STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota, by its Attorney General, Keith Ellison,

Plaintiff,

vs.

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

Defendant.

Court File No. 27-CV-24-18827

**ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS**

The above-entitled matter came duly before the Honorable Christian Sande, Judge of the above-named court, on Friday, May 23, 2025 at the Hennepin County Government Center, Minneapolis, Minnesota.

Katherine Moerke, Attorney at Law, appeared on behalf of Plaintiff;

Christopher Renzulli, Attorney at Law, appeared on behalf of Defendants.

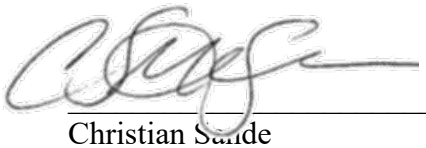
Based upon all the files, records, and proceedings in this case, and the Court being fully advised in the premises,

**IT IS HEREBY ORDERED:**

1. Defendants' Motion to Dismiss is **DENIED.**
2. The attached Memorandum is incorporated by reference in this Order.
3. All prior and consistent orders shall remain in full force and effect.
4. Service of a copy of this order shall be made upon self-represented parties by first class U.S. mail at their address(es) last known to the Court Administrator, or to attorneys by e-service, which shall be due and proper service for all purposes.

Dated: August 21, 2025

**BY THE COURT:**




Christian Sande
Judge of District Court

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## MEMORANDUM

## I. Background

The State of Minnesota filed this case on December 12, 2024. The State alleges firearm manufacturer and dealer Glock, Inc. and its Austrian parent company, Glock Ges.m.b.H. ("Glock Austria," and collectively with Glock, Inc., "Defendants") have caused significant harm in Minnesota due to Glock's design and promotion of handguns susceptible to illegal modification into automatic firearms by the addition of a Glock switch or illegal conversion device. The State asserts the following seven claims:

- Count 1 – Public Nuisance
- Count 2 – Aiding and Abetting Negligence Per Se
- Count 3 – Prevention of Consumer Fraud Act (Minn. Stat. § 325F.69)
- Count 4 – Deceptive Trade Practices Act (Minn. Stat. § 325D.44)
- Count 5 – False Statement in Advertising (Minn. Stat. § 325F.67)
- Count 6 – Negligence
- Count 7 – Products Liability

On February 3, 2025, Defendant Glock, Inc. filed a Notice of Motion and Motion to Dismiss the State's Complaint pursuant to Minn. R. Civ. P. 12.02(e) and the State's failure to state a claim upon which relief can be granted. On February 20, 2025, Glock, Inc. filed its Memorandum of Law in Support of Its Motion to Dismiss and other supporting papers. On April 2, 2025, following proper service of the State's Complaint on Glock Austria under the Hague Convention, Glock Austria filed its own Notice of Motion and Motion to Dismiss joining Glock, Inc.'s Motion to Dismiss with respect to two of the three arguments asserted. Glock Austria did not join Glock, Inc's Motion as to any arguments based on the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901–03 ("PLCAA").[1]

[1] Def. Glock Ges.m.b.H Joinder Mem. of Law in Supp. of Mot. to Dismiss 2, ¶ 4, Apr. 2, 2025 ("Glock Ges.m.b.H does not join the arguments pursuant to the Protection of Lawful Commerce in Arms Act . . . set forth in and under Section II of Glock, Inc.'s Memorandum of Law.").

On April 23, 2025, the State filed its Memorandum of Law in Opposition to Defendants' Motion to Dismiss. On May 14, 2025, Defendants filed a Reply Memorandum in Further Support of Motions to Dismiss. On May 23, 2025, the Court heard oral argument on Defendants' Motions to Dismiss and took the matter under advisement.

On June 6, 2025, the Court issued Findings and Order for Written Submissions requesting further briefing from the parties regarding implications (if any) of the United States Supreme Court's decision in *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025). On June 20, 2025, both parties submitted letter briefs in response to the Court's June 6, 2025 Order.

## II. Legal Standard

Pursuant to Minnesota Rules of Civil Procedure Rule 12.02(e), a complaint that fails to state a claim upon which relief may be granted is subject to dismissal. "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014); *see also* Minn. R. Civ. P. 8.01 (requiring that a complaint only "contain a short and plain statement of the claim showing that the pleader is entitled to relief"). Stated differently, "[a] district court may only dismiss a complaint under Rule 12.02(e) 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.'" *Finn v. Alliance Bank*, 860 N.W.2d 638, 653 (Minn. 2015) (quoting *Walsh*, 851 N.W.2d at 602 (Minn. 2014)). Thus, "dismissals under rule 12.02(e) are generally disfavored." *Jacobson v. Bd. of Trustees of the Tchrs. Ret. Assn.*, 627 N.W.2d 106, 109 (Minn. Ct. App. 2001).

When determining whether a complaint has stated a claim upon which relief may be granted under Minn. R. Civ. P. 12.02(e), courts consider "only the facts alleged in the complaint, accepting

those facts as true and [construing] all reasonable inferences in favor of the nonmoving party." *Finn*, 860 N.W.2d at 653 (citations omitted). The court is "not bound by legal conclusions stated in a complaint." *Walsh*, 851 N.W.2d at 603 (citing *Herbert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008)). A plaintiff also cannot rely on mere "labels and conclusions" to defeat a Rule 12.02(e) motion to dismiss. *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010). When a complaint has failed to state a claim upon which relief may be granted, dismissal with prejudice is appropriate. *See Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 748 (Minn. 2000).

Because Defendants have filed their Motions to Dismiss pursuant to Minn. R. Civ. P. 12.02(e), the Court will accept all factual allegations in the State's Complaint as true and will construe all reasonable inferences in the State's favor. *See Finn*, 860 N.W.2d at 653.

## III. Analysis

Defendant Glock, Inc. argues the State's Complaint should be dismissed because the Complaint (1) is barred by the immunity provided by the PLCAA,[2] (2) fails to state valid claims pursuant to Minnesota law,[3] and (3) seeks unconstitutional relief under the First and Second Amendment of the United States Constitution.[4] Glock Austria joins and adopts Glock, Inc's arguments,[5] except for the PLCAA.[6]

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[2] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 6–21, Mar. 20, 2025.

[3] *Id.* at 21–31.

[4] *Id.* at 31–35.

[5] Def. Glock Ges.m.b.H Joinder Mem. of Law in Supp. of Mot. to Dismiss 2, ¶ 3, Apr. 2, 2025.

[6] *See supra* note 1 and accompanying text. The Protection of Lawful Commerce in Arms Act limits which gun manufacturers and sellers can be protected from certain civil lawsuits by defining "manufacturer" and "seller" in a manner that requires licensure under United States firearms laws. 15 U.S.C. § 7903(2), (6). Glock Austria concedes that it is not a "manufacturer" or "seller" under the PLCAA and does not join in Glock, Inc.'s immunity argument. Thus, the Court's analysis regarding the PLCAA only applies to Glock, Inc.

The State contends that while the PLCAA limits what civil actions may be brought against gun manufacturers and sellers, the PLCAA recognizes six categorical exceptions. The State argues that its Complaint fits within three of the six exceptions, and therefore its action against Glock, Inc. is not barred by the PLCAA.[7] The State next argues that all seven of its claims are cognizable under Minnesota law,[8] and its action is not unconstitutional pursuant to the First and Second Amendment.[9]

**A. Immunity Under the Protection of Lawful Commerce in Arms Act (PLCAA)**

The PLCAA prohibits initiating a "qualified civil liability action" in any federal or state court.[10] 15 U.S.C. § 7902(a). A "qualified civil liability action" is defined as:

> 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 . . . .

*Id.* § 7903(5)(A).

Six specific types of actions are expressly excluded from the "qualified civil liability action" definition. The three exceptions relevant to this lawsuit are:

> (ii) an action brought against a seller for negligent entrustment or negligence per se;
>
> (iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought . . .;
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> ***

[7] Mem. of Law in Opp'n to Mot. to Dismiss by Glock, Inc. and Glock Ges.M.b.H 6–19, Apr. 23, 2025.

[8] *Id*. at 19–37.

[9] *Id*. at 37–43.

[10] One of Congress's stated purposes for enacting the PLCAA was to "prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended." 15 U.S.C. § 7901(b)(1).

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

*Id.* § 7903(5)(A)(ii)-(iii), (v).

Because the PLCAA only applies to a "qualified civil liability action" and the six exceptions likewise apply to "an action," if an individual claim—as part of a civil action—fits into one of the exceptions, the entirety of the case is necessarily allowed to proceed. *See* 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 action to be known as 'civil action.'").

A substantial body of case law supports this conclusion, including an opinion from the U.S. District Court for the District of Minnesota: "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." *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 840–41 (D. Minn. 2023).[11] Thus, in this case, if any one of the State's claims fits within an exception to the PLCAA's "qualified civil liability action" definition, the State's entire action proceeds.

[11] *See also City of Kansas City, Missouri v. Jimenez Arms*, *Inc. et al.*, Case No. 2016-CV00829, at 4–5 (Mo. Cir. Ct. Nov. 17, 2022) ("[B]ecause the Court finds the predicate exception applicable to this action, there is no need to engage in a claim-by-claim analysis."); *Corporan v. Wal-Mart Stores E., LP*, No. 16-2305-JWL, 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.*, 13 N.Y.S. 3d 777, 787 (N.Y. Sup. Ct. 2014) (summarizing case law that determined "as long as one PLCAA exception applies to one claim the entire action continues," before determining "this 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.*, 952 N.Y.S.2d 333, 339–40 (N.Y. App. Div. 2012), *amended by* 962 N.Y.S.2d 834 (N.Y. App. Div.

Glock, Inc. argues the State's action fits within the "qualified civil liability action" definition,[12] none of State's individual claims fit within the six exceptions,[13] and, therefore, the State's action against Glock, Inc. must be dismissed under PLCAA immunity.[14] The State does not dispute its action falls within the "qualified civil liability action" definition; rather, the State contends that three of the six exceptions apply, and its action against Glock, Inc. is not barred.[15] The State argues the predicate, negligence per se, and product defect exceptions apply.[16]

**1. Predicate Exception**

Pursuant to the third exception to its "qualified civil liability action" definition, the PLCAA does not bar "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

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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. . . ." (citations omitted)). *But see Doyle v. Combined Sys., Inc.*, No. 3:22-CV-01536-K, 2023 WL 5945857, at *6–7 (N.D. Tex. Sept. 11, 2023) (concluding "the defense set forth in the PLCAA as one that may apply to some of Plaintiffs' claims but not others" because "a prohibition on suits rather than claims would permit claims Congress sought to foreclose"). *See generally Ramos v. Wal-Mart Stores, Inc.*, 202 F.Supp.3d 457, 464–66 (E.D. Pa. 2016) (weighing whether "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" or if a claim-by-claim analysis is required).

[12] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 7–9, Mar. 20, 2025 ("Based on the allegations in the Complaint, this case is a civil proceeding brought by a person (the State) against a manufacturer (Glock, Inc.) of qualified products (Glock pistols) for damages and other relief based on the criminal use (the illegal conversion of Glock pistols to machine guns by the installation of MCDs and the use of the Modified Glock Pistols to commit crimes) of the qualified products (Glock pistols) by third parties (criminals who illegally modify them into machine guns through the installation of MCDs and use them to commit crimes).").

[13] *Id.* at 9–21.

[14] *Id.* at 21.

[15] *See* Mem. of Law in Opp'n to Mot. to Dismiss by Glock, Inc. and Glock Ges.M.b.H 7, Apr. 23, 2025 (stating the "qualified civil liability action" definition before focusing its analysis on the applicable exceptions).

[16] *Id.* at 10–19.

proximate cause of the harm for which relief is sought . . . ." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). This exception is known as the "predicate exception" because "its operation requires an underlying predicate statutory violation." *City of New York v. A-1 Jewelry & Pawn, Inc.*, 247 F.R.D. 296, 351 (E.D.N.Y. 2007).

**a. Knowing Violation of Applicable Statute**

For an action to satisfy the predicate exception, first, a firearm manufacturer or seller must have "knowingly violated a State or Federal statute *applicable* to the sale of the product."[17] § 7903(5)(A)(iii) (emphasis added). Coincidentally, the application of the predicate exception's first prong hinges on what statutes are "applicable" to firearm sales. "[T]he predicate statute must regulate the firearms industry specifically." *Fleet Farm LLC*, 679 F. Supp. 3d at 840 (citing *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 404 (2d Cir. 2008)). However, the predicate statute does not need to "exclusively" regulate the firearm industry. *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1134–36 (9th Cir. 2009) (concluding a definition of "applicable" in which a plaintiff must allege a "knowing violation of a statute that pertained exclusively to the sale or marketing of firearms" is "too narrow"); *Beretta U.S.A. Corp.*, 524 F.3d at 399–400 ("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.").

More directly, the term "applicable" encompasses statutes that (1) "expressly regulate firearms," (2) "courts have applied to the sale and marketing of firearms," and (3) "do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms." *Beretta*

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

*U.S.A. Corp.*, 524 F.3d at 404. After analyzing the PLCAA's text and purpose, the Ninth Circuit stated: "We find it more likely that Congress had in mind only these types of statutes—statutes that regulate manufacturing, importing, selling, marketing, and using firearms or that regulate the firearms industry . . . ." *Ileto*, 565 F.3d at 1136. Courts have thus gone on to hold that the term "applicable" does not encompass statutes codifying "general tort theories," (*id.*) or criminal nuisance (*Beretta U.S.A. Corp.*, 524 F.3d at 404), but does encompass state consumer protection statutes. *See, e.g.*, *Doyle v. Combined Sys., Inc*, No. 3:22-CV-01536-K, 2023 WL 5945857, at *9–11 (N.D. Tex. Sept. 11, 2023) (holding that Texas's Deceptive Trade Practices Act, as a statute that "specifically regulate[s] the marketing and sale of goods, including the firearms and ammunition manufactured and sold by Defendants," is an applicable statute under the predicate exception); *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 [Nevada's Deceptive Trade Practices Act] from serving as a predicate statutory violation."); *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262, 300–08 (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").

Based on *Ileto* and *Beretta U.S.A. Corp.*, Glock, Inc. argues any alleged statutory violation is regarding a "statute of general applicability," thus the predicate exception does not apply.[18] The State alleges Glock, Inc. knowingly violated four state statutes applicable to the sale or marketing of firearms: Minnesota Statute §§ 325F.69 (Prevention of Consumer Fraud Act), 325D.44 (Deceptive

[18] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 14–19, Mar. 20, 2025.

Trade Practices Act), 325F.67 (False Statement in Advertising), and 609.67 (prohibition of machine guns).[19] The former three of these statutes, as state consumer protection statutes designed to "protect consumers from unlawful and fraudulent trade practices in the marketplace," *Ly v. Nystrom*, 615 N.W.2d 302, 308 (Minn. 2000), are of the exact statutory ilk that courts have found as "applicable" under the predicate exception. *See, e.g.*, *Beretta U.S.A. Corp.*, 524 F.3d at 404; *Doyle*, 2023 WL 5945857, at *9–11; *Prescott*, 410 F. Supp. 3d at 1137–40.

Minnesota Statute § 325F.69, subd. 1 (Prevention of Consumer Fraud Act) states:

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

(emphasis added). "Merchandise" is broadly defined as "objects, wares, goods, commodities, intangibles, real estate, loans, or services." *Id.* § 325F.68, subd. 2.

Minnesota Statute § 325D.44, subd. 1 (Deceptive Trade Practices Act) relevantly states[20]:

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

[19] Mem. of Law in Opp'n to Mot. to Dismiss by Glock, Inc. and Glock Ges.M.b.H 10–14, Apr. 23, 2025.

[20] The provided portions of Minnesota Statute § 325D.44 are those referenced in the State's Complaint as being alleged implicated. *See* Compl. 68–69, ¶ 260, Dec. 12, 2024.

Minnesota Statute § 325F.67 (False Statement in Advertising Act) states, in part:

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

All three of foregoing consumer protection statutes resemble or operate in the same vein as statutes previously found to be "applicable" and not barred under the predicate exception. *See, e.g.*, *Doyle, Inc*, 2023 WL 5945857, at *9–11; *Prescott*, 410 F. Supp. 3d at 1137–40. Additionally, the broad definition of "merchandise" provided by Minnesota Statute § 325F.68, subd. 2, encapsulates firearms in that firearms fit within the terms "goods" (Minn. Stat. § 325D.44, subd. 1) and "merchandise" (*Id.* § 325F.67). At this stage of the litigation, all three statutes "clearly can be said to implicate the purchase and sale of firearms." *Beretta U.S.A. Corp.*, 524 F.3d at 404. The Court determines that these three statutes are "applicable" statutes under the predicate exception.

The State further alleges Glock, Inc. knowingly violated each of these statutes.[21] Accepting these factual allegations as true, *see Finn*, 860 N.W.2d at 653, the Court concludes the States's action meets the first prong of the predicate exception as "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).

[21] *Id.* at 65–72, ¶¶ 245–78.

### b. Proximate Cause of Harm

The second prong of the predicate exception requires that the knowing violation of an applicable statute "was a proximate cause of the harm for which relief is sought." *Id.* The existence of proximate cause in a particular case is a question of fact for the jury to decide. *See Norberg v. Northwestern Hosp. Ass'n*, 270 N.W.2d 271, 274 (Minn. 1978). "The proximate cause of an injury is the act or omission which causes the injury directly or immediately, or through a natural sequence of events, without the intervention of another independent and efficient cause." *Lennon v. Pieper*, 411 N.W.2d 225, 228 (Minn. Ct. App. 1987) (quotations omitted); *see also Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268, (1992) (stating proximate cause requires "direct relation between the injury asserted and the injurious conduct alleged"). "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. *Lennon*, 411 N.W.2d at 228 (citing *Ponticas v. K.M.S. Invs.*, 331 N.W.2d 907, 915 (Minn. 1983).

"A superseding, intervening cause of harm acts as a limitation on a defendant's liability for his negligent conduct. It breaks the chain of causation set in operation by a defendant's negligence, thereby insulating his negligence as a direct cause of the injury." *Id.* "An intervening act is not superseding unless (1) its harmful effects must have occurred after the original negligence; (2) it has not been brought about by the original negligence; (3) it actively worked to bring about a result which would not otherwise have followed from the original negligence; and (4) it was not reasonably foreseeable by the original wrongdoer. *Ponticas v. K.M.S. Invs.*, 331 N.W.2d at 915 (citing *Kroeger v. Lee*, 270 Minn. 75, 78, 132 N.W.2d 727, 729–30 (1967)).

"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) (citation omitted). This limitation also applies to superseding, intervening criminal acts. *See Hilligoss v. Cross Cos.*, 304 Minn 546, 547, 228 N.W.2d 585, 586 (1975) ("[T]o be a legally sufficient intervening cause, the criminal act itself must not be reasonably foreseeable." (citing *Wallinga v. Johnson*, 269 Minn. 436, 440, 131 N.W.2d 216, 219 (1964))).

Accepting the facts in the Complaint as true and construing all reasonable inferences in favor of the State, *see Finn*, 860 N.W.2d at 653, the State has sufficiently pled that Glock, Inc.'s alleged violations of the three consumer protection statutes were the proximate cause of the State's injury. Specifically, the State alleges Glock, Inc. has strategically manufactured[22] and misleadingly advertised its handguns in violation of consumer protection statutes,[23] which encourages illegal modification into automatic firearms,[24] and causes the foreseeable proliferation of machine guns and other resultant harms in Minnesota.[25] Despite Defendants' argument that third-party criminals are the sole proximate cause of the State's injury,[26] the State sufficiently alleges that the act of criminals

[22] *See, e.g.*, *id.* at 16–30, ¶¶ 58–105 (alleging how Defendants' design of their semi-automatic handguns facilitates their easy conversion into illegal fully automatic machine guns).

[23] *Id.* at 65–72, ¶¶ 245–78 (asserting consumer protection claims).

[24] *See, e.g.*, *id.* at 30–34, ¶¶ 106–11 (alleging Defendants' advertising of fully automatic Glock handguns is misleading).

[25] See, e.g., *id.* at 34–44, ¶¶ 116–55 (alleging Defendants' knowledge regarding (1) viability of using switches in their handguns dating back to the late 1980s, (2) recent Glock switch usage, and (3) mass shootings involving Glock handguns equipped with Glock switches).

[26] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 27–28, Mar. 20, 2025.

illegally converting Glock handguns into machine guns with Glock switches was foreseeable and known to Glock, Inc, thus said acts cannot be superseding, intervening causes.[27]

At this stage in the case, and accepting the relevant facts from Complaint as true, the Court concludes the State's action against Glock, Inc. satisfies the predicate exception and is not barred by the PLCAA.

#### 2. Negligence Per Se and Product Defect Exceptions

As "[o]nly one claim needs to survive the preemption analysis for the entire suit to move forward," *Fleet Farm LLC*, 679 F. Supp. 3d at 840–41, the Court will not analyze whether the PLCAA's negligence per se or product defect exceptions also apply to the State's Action, nor will the Court analyze whether Minnesota Statute § 609.67 also satisfies the predicate exception.

### B. Sufficiency of the State's Complaint

The Court will now analyze whether the State has sufficiently alleged its seven claims against Defendants pursuant to Minnesota Rules of Civil Procedure Rule 12.02(e).

#### 1. Count 1 – Public Nuisance

The State alleges Defendants created a public nuisance and unreasonably interfered with rights common to the public by:

- Designing semi-automatic handguns in such a manner that they can be easily modified into illegal, fully automatic machine guns;
- Promoting the desirability of fully automatic Glock handguns, while knowing that it is illegal for civilians to purchase fully automatic weapons and knowing that the only way that civilians can possess Glock handguns with fully automatic capacity is for them to equip Glock handguns with Glock switches, thereby encouraging the conversion of Glock semi-automatic handguns into fully automatic machine guns;
- Promoting the ease of customizing Glock handguns by accessing internal parts and systems and attaching accessories based on their "simple" and "easy"

[27] *See, e.g.*, *id.* at 34–44, ¶¶ 116–55 (alleging Defendants' knowledge regarding (1) viability of using switches in their handguns dating back to the late 1980s, (2) recent Glock switch usage, and (3) mass shootings involving Glock handguns equipped with Glock switches).

design, thereby knowingly encouraging and facilitating the conversion of Glock semi-automatic handguns into fully automatic machine guns;

- Failing to acknowledge that Glock switches are illegal and dangerous when Glock features fully automatic Glock handguns in its advertising, and failing to denounce the use of Glock switches or warn the public that Glock switches are not Glock products; and
- Failing to correct the design of Glock semi-automatic handguns to prevent their simple or easy conversion into fully automatic machine guns.[28]

In seeking to dismiss Count 1 – Public Nuisance, Defendants argue that they lacked the requisite intentionality to be held liable for public nuisance, thus—on the basis that handguns are legal—it should be allowed to continue with the good-faith activities of which the State complains.[29]

Minnesota Statute section 609.74 provides:

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

(emphasis added).

"[T]he word 'intentionally' was added to eliminate those cases where there is a good faith claim on the part of the defendant that he has a right to continue with the activity in which he is engaged." *Myers v. Becker County*, 833 F. Supp. 1424, 1433–34 (D. Minn. 1993) (quotations omitted). "[A]n interference with the public right, is intentional if the actor (a) acts for the purpose of causing it, or (b) knows that it is resulting or is substantially certain to result from his conduct. Restatement (Second) of Torts § 825. As pertaining to recurrent interferences with the public right,

[28] *Id.* at 61, ¶ 220.

[29] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 14–19, Mar. 20, 2025.

"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." *Id.* § 825, cmt d; *see also Myers*, 833 F. Supp. at 1433–34 (finding the requisite intent when a party "ignored warnings" and "took no action to abate the problem").

The State sufficiently alleges facts that Defendants had the requisite intent due to their knowledge about the ability for Glock handguns to be equipped with Glock switches for decades and awareness of the prevalent use of Glock switches on Glock handguns and the resultant harm today.[30] *See Walsh*, 851 N.W.2d at 603. The State further alleges that despite this knowledge, Defendants have done nothing to remedy the problem.[31] The Court denies Defendants' Motions to Dismiss as to Count 1 – Public Nuisance.

**2. Count 2 – Aiding and Abetting Negligence Per Se**

The State claims that Defendants aided and abetted individual violations of Minnesota Statutes § 609.67, subdivision 2(a), which provides: "Except as otherwise provided herein, whoever owns, possesses, or operates a machine gun, or any trigger activator or machine gun conversion kit may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than $35,000, or both." Specifically, the State claims that by designing, manufacturing, refusing to change the design, and marketing the attractiveness of Glock handguns that can be converted into fully automatic machine gun, Glock has "aided" individuals to violate 609.69.[32]

[30] Compl. 34–44, ¶¶ 116–55, Dec. 12, 2024 (alleging Defendants' knowledge regarding (1) viability of using switches in their handguns dating back to the late 1980s, (2) recent Glock switch usage, and (3) mass shootings involving Glock handguns equipped with Glock switches).

[31] *Id.* at 61, ¶ 220.

[32] *Id.* at 63–65, ¶¶ 225–44.

### a. Sufficiency of Minnesota Statute § 609.67 as the Basis for Negligence Per Se

"Negligence per se is a form of ordinary negligence that results from violation of a statute." *Seim v. Garavalia*, 306 N.W.2d 806, 810 (Minn. 1981) "It is well settled that breach of a statute gives rise to negligence per se if the persons harmed by that violation are within the intended protection of the statute and the harm suffered is of the type the legislation was intended to prevent." *Pac. Indem. Co. v. Thompson-Yaeger, Inc.*, 260 N.W.2d 548, 558 (Minn. 1977) (compiling cases). More completely, a statutory violation can give rise to negligence per se if:

Defendants argue that "statutes designed to protect the public at large rather than a particular class of individuals" do not give rise to an applicable duty of care under negligence per se.[33] Defendants cite to a Minnesota Supreme Court decision that suggests negligence per se cannot be premised on a statute whose purpose is to "protect the interest of the state" or "secure to individuals the enjoyments of rights or privileges to which they are entitled only as members of the public." *Kronzer v. First Nat. Bank of Minneapolis*, 305 Minn. 415, 423–24, 235 N.W.2d 187, 192–93 (1975); *see also Fleet Farm LLC*, 679 F. Supp. 3d at 847 (summarizing *Kronzer*).

In analyzing the exact argument presented to this Court by Defendants, the District of Minnesota in *Fleet Farm* concluded:

> [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.

[33] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 11, Mar. 20, 2025.

Additionally, pursuant to *Pac. Indem. Co.*, 260 N.W.2d at 558, the State has sufficiently alleged that Minnesota Statute § 609.67, subd. 2 provides a statutory basis for negligence per se. Specifically, the State alleges:

- Minnesota Statutes section 609.67 is intended to curb firearm crime and protect public safety by prohibiting the use and possession of uniquely dangerous fully automatic machine guns by the Minnesota public. This law imposes obligations and restrictions on the public to further its purpose.
- The State and its residents are within the class of persons meant to be protected by Minn. Stat. § 609.67, and the injuries to the State and its citizens are of the nature that this statute was designed to prevent.
- People harmed by the violations of Minnesota Statutes section 609.67 from the possession and use of Glock handguns equipped with Glock switches are within the intended protection of the statute—i.e., people harmed by gun violence—and the harm suffered is of the type the statute was intended to prevent—i.e., gun violence.[34]

At the motion to dismiss stage, and accepting the facts in the Complaint as true, the Court concludes Minnesota Statute § 609.67 provides a sufficient statutory basis for the State's aiding and abetting negligence per se claim.

**b. Satisfaction of Requirements of Aiding and Abetting Negligence Per Se Claim**

Under Minnesota law, three elements must be satisfied to prove aiding and abetting the commission of a tort: "(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 tortfeasor in the achievement of the breach. *Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 187 (Minn. 1999). The second and third elements are evaluated in tandem. *Id.* at 188 (quoting *In re TMJ*

[34] Compl. 64, ¶¶ 232–33, 235, Dec. 12, 2024.

*Implants Prods. Liab. Litig*, 113 F.3d 1484, 1495 (8th Cir. 1997)). "[W]here there is a minimal showing of substantial assistance, a greater showing of scienter is required." *Id.* (quoting *Camp v. Dema*, 948 F.2d 455, 459 (8th Cir. 1991). In analyzing the knowledge and assistance elements, Courts consider case-by-case circumstances such as "the relationship between the defendant and the primary tortfeasor, the nature of the primary tortfeasor's activity, the nature of the assistance provided by the defendant, and the defendant's state of mind." *Id.*

The Minnesota Supreme Court in *Witzman*, in following the Restatement (Second) of Torts, found that a primary tort-feasor must only "commit *a tort* that causes an injury to the plaintiff," without contemplating whether certain torts are excluded. *Id.* (emphasis added). "The 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.*, No. MDL 3084 CRB, 2024 WL 2261926, at *16 (N.D. Cal. May 16, 2024) (quoting Restatement (Second) of Torts § 876(b), cmt. d).

Accepting the States factual allegations as true, the State has sufficiently alleged its claim under the three-part tortious aiding and abetting standard. *See Witzman*, 601 N.W.2d at 187. As to element one, the State alleges individuals who have modified Glock handguns with Glock switches have committed negligence per se.[35] As to element two, the State alleges Defendants know attaching Glock switches to Glock handguns is against the law.[36] And as to element three, the State alleges Defendants have "substantially assisted and encouraged" individuals who modify Glock handguns with Glock switches. Specifically, the State alleges Defendants have substantially assisted by knowingly designing their handguns to be easily modified to fully automatic machine

[35] *Id.* at 64, ¶¶ 234–35.

[36] *Id.* at 34–37, ¶¶ 112–28.

and refusing to change their design, even in light of the known danger and harm.[37] The State further alleges Defendants encouraged individuals to modify Glock handguns by promoting Glock's fully automatic machine gun as "fun."[38]

The Court denies Defendants' Motions to Dismiss as to Count 2 – Aiding and Abetting Negligence Per Se.

**3. Counts 3, 4, and 5 – Consumer Protection Claims**

The State claims Defendants have violated three consumer protection statutes: the Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69 (Count 3), Deceptive Trade Practices Act, Minn. Stat § 325D.44 (Count 4), and False Statement in Advertising Act, Minn. Stat. § 325F.67 (Count 5).[39]

These laws "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) ("Minnesota's consumer-protection statutes are commonly read together so as to prohibit the use of deceptive and unlawful trade practices.") "[T]he standard for finding unlawful deception pursuant to Minnesota's consumer-protection laws is 'the tendency or capacity to deceive.'" *State v. Am. Family Prepaid Legal Corp.*, No. A11-1848, 2012 WL 2505843, *6 (Minn. Ct. App. 2012).[40]

[37] *Id.* at 65, ¶ 240.

[38] *Id.* at 30–34, ¶¶ 106–11.

[39] *Id.* at 65–72, ¶¶ 245–78.

[40] Unpublished opinions of the court of appeals are not precedential but the district court may cite to them for their persuasive value. *See Donnelly Bros. Const. Co., Inc. v. State Auto Prop. and Cas. Ins. Co.*, 759 N.W.2d 651, 659 (Minn. Ct. App. 2009).

Thus, "[n]either a defendant's intent to deceive nor the consumer's reliance on a defendant's conduct is required to prove statutory fraud." *Id.*[41]

Liability for unlawful deception can arise from omissions but the omission must be (1) material and (2) "the party concealing the fact must have been under a legal or equitable obligation to communicate the fact to the other party." *Graphic Commc'ns*, 850 N.W.2d at 695 (Minn. 2014). 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. *Id.*

Accepting factual allegations as true at this stage of the litigation, the State sufficiently alleges Defendants violated these three statutes by way of the following combination of representations and omissions:

- advertising fully automatic handguns as desirable and "fun," and
- promoting Glock handguns as particularly easy to customize by accessing internal parts and systems and attaching accessories based on Glock's "simple" and "easy" design, without disclosing that it is illegal under Minnesota law for civilians to purchase, possess, or use fully automatic weapons and without disclosing that it is illegal for anyone to equip a Glock handgun with a switch. As the manufacturer of Glock handguns, Glock had special knowledge about its handgun products and their

[41] *See also* Minn. Stat. § 325D.44, subd. 2 ("[A] complainant need not prove . . . actual confusion or misunderstanding."); Minn. Stat. § 325F.67 (providing for a violation "whether or not pecuniary or other specific damage to a person occurs"); Minn. Stat. § 325F.69, subd. 1 (allowing injunction "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 [to make it easier to sue for consumer fraud] is evidenced by the elimination of elements of common law fraud, such as proof of damages or reliance on misrepresentations."); *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.").

> ease of conversion, yet failed to say enough to prevent its advertising representations from being misleading.[42]

In other words, the State argues, at minimum, Defendants' entire body of conduct, representations, and omissions deceive consumers of their handguns.[43] The State sufficiently alleges that Defendants omissions were material to Glock's sale of handguns,[44] and Defendants had a special duty to disclose said material facts.[45] The Court denies Defendants' Motions to Dismiss as to Count 3 – Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69; Count 4 – Deceptive Trade Practices Act, Minn. Stat § 325D.44, and Count 5 – False Statement in Advertising Act, Minn. Stat. § 325F.67.

**4. Count 6 – Negligence**

There are "four essential elements of the ordinary negligence claim: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of the duty being the proximate cause of the injury." *Gradjelick v. Hance*, 646 N.W.2d 225, 234 (Minn. 2002). The parties in this matter dispute whether the State has failed to allege facts to support the elements of duty, breach of duty, and causation—specifically, proximate causation.[46]

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[42] *Id.* at 66–67, 69–70, ¶¶ 251, 265; *see also id.* 71–72, ¶ 276 (alleging the same conduct as to False Statement in Advertisement Act with a slight change in language).

[43] *See id.* at 1, 19–24, 30–34, ¶¶ 2, 67–84, 106–11 (detailing Defendants' promotion of its "full-auto" handgun as "fun," and easily modifiable design).

[44] *Id.* 43–44, 68, ¶ 151–55, 256; *see also* Mem. of Law in Opp'n to Mot. to Dismiss by Glock, Inc. and Glock Ges.M.b.H 10–14, Apr. 23, 2025 (stating Defendants omissions are material as "basic to the transaction" and "may justifiably induce the [consumer] to act or refrain from acting" (quoting *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)).

[45] Compl. 66–67, ¶ 251, Dec. 12, 2024.

[46] *See* Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 26–28, Mar. 20, 2025; Mem. of Law in Opp'n to Mot. to Dismiss by Glock, Inc. and Glock Ges.M.b.H 28–31, Apr. 23, 2025.

### a. Existence and Breach of Duty of Care

"[G]eneral 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).

The State makes the following allegations that Defendants have breached an applicable duty of care:

- Defendants have known for decades that their handguns can be easily modified to fully automatic machine guns and modeled this modification capability in marketing their handguns;[47]
- Defendants' have admitted to their knowledge of the modification capability of their handguns in communications with the Department of Homeland Security and Bureau of Alcohol, Tobacco, Firearms and Explosives;[48]
- Congress has issued public letters regarding the proliferation of Glock switches and the media have reported on shootings involving Glock switches;[49]
- Defendants still manufacture and sell handguns susceptible to modification, despite Defendants knowledge of the easy modification;[50]
- Glock handguns modified by Glock switches pose extreme danger and injury to the public;[51]
- Defendants refuse to alter their design, despite knowledge that their handguns are frequently being modified to fully automatic machine guns and harming the State and their residents.[52]

[47] Compl. 34–36, ¶¶ 112–21, Dec. 12, 2024.

[48] *Id.* at 36–37, ¶¶ 123, 127.

[49] *Id.* at 38–40, ¶¶ 129–40.

[50] *Id.* at 1, 29–30, ¶¶ 1, 100–04.

[51] *Id.* at 13–15, 49–59, ¶¶ 47–52, 173–214 (alleging the increased danger posed by Glock handguns modified by Glock switches and the crimes that have been carried out using said handguns).

[52] *Id.* at 34–43, ¶¶ 112–50.

At this motion to dismiss stage, construing all factual allegations in the State's favor, the Court concludes that the State has sufficiently alleged Defendants created a "foreseeable risk of injury" to the State and its residents by designing, selling, and manufacturing handguns susceptible to modification into fully automatic machine guns amid the known danger. The State has also sufficiently alleged that Defendants have breached the "affirmative duty that arises from the probability or foreseeability of injury" by continuing to sell and manufacture the very same handguns that are susceptible to modification into fully automatic machine guns and pose harm to the public. *See id.*

**b. Proximate Cause**

The Court has discussed above the standard for proximate cause.[53] Defendants argue that third-party criminals who modify Glock handguns into fully automatic machine guns are the proximate cause of the State's injury, and those actions break the chain of causation as intervening, superseding causes.[54]

At this stage of the litigation when the Court must construe all factual allegations in the State's favor, the State sufficiently alleges that the act of criminals illegally converting Glock handguns into machine guns with Glock switches was foreseeable and known to Defendants, and that the third-party acts may not be considered superseding, intervening causes. *See Bilotta*, 346 N.W.2d at 625; *Hilligoss*, 304 Minn at 547, 228 N.W.2d at 586 (1975).[55] The Court therefore denies Defendants' Motions to Dismiss as to Count 6 – Negligence.

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[53] *See supra* Section III.A.1.b.

[54] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 27–28, Mar. 20, 2025.

[55] Compl. 34–44, ¶¶ 116–55 Dec. 12, 2024 (alleging Defendants' knowledge regarding (1) viability of using switches in their handguns dating back to the late 1980s, (2) recent Glock switch usage, and (3) mass shootings involving Glock handguns equipped with Glock switches).

### 5. Count 7 – Product Liability

In asserting claims for design defect and failure to warn, the State alleges Defendants have "unreasonably design[ed] and manufactured Glock handguns in such a way to facilitate their straightforward and easy modification by Glock switches into fully automatic machine guns that are unreasonably dangerous." The State further alleges, despite this unreasonable design and manufacture, Defendants have refused to alter the design of Glock handguns and failed to warn the public about the dangers and illegality of converting Glock handguns into fully automatic machine guns.[56] As to the State's design defect claim, Defendants argue the State has failed to allege that their handguns are "defective in the condition in which they leave [Defendants'] control." As to the failure to warn claim, Defendants contend they have no duty to warn the public.[57]

#### a. Design Defect Claim

For a design defect claim, "the plaintiff must demonstrate that a product was defective at the time it left the defendant's control and that the defect caused injury to the plaintiff." *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 387 (Minn. Ct. App. 2004) (citing *Bilotta*, 346 N.W.2d at 623 n.3). "To determine whether a product is defective, Minnesota courts apply a 'reasonable care balancing test.'" *Drager by Gutzman v. Aluminum Indus. Corp.*, 495 N.W.2d 879, 882 (Minn. Ct. App. 1993) (citing *Westbrock v. Marshalltown Mfg. Co.*, 473 N.W.2d 352, 356 (Minn. Ct. App. 1991)).

> [A] manufacturer is obligated to exercise 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.
>
> What constitutes "reasonable care" will, of course, vary with the surrounding circumstances and will involve a balancing of the likelihood of harm, and the gravity of harm if it happens, against the burden of the precaution which would be effective to avoid the harm.

[56] *Id.* at 73–75, ¶¶ 287–302.

[57] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 28–31, Mar. 20, 2025.

*Bilotta*, 346 N.W.2d at 621 (quotations omitted) (citing *Holm v. Sponco*, 324 N.W.2d 207, 212 (Minn. 1982)). "Generally, the question of whether a product is defective is a question of fact; however, where reasonable minds cannot differ, the question becomes one of law." *Drager by Gutzman*, 495 N.W.2d at 882.

The State alleges that Defendants have "breached their duty to use reasonable care to design handguns that are not unreasonably dangerous" by:

> unreasonably designing and manufacturing Glock handguns in such a way to facilitate their straightforward and easy modification by Glock switches into fully automatic machine guns that are unreasonably dangerous to those potentially exposed to the handguns, including members of the public that are put at risk by the uncontrollable nature of fully automatic weapon fire.[58]

More specifically, the State alleges facts regarding (1) Defendants' "unreasonable" handgun design and manufacture that makes this modification possible and simple;[59] (2) the prevalence, likelihood, and gravity of resultant harm caused by the modification;[60] (3) Defendants' knowledge and foreseeability of this modification and resultant harms;[61] and (4) the ease at which Defendants could alter the design of their handguns.[62] The State's Complaint provides facts that would allow a jury to find that Defendants' handgun design is defective under Minnesota's "reasonable care balancing test." *See Drager by Gutzman*, 495 N.W.2d at 882; *Bilotta*, 346 N.W.2d at 621. The State

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[58] Compl. 73–74, ¶ 291, Dec. 12, 2024.

[59] *Id.* at 24–28, ¶¶ 85–98 (detailing design elements of Glock handguns that make them easy to modify).

[60] *Id.* at 44–59, ¶¶ 156–214 (summarizing the proliferation of Glock handguns equipped with Glock switches, and the harms caused by said proliferation).

[61] *Id.* at 34–44, ¶¶ 116–55 (alleging Defendants' knowledge regarding (1) viability of using switches in their handguns dating back to the late 1980s, (2) recent Glock switch usage, and (3) mass shootings involving Glock handguns equipped with Glock switches).

[62] *Id.* at 28–30, ¶¶ 99–105 (describing changes that could be made to Glock handguns to prevent modification).

sufficiently alleges the Defendants' handguns are defective at the time they leave Defendants' control. *See Walsh*, 851 N.W.2d at 603. Accordingly, the Court denies Defendants' Motions to Dismiss the States' design defect claim under Count 7 – Products Liability.

**b. Failure to Warn**

Failure to warn claims have three elements: "(1) whether there exists a duty to warn about the risk in question; (2) whether the warning given was inadequate; and (3) whether the lack of a warning was a cause of plaintiff's injuries." *Seefeld v. Crown, Cork & Seal Co.*, 779 F. Supp. 461, 464 (D. Minn. 1991) (citing *Balder v. Haley*, 399 N.W.2d 77, 81 (Minn. 1987)).

A duty to warn "arises from the probability or foreseeability of injury to the plaintiff." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 629 (Minn. 2017) (quoting *Domagala*, 805 N.W.2d at 26). "In general, a [manufacturer] has a duty to warn end users of a dangerous product if it is reasonably foreseeable that an injury could occur in its use." *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 582 (Minn. 2012) (quoting *Gray v. Badger Mining Corp.*, 676 N.W.2d 268, 274 (Minn. 2004)). This duty to warn also extends to improper usage of products.

> 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, particularly if the manufacturer has no reason to believe that the users will comprehend the risk.

*Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 99 (Minn. 1987).

In other words, the duty to warn consists of two duties, "(1) [t]he duty to give adequate instructions for safe use; and (2) the duty to warn of dangers inherent in improper usage." *Glorvigen*, 816 N.W.2d at 582 (quoting *Frey v. Montgomery Ward & Co.*, 258 N.W.2d 782, 787 (Minn. 1977)). Existence of a duty to warn is generally an issue for the court to decide. *Montemayor*, 898 N.W.2d at 629.

Currently before the Court is the issue of whether Defendants had a duty to warn arising from the public's improper conversion of their handguns to fully automatic machine guns. The State argues Defendants had a duty to warn the public about the dangers and illegality of converting Glock handguns into fully automatic machine guns.[63] Defendants contend they have no duty to warn the public, therefore the failure to warn claim should be dismissed.[64]

The State has sufficiently alleged Defendants had a duty to warn users of the dangers of converting their handguns to fully automatic machine guns. The State alleges Defendants have promoted the "customizability" of Glock handguns[65] and the "fun" of using fully automatic Glock handguns,[66] despite Defendants' knowledge of the illegal modifications and the current danger said modifications pose to the public.[67] Accepting these facts as true, it is reasonable to conclude that the inherent dangers stemming from the public's improper use of Glock handguns are foreseeable to Defendants, thus giving rise to a duty to warn. *See Montemayor*, 898 N.W.2d at 629. And, as the duty to warn extends to improper usage of Defendants' handguns, *see Glorvigen*, 816 N.W.2d at 582, the State has sufficiently alleged at this stage that Defendants had a duty to warn the public of the dangers and illegality of converting their handguns to fully automatic machine guns.

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[63] *Id.* at 74, ¶ 293; *see also* Mem. of Law in Opp'n to Mot. to Dismiss by Glock, Inc. and Glock Ges.M.b.H 34, Apr. 23, 2025.

[64] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 30–31, Mar. 20, 2025.

[65] Compl. 34–36, ¶¶ 112–21, Dec. 12, 2024.

[66] *Id.* at 1–2, ¶ 2 (displaying the social media posts describing fully automatic Glock handguns as "fun").

[67] *Id.* at 18, 35–44, ¶¶ 66, 116–55 (alleging Defendants' knowledge regarding the (1) dangers in using Glock handguns equipped with Glock switches, (2) viability of using switches in their handguns dating back to the late 1980s, (3) recent Glock switch usage, and (4) mass shootings involving Glock handguns equipped with Glock switches).

The Court denies Defendants' Motions to Dismiss the States' failure to warn claim under Count 7 – Products Liability.

### C. Constitutionality of Relief Sought by the State

#### 1. First Amendment

Through the relief sought in this matter, Defendants argue the State is violating Defendants' First Amendment rights. Defendants contend the State seeks to punish and change the content of its speech:

> (1) referring to shooting a full-auto Glock 18 pistol as being "fun"; (2) "[p]romoting the ease of customizing Glock handguns by accessing internal parts and systems and attaching accessories based on their 'simple' and 'easy' design; (3) "not include[ing] [sic] disclosures on its handguns, instruction manuals, or marketing materials warning purchasers that converting a semi-automatic handgun to a fully automatic machine gun is illegal"; "[f]ailing to acknowledge that Glock switches are illegal and dangerous [when] feature[ing] [sic] fully automatic Glock handguns in its advertising"; and "failing to denounce the use of Glock switches or warn the public that Glock switches are not Glock products.[68]

The First Amendment does not prohibit regulations of or liability based on (1) false, deceptive, or misleading speech that is (2) purely commercial speech. *See Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 367 (2002) ("If [commercial speech concerns unlawful activity or is misleading], then the speech is not protected by the First Amendment."); *see also Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626 (1985) (stating "warning[s] or disclaimer[s] might be appropriately required . . . in order to dissipate the possibility of consumer confusion or deception").

"Three factors govern 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,

[68] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 31–32, Mar. 20, 2025.

1120 (8th Cir. 1999) (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66–67 (1983)). "The presence of all three factors provides 'strong support' for the conclusion that the speech in question is commercial." *Id.*

The State alleges that Defendants' social media campaigns referenced in the Complaint are "plainly commercial" because they are promotional forms of speech regarding specific Glock handguns for which Glock has a clear economic motivation (i.e. the sale of its handguns).[69] The State further alleges Defendants commercial speech is deceptive and misleading. Specifically, the State alleges:

- Defendants know their semi-automatic handguns are easily, frequently, and illegally converted into fully automatic weapons with Glock switches;[70]
- Defendants continue to promote the "fun" of their fully automatic Glock 18 handgun to an audience that is largely unable to purchase the Glock 18;[71]
- Defendants' social media posts include multiple comments from consumers promoting or asking about Glock switches or how the user can purchase a fully automatic handgun.[72]
- Defendants showcase the simplicity of their design and encourage consumers to leverage this simple design to customize their handguns.[73]

Taking these allegations as true, the State has sufficiently alleged that Defendants' social media and promotional campaigns are misleading and deceptive forms of commercial speech that are not protected by the First Amendment. *See Thompson*, 535 U.S. at 367. The Court concludes that the First Amendment does not prevent this action from proceeding based on the State's factual allegations at this stage.

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[69] Mem. of Law in Opp'n to Mot. to Dismiss by Glock, Inc. and Glock Ges.M.b.H 38–39, Apr. 23, 2025; Compl. 21–23, 31–33, ¶¶ 74–80, 107–11, Dec. 12, 2024 (describing Defendants various social media campaigns).

[70] Compl. 34–37, ¶¶ 112–28, Dec. 12, 2024.

[71] Compl. at 31–33, ¶¶ 107–11.

[72] *Id.*

[73] *Id.* at 19–21, ¶¶ 67–73.

### 2. Second Amendment

The State, in part, requests this Court to "[o]rder Defendants to modify the design of Defendants' semi-automatic handguns that are sold to the public and can be converted with a Glock switch, including the Glock 17 and 19, so that these handguns cannot be easily converted into fully automatic machine guns."[74]

Defendants argue this requested relief violates their Second Amendment rights as it "seeks to effectively ban the sale, and by necessity, the right to acquire to keep and bear, all new Glock pistols that can be illegally converted to machine gun [sic]."[75] The State argues that Defendants do not have "freestanding right to sell firearms" under the Second Amendment.[76]

"[T]he Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense." *New York State Rifle & Pistol Ass'n, v. Bruen*, 597 U.S. 1, 17 (2022). When the Court is faced with applying the Second Amendment, the applicable standard is as follows:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

*Bruen*, 597 U.S. at 24 (quoting *Konigsberg* v. *State Bar of Cal.*, 366 U.S. 36, 50 n.10, (1961).

The initial burden to show "the Second Amendment's plain text covers an individual's conduct" is on the individual asserting Second Amendment protection. *See generally United States v. Roberts*, 710 F. Supp. 3d 658, 674–75 (D. Alaska 2024) (starting its application of the *Bruen* standard by looking to the asserting party's conduct and asserted Second Amendment rights). Therefore, it is

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[74] *Id.* at 76, ¶ 4.

[75] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 34–35, Mar. 20, 2025.

[76] Mem. of Law in Opp'n to Mot. to Dismiss by Glock, Inc. and Glock Ges.M.b.H 42, Apr. 23, 2025.

Defendants burden in this case to show their sale of Glock handguns that can be illegally converted to machine guns is covered by the plain text of the Second Amendment.

Defendants argue the Second Amendment's text covers the lawful commerce and sale of modifiable Glock handguns, citing: (1) *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017); (2) *Radich v. Guerrero*, No. 1:14-CV-00020, 2016 WL 1212437, *7 (D. N. Mar. I. Mar. 28, 2016); and (3) *Andrews v. State*, 50 Tenn. 165, 178 (1871).[77] In countering that Defendants cannot meet their burden under *Bruen*, the State cites to *Gazzola v. Hochul*, 645 F. Supp. 3d 37, 64 (N.D.N.Y. 2022), *aff'd*, 88 F.4th 186 (2d Cir. 2023).

In *Teixeira*, the U.S. Court of Appeals for the Ninth Circuit performed a textual analysis of the Second Amendment and concluded, "Nothing in the text of the Amendment . . . suggests the Second Amendment confers an independent right to sell or trade weapons." 873 F.3d at 683.

In *Radich*, the District Court for the Northern Mariana Islands held the Second Amendment prohibited a ban an import of handguns, stating: "If the Second Amendment individual right to keep and bear a handgun for self-defense is to have any meaning, it must protect an eligible individual's right to purchase a handgun, as well as the complimentary [sic] *right to sell handguns*." 2016 WL 1212437, at *7 (emphasis added).

In *Andrews*, the Supreme Court of Tennessee analyzed the right to bear arms under the Tennessee Constitution and concluded: "What, then, is involved in this right of keeping arms? It necessarily involves the right to purchase." 50 Tenn. at 178.

In *Gazzola*, the U.S. District Court of the Northern District of New York completed a post-*Bruen* textual analysis of the Second Amendment and concluded the Second Amendment "makes no

[77] Def. Glock, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss 35 n.17, Mar. 20, 2025.

mention of buying, selling, storing, shipping, or otherwise engaging in the business of firearms." 645 F. Supp. 3d at 64.

Only *Radich* lends support to the assertion that the *sale* of Glock handguns that can be illegally converted to an automatic weapon is covered by the plain text of the Second Amendment.[78] The conclusions in *Teixeira* and *Gazzola* run counter to this assertion; *Andrews* was regarding the Tennessee Constitution and a "right to purchase," not sell guns. *See* 50 Tenn. at 178. And *Radich* is a pre-*Bruen* decision that contemplates the unique context of a complete ban on imported handguns to the Commonwealth of the Northern Mariana Islands. *See* 2016 WL 1212437, at *1. As such, the Court concludes that the Second Amendment does not prevent this action. *See Bruen*, 597 U.S. at 24.

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[78] *Id.* at 34–35.