (quoting Restatement (Second) of Torts § 876(b) cmt. d.).

The State has sufficiently alleged a claim of aiding and abetting negligence per se.

III. The State's Action Does Not Violate the United States Constitution.

Glock summarily argues that the relief sought by the State in this lawsuit is unconstitutional. But under established law, the State's action does not violate the First Amendment or the Second Amendment.

A. The State's Action Against Glock Does Not Violate the First Amendment.

Glock's invocation of the First Amendment is without merit. The State's action is based on Glock knowingly facilitating and promoting the conversion of Glock handguns into illegal

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

machine guns, including through advertisements and social media campaigns. Such commercial speech that is deceptive and promotes unlawful conduct receives no First Amendment protection.

1. Glock's Advertisements and Social Media Posts Are Commercial Speech.

Glock wrongly asserts that the commercial speech doctrine applies only to speech that "propose[s] a commercial transaction." Glock Mem. at 32. The United States Supreme Court has identified the factors courts should consider when deciding whether speech is commercial: "(i) whether the communication is an advertisement, (ii) whether it refers to a specific product or service, and (iii) whether the speaker has an economic motivation for the speech." *Porous Media Corp. v. Pall Corp.*, 173 F.3d 1109, 1120 (8th Cir. 1999) (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66–67 (1983)). Under this approach, "speech connected with the sale of a good or a service—promoting the product or service, explaining it, or giving warnings about it—is commercial." *Md. Shall Issue, Inc. v. Anne Arundel Cnty.*, 91 F.4th 238, 248 (4th Cir. 2024) (citing *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 561 (1980)). Applying these factors, Minnesota courts have specifically rejected Glock's narrow definition of commercial speech. *Minn. League of Credit Unions v. Minn. Dep't of Commerce*, 486 N.W.2d 399, 403 (Minn. 1992). Instead, "we use 'common sense' in determining whether a rule regulated commercial speech." *Id.*

Glock's advertisements and social media campaigns referenced in the complaint are plainly commercial speech. Glock's statements on its website are designed to encourage consumers to purchase Glock products.[19] Likewise, Glock's social media posts engage with customers to

[19] Several of the challenged statements are those in which Glock compares the simple design of its handguns to those of its competitors. *See* Compl. at 19, ¶ 69 ("Glock's website celebrates that its handguns are 'manufactured with only 34 component parts, significantly less than our competitors' semi-automatic pistol designs.'").

increase profits and help establish Glock's reputation as the leading handgun manufacturer.[20] Thus, all of Glock's statements cited in the complaint are commercial speech—*i.e.*, informational and promotional speech for advertising specific products for which Glock has a clear economic motivation.

2. Glock's Commercial Speech Is Deceptive and Promotes Unlawful Conduct and Is Therefore Not Protected Under the First Amendment.

Courts provide commercial speech with only "a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values." *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978); *see also State v. Casino Mktg. Grp.*, 491 N.W.2d 882, 887 (Minn. 1992) ("Both the United States Supreme Court and this court have stopped far short of extending absolute free speech protection to commercial speech."). If "commercial speech concerns unlawful activity or is misleading . . . the speech is not protected by the First Amendment." *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 367 (2002); *see also 1-800-411-Pain Referral Serv., LLC v. Otto*, 744 F.3d 1045, 1056 (8th Cir. 2014) ("[T]he threshold inquiry for assessing commercial speech restrictions is whether the speech at issue is misleading or concerns unlawful activity.").

Here, Glock's advertising is deceptive, misleading, and unfair—and promotes illegal activity. Despite knowing that its semi-automatic handguns are easily and frequently converted into fully automatic weapons with Glock switches, Glock continues to promote the "fun" of its

[20] Glock's "what do you like most about the design of your GLOCK" and the #MyGlock campaigns are meant to engage current and potential consumers and promote and provide information about Glock's products. *See* Compl. at 21–23, ¶¶ 74–80 (describing Glock's social media campaigns meant to promote its Glock semi-automatic handguns). Similarly, Glock's social media posts promoting its Glock 18 fully automatic handgun are advertisements not just for the specific product but for the entire brand. *See* Compl. at 31–33, ¶¶ 107–11 (identifying and describing Glock's Instagram posts that celebrate the "fun" of Glock's fully automatic weapons).

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

fully automatic Glock 18 handgun to an audience that is largely unable to purchase it. *See* Compl. at 31–33, ¶¶ 107–11. Notably, Glock's social media posts include multiple comments from consumers promoting or asking about Glock switches or how the user can purchase a fully automatic handgun. *Id.* Glock's promotion of the uniquely simple and easy design of its semi-automatic handguns is likewise problematic. *See* Compl. at 19–20, ¶¶ 67–70. Glock showcases the simplicity of its design, and Glock encourages consumers to leverage this simple design to customize their handguns.[21] Accordingly, Glock's commercial speech is not subject to First Amendment protections.

Even if the Court were to conclude both that Glock's commercial speech is not misleading *and* that it concerns lawful activity, Glock's First Amendment claim would be subject to only intermediate scrutiny—not strict scrutiny as Glock suggests. Under intermediate scrutiny for commercial speech, the court considers whether (i) a substantial government interest has been asserted, (ii) the regulation directly advances the governmental interest, and (iii) there is a "reasonable fit" between the ends and means chose to accomplish it. *See Minn. League of Credit Unions*, 486 N.W.2d at 403. The State's action would survive such intermediate scrutiny because the State has a substantial interest in promoting public safety by reducing gun violence and seeks a reasonably tailored injunction preventing Glock only from engaging in advertising and other activity that violates Minnesota law.

[21] Glock has launched several social media campaigns to promote the ease with which consumers can customize and personalize their Glock handguns. Compl. at 21–23, ¶¶ 74–80. For example, Glock's website boasts that its handguns are "manufactured with only 34 component parts, significantly less than our competitors' semi-automatic pistol designs." Glock brags about how easy it is to disassemble its guns: "[t]he design of GLOCK modern firearms enables them to be field stripped into four main components without tools in seconds." *See* Compl. at 19–20, ¶¶ 67–72.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

3. Disclosure Requirements of Commercial Speech Are Constitutionally Permissible.

Glock's argument that the State is attempting to "force Glock, Inc. to change its speech" is unavailing. As a threshold matter, Glock directs the Court to the wrong standard for analysis of disclosure requirements. *See* Glock Mem. at 34. "[T]he extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides," so any interest Glock has "in *not* providing any particular factual information in [its] advertising is minimal." *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 471 U.S. 626, 651 (1985) (internal citation omitted). Therefore, "[warnings] or [disclaimers] might be appropriately required . . . in order to dissipate the possibility of consumer confusion or deception." *Id.* (internal quotation marks omitted).

Here, disclaimers on Glock's advertising regarding the illegality of machine guns and Glock switches is "reasonably related to the State's interest in preventing deception of consumers" and promoting public safety and would not be "unjustified or unduly burdensome to the point that they offend the First Amendment." *Otto*, 744 F.3d at 1062 (citing *Zauderer*, 471 U.S. at 651).

Glock's First Amendment arguments do not warrant dismissal of the State's action.

B. The State's Requested Relief Against Glock Does Not Violate the Second Amendment.

At the end of Glock's motion to dismiss, Glock flatly and incorrectly declares in two paragraphs that the State's request for injunctive relief somehow violates the Second Amendment. At the outset, Glock mischaracterizes the State's requested relief. Such relief would not "prohibit individuals anywhere in the United States from being able to acquire new Glock pistols," as Glock wrongly states. Glock Mem. at 34–35. Instead, as one of several requests for relief, the State requests that the Court order Glock to modify the design of select handgun models that are sold to

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

the public in Minnesota and can easily be converted into illegal—and dangerous—machine guns. Compl. at 76, ¶4. Such relief does not violate the Second Amendment. *See New York v. Arm or Ally, LLC*, 718 F. Supp. 3d 310, 334–36 (S.D.N.Y. 2024) (upholding an action by the New York Attorney General imposing civil liability against firearm manufacturers for failing to prevent unlawful use of their products).

To raise a Second Amendment challenge, Glock has the burden of demonstrating that "the Second Amendment's plain text covers [the] individual's conduct" at issue. *See New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). Glock cannot satisfy this burden. Glock does not have a freestanding right to sell firearms. *See Gazzola v. Hochul*, 645 F. Supp. 3d 37, 64 (N.D.N.Y. 2022), *aff'd*, 88 F.4th 186 (2d Cir. 2023) (holding that firearms sellers were not likely to succeed on a Second Amendment challenge because the Amendment's text "makes no mention of buying, selling, . . . or otherwise engaging in the business of firearms"); *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 678, 682–83 (9th Cir. 2017) (holding that the Second Amendment does not protect an "independent right to sell or trade weapons").

Nor does the Second Amendment provide Glock's customers with a right to purchase a specific make and model of firearm, especially when that specific firearm can be easily converted into a machine gun. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (emphasizing that "nothing in our opinion should be taken to cast doubt" on "longstanding" provisions that "impose conditions and qualifications on the commercial sale of firearms" and acknowledging the "important limitation" on the Second Amendment of the prohibition on "the carrying of dangerous and unusual weapons") (quotation omitted); *cf. Teixeira*, 873 F.3d at 682–83 (permitting restrictions on firearm sales by sellers "as long as [consumers'] access [to firearms] is not meaningfully constrained"). Glock has thus failed to "rebut the presumption of lawfulness that

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

attaches" to the "conditions and qualifications on the commercial sale of firearms" the State seeks to enforce here. *See Arm or Ally*, 718 F. Supp. 3d at 335; *see also State v. Craig*, 826 N.W.2d 789, 793–96 (Minn. 2013) (granting a heavy presumption in favor of the government when laws identified by *Heller* as "presumptively lawful" are challenged under the Second Amendment).

Only if Glock demonstrates that the relief the State requests would infringe on conduct covered by the plain text of the Second Amendment would a court engage in analysis to determine if the relief is consistent with this nation's historical tradition. *See Bruen*, 597 U.S. at 17. Here, even if Glock could carry its burden to show that the plain text of the Second Amendment protects Glock's ability to sell Glock handguns that are easily convertible into machine guns—which it cannot—the State's action would still be allowed to proceed because it seeks relief that is "consistent with the Nation's historical tradition of firearm regulation." *Id.* Indeed, the United States District Court for Minnesota upheld the federal prohibition on possessing machine guns in a Second Amendment challenge brought by a criminal defendant who possessed a Glock converted with a switch. *United States v. Hart*, No. 23-cr-293, 2024 WL 992632, at *4–6 (D. Minn. Jan. 3, 2024) (concluding that federal prohibitions on switches and other machine gun conversion devices remain consistent with our Nation's historical tradition of firearm regulation); *see also Arm or Ally*, 718 F. Supp. at 335–36 (holding public nuisance and consumer protection laws that regulate ghost gun manufacturers were supported by early historical precedents significantly controlling firearm manufacturing and sales). Minnesota's prohibition on machine gun possession is likewise constitutional under *Bruen*'s framework, and the State may take action to enforce compliance with the law.

CONCLUSION

For the foregoing reasons, the Court should deny Glock's motion to dismiss.

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

Dated: April 23, 2025

KEITH ELLISON
Attorney General
State of Minnesota

JAMES W. CANADAY (#030234X)
Deputy Attorney General

/s/ Katherine A. Moerke
KATHERINE A. MOERKE (#0312277)
JASON PLEGGENKUHLE (#0391772)
ERIC J. MALONEY (#0396326)
JACOB HARRIS (#0399255)
JON M. WOODRUFF (#399453)
SARAH DOKTORI (#0403060)
Assistant Attorneys General

445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
james.canaday@ag.state.mn.us
Telephone: (651) 757-1421
katherine.moerke@ag.state.mn.us
Telephone: (651) 757-1288
jason.pleggenkuhle@ag.state.mn.us
Telephone: (651) 757-1147
eric.maloney@ag.state.mn.us
Telephone: (651) 757-1021
jacob.harris@ag.state.mn.us
Telephone: (651) 857-1156
jon.woodruff@ag.state.mn.us
Telephone: (651) 300-7425
sarah.doktori@ag.state.mn.us
Telephone: (651) 757-1029

GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE

DAVID PUCINO (*pro hac vice*)
WILLIAM T. CLARK (*pro hac vice*)
LEKHA MENON (*pro hac vice*)

244 Madison Avenue, Ste 147
New York, NY 10016
Telephone: (202) 808-8654
dpucino@giffords.org
wclark@giffords.org
lmenon@giffords.org

ESTHER SANCHEZ-GOMEZ (*pro hac vice*)
268 Bush Street, #555
San Francisco, CA 94104
Telephone: (202) 808-8654
esanchezgomez@giffords.org

KELLY M. PERCIVAL (*pro hac vice*)
P.O. Box 51196
Washington, DC 20091
Telephone: (202) 808-8654
kpercival@giffords.org

UNIVERSITY OF MINNESOTA GUN VIOLENCE PREVENTION CLINIC

MEGAN WALSH (#0394837)
MARIA AQUINO-DURAN (#0395054)
Special Assistant Attorneys General

EMILY BYERS OLSON
ROSE LEWIS
MELISSA HARTLEY
SAVANNAH KLEIN
Certified Student Attorneys

University of Minnesota Law School
190 Mondale Hall
229 19th Avenue South
Minneapolis, MN 55455
Phone: (612) 625-5515
wals0270@umn.edu
aquin061@umn.edu
hartl303@umn.edu
byers064@umn.edu
lewi780@umn.edu
klei0553@umn.edu

Attorneys for State of Minnesota

Filed in District Court
State of Minnesota
4/23/2025 11:11 AM

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.

/s/ Katherine A. Moerke
Katherine A. Moerke
Assistant Attorney General