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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

CITY OF CHICAGO, an Illinois)	
Municipal corporation,)	
)	Hon Judge Allen P. Walker
Plaintiff,)	
)	
-vs-)	Case No.: 2024CH06875
)	
GLOCK, INC., <i>et al</i> ,)	
)	
Defendants.)	

**DEFENDANT MIDWEST SPORTING GOODS CO.’S
MEMORANDUM IN SUPPORT OF ITS MOTION TO CERTIFY ISSUES FOR
INTERLOCUTORY APPEAL AND CONTINUE THE CURRENT DISCOVERY STAY**

INTRODUCTION

This lawsuit seeks to hold Midwest Sporting Goods Co. (“Midwest”), a federally-licensed retailer of firearms including popular, legal, non-defective Glock firearms, liable for harms caused by the criminal acts of third parties. To circumvent the protections afforded by the Protection of Lawful Commerce in Arms Act (“PLCAA”), Plaintiff has attempted to plead its claims within the PLCAA’s predicate exception by arguing that Midwest somehow violated MCC Section 2-25-090 and 815 ILCS 505/2DDDD(b)(1) & (4) by doing two things in relation to its sale and advertising of Glock firearms: 1) advertising them as “safe,” and 2) not informing customers of the ways in which they could commit crimes with the firearms if they chose to. Midwest moved to dismiss Plaintiff’s claims against it under Section 2-619 and 2-615 and, in its Memorandum Opinion and Order of September 18, 2025, the Court denied Midwest’s motion.

The Order raises significant questions of law, if not questions of first impression in Illinois, appropriate for interlocutory review. Illinois Supreme Court Rule 308(a) provides that:

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When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court's own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2016). All that is required is a question of law to which there is a substantial difference of opinion the immediate appeal of which may materially advance the ultimate termination of the litigation. See *De Bouse v. Bayer*, 235 Ill. 2d 544, 561 (2009); *Walker v. Carnival Cruise Lines, Inc.*, 383 Ill. App. 3d 129, 133 (2008). Such is the case here.

Importantly, the decision to grant or deny a motion to dismiss under section 2-615 or 2-619 is subject to de novo review under Supreme Court Rule 308. *Mosby v. Ingalls Mem'l Hosp.*, 2023 IL 129081, ¶ 29 (2023); see also *Young v. Bryco Arms*, 213 Ill. 2d 433, 440–41, (2004). As well, questions of statutory construction – also at issue here, particularly with respect to the PLCAA – are also questions of law reviewed de novo and commonly reviewed on interlocutory appeal. *Mosby*, supra. An immediate resolution of the questions of law through interlocutory appeal not only “may” “materially advance the ultimate termination of the litigation” (IL S. Ct. R. 308); it likely “will” dispose of the action against Midwest entirely.

The final requirement of Rule 308, whether there are substantial grounds for difference of opinion, undoubtedly exists here. The Court's rulings on aiding and abetting liability and negligent entrustment vastly expand these legal doctrines beyond any recognized borders and Illinois precedent. Thus, as explained below, the following issues particularly appropriate for interlocutory appeal under Rule 308(a):

1. Are MCC Section 2-25-090 and 815 ILCS 505/2DDDD(b)(1) & (4) unconstitutionally vague and violative of due process as applied to Midwest such that a person of ordinary intelligence would not understand that either describing a firearm as “safe” or failing to notify customers of potential criminal uses of the firearm constitutes a violation of these provisions?
2. Does the First Amendment prohibit application of MCC Section 2-25-090 and 815 ILCS 505/2DDDD(b)(1) & (4) to prohibit Midwest from describing Glock firearms as “safe” or requiring Midwest to notify customers of potential criminal uses of the firearm violate Midwest protections under the First Amendment?
3. Do MCC Section 2-25-090 and 815 ILCS 505/2BBBB(b)(1) & (4) prohibit federally licensed firearms retailers from describing non-defective firearms as “safe” or require federally licensed firearms retailers to notify customers of potential criminal uses of the firearms that they sell?
4. Does public policy allow imposition of an obligation upon sellers of legal, non-defective products to inform customers of ways that they might illegally alter or use the products?

ARGUMENT

I. MCC SECTION 2-25-090 AND 815 ILCS 505/2DDDD(b)(1)&(4) ARE UNCONSTITUTIONALLY VAGUE AS APPLIED TO MIDWEST.

“A statute satisfies due process so long as its prohibitions are sufficiently definite when measured by common understanding and practices. *See, United States v. Petrillo*, 332 U.S. 1, 8 (1947); *People v. Wisslead*, 108 Ill. 2d 389, 398 (1985). Conversely, a statute or ordinance is unconstitutionally vague and violates due process when it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute" or lacks standards restricting the discretion of governmental authorities who apply the law. (Internal quotation marks omitted.) *See, East St. Louis Fed. of Teachers, Local 1220, American Fed. Of Teachers, AFL-CIO v. East St. Louis School Dist. No. 189 Financial Oversight Panel*, 178 Ill. 2d 399, 425 (1997). The

terms cannot be so ill-defined that their meaning may be determined at whim rather than by objective criteria. *Id.*; citing *People v. R.G.*, 131 Ill. 2d 328, 361 (1989).

The key statute for the Court's analysis is 815 ILCS 505/2DDDD(b)(1) & (4)¹ which reads as follows:

- (b) It is an unlawful practice within the meaning of this Act for any firearm industry member, through the sale, manufacturing, importing, or marketing of a firearm-related product, to do any of the following:
 - (1) Knowingly create, maintain, or contribute to a condition in Illinois that endangers the safety or health of the public by conduct either unlawful in itself or unreasonable under all circumstances, including failing to establish or utilize reasonable controls. Reasonable controls include reasonable procedures, safeguards, and business practices that are designed to:
 - (A) prevent the sale or distribution of a firearm-related product to a straw purchaser, a person prohibited by law from possessing a firearm, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves or another individual or of possessing or using a firearm-related product unlawfully;
 - (B) prevent the loss or theft of a firearm-related product from the firearm industry member; or
 - (C) comply with all provisions of applicable local, State, and federal law, and do not otherwise promote the unlawful manufacture, sale, possession, marketing, or use of a firearm-related product.
 - (4) Otherwise engage in unfair methods of competition or unfair or deceptive acts or practices declared unlawful under Section 2 of this Act [815 ILCS 505/2].

* * * *

815 ILCS 505/2DDDD(b)(1) has three subsections dealing with: A) preventing sale or distribution of a firearm-related product to a straw purchaser or other person who the seller has

¹ MCC Section 2-25-090 merely purports to create a cause of action on the part of Plaintiff to enforce the Illinois statute, and so the statute must be the center of the Court's analysis.

reasonable cause to believe is a substantial risk,² B) preventing the loss or theft of a firearm-related product,³ and C) complying with applicable local, State, and federal laws and not promoting unlawful activity. Of course, to apply the first clause of (b)(1)(C) to a violation of (b)(1)(C) itself would be mere tautology, and that does not appear to be what this Court did or intended to do here. Conversely, to the second clause of (b)(1)(C), Plaintiff set forth no factual allegation to support a conclusion that Midwest promoted unlawful use of a firearm-related product. No person of ordinary intelligence would conclude that what (b)(1)(C) requires is that a self of firearm-related products inform buyers of ways in which they could unlawfully alter or use a product,⁴ and application of this provision to require that a licensed seller of firearms affirmatively inform sellers of potential ways to alter and illegally use a firearm is violative of due process as applied to Midwest. That is, no reasonable reading of the law would hold that telling someone how they can illegally modify a firearm somehow is not promoting illegal use while not telling someone how they can illegally modify a firearm somehow is promoting illegal use.

815 ILCS 505/2DDDD(b)(4) merely prohibits sellers of firearm-related products from engaging in unfair methods of competition or unfair or deceptive acts. Again, no reasonable reading of the law would deem it to be “unfair” or “deceptive” to describe a non-defective firearm with multiple passive safeties “safe” in the context of a firearm sale. After all, the customer knows that it is a firearm. Moreover, no reasonable reading of the law would deem it to be “unfair” or

² Plaintiff’s complaint makes no such allegation as to any individual to whom Midwest is alleged to have sold a firearm.

³ Plaintiff’s complaint makes no such as to any firearm-related product lost by or stolen from Midwest.

⁴ It would seem, rather, that volunteering such information would instead be the promotion of the unlawful alteration and use of a firearm-related product. Under such a scenario, if this provision is deemed to be a prohibition on selling Glock firearms without volunteering such information or with volunteering such information, then the provision just becomes a *de facto* ban on the sale of Glock firearms, which is something that the State of Illinois has clearly not undertaken to do.

“deceptive” to not advise customers of ways that they could break the law with a firearm.⁵ As a matter of law, due process does not permit application of the law relied upon by Plaintiff to serve as the basis for satisfying the predicate exception relative to Midwest when all Midwest did was sell legal, non-defective products. If application of this law to Midwest violates due process, then the PLCAA’s predicate exception is not satisfied, and the claims against Midwest must be dismissed.

II. THE FIRST AMENDMENT DOES NOT PERMIT MIDWEST TO BE HELD LIABLE HERE FOR ITS WORDS OR ITS SILENCE.

Ultimately, Plaintiff’s claims against Midwest are about speech. Midwest sells popular, legal, non-defective Glock firearms. As noted in this Court’s opinion, Plaintiff’s purported basis for liability on the part of Midwest are: 1) Midwest advertised Glock firearms as “safe,” and 2) Midwest did not notify customers of potential ways to illegally modify Glock firearms.

The First Amendment protects the content of speech except for a few “well-defined and narrowly limited classes,” such as incitement, obscenity, true threats, and defamation. *United States v. Stevens*, 559 U.S. 460, 468–69 (2010) (quotation marks omitted); *see also Counterman v. Colorado*, 600 U.S. 66, 83 (2023) (Sotomayor, J., concurring). Even in civil cases between private parties, a court cannot apply a rule that would otherwise be an “invalid restriction[]” on First Amendment freedoms. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964); *see also James v. Meow Media, Inc.*, 300 F.3d 683, 695–99 (6th Cir. 2002) (analyzing the First Amendment issues arising from imposing tort liability against a video game distributor based on allegations that its violent video games foreseeably caused a third-party’s criminal acts).

⁵ Anyone who later learned how to illegally alter a Glock firearm would necessarily then have gained the knowledge before doing so that Plaintiff now claims should have been given at the time of sale, thereby breaking the imagined chain of causation arising from Midwest’s purported offense.

Applying MCC Section 2-25-090 and 815 ILCS 505/2BBBB(b)(1) & (4) to Midwest's speech or silence here would cross that line. Normally, when one person's speech is alleged to cause another person to commit an act of criminal violence, the First Amendment question is whether the speech is unprotected "incitement." "The First Amendment does not protect speech that "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *See, Brandenburg v. Ohio*, 395 U.S. 444 (1969) (per curiam); *United States v. Betts*, 509 F.Supp. 3d 1053, 1058 (C.D. Ill. 2020). There is, and can be, no serious contention that the speech at issue reaches this high bar. None of it calls for anyone to break the law, and there is no allegation that Midwest's speech was "directed" with the intent to produce "imminent" lawlessness.

Accordingly, application of MCC Section 2-25-090 and 815 ILCS 505/2DDDD(b)(1) & (4) as a means of holding Midwest potentially liable for the criminal third-party actions of others merely for describing a product as "safe" and not telling people how to criminally alter it violates Midwest's rights under the First Amendment.

III. MCC SECTION 2-25-090 AND 815 ILCS 505/2BBBB(b)(1) & (4) DO NOT PROHIBIT FEDERALLY LICENSED FIREARMS RETAILERS FROM DESCRIBING NON-DEFECTIVE FIREARMS AS "SAFE" OR REQUIRE FEDERALLY LICENSED FIREARMS RETAILERS TO NOTIFY CUSTOMERS OF POTENTIAL CRIMINAL USES OF THE FIREARMS THAT THEY SELL.

To avoid repetition, the reasons set forth in Section I above apply here and need not be repeated. However, Midwest asserts that not only are legal provision relied upon by Plaintiff unconstitutionally vague if they are to be applied to Midwest as the Court has allowed them to be, but one step further, these provisions are not vague at all and simply do not encompass what Midwest is alleged to have said or not said.

IV. **PUBLIC POLICY DOES NOT ALLOW IMPOSITION OF AN OBLIGATION UPON SELLERS OF LEGAL, NON-DEFECTIVE PRODUCTS TO INFORM CUSTOMERS OF WAYS THAT THEY MIGHT ILLEGALLY ALTER OR USE THE PRODUCTS.**

"Public policy retains a place of great importance in the process of statutory interpretation, and the tendency of the courts has always been to favor an interpretation which is consistent with public policy. In fact, it may be safely asserted that the basis of all the interpretive rules in regard to strict and liberal interpretation are founded upon public policy in one form or another." *See, Wilbon v. D.F. Bast Co.*, 48 Ill. App. 3d 98, 102 (1st Dist. 1977). The Illinois Supreme Court has described public policy as follows:

There is no precise definition of the term. In general, it can be said that public policy concerns what is right and just and what affects the citizens of the State collectively. It is to be found in the State's constitution and statutes and, when they are silent, in its judicial decisions.

See, Palmateer v. International Harvester Co., 85 Ill. 2d 124, 130 (1981); citing, *Smith v. Board of Education*, 405 Ill. 143, 147 (1950).

A key question of law that must be determined at the earliest possible stage is whether public policy in Illinois allows punishment of legal retailers of non-defective products for not informing retail customers of the illegal things that they could potentially choose to do with a product. Put another way, must sellers of products to inform customers of ways that they might illegally alter or use them? Does it make sense to require sellers of aerosol products and cigarette lighters to inform buyers of the inadvisable combination of those products to make a small flamethrower? Or to require sellers of nitrous oxide containers to notify purchasers that, if they wanted to, they could use the product to seek a dangerous high? Or to require sellers of PVC pipe to advise purchasers that the product can be used to make potato cannons? It would seem like quite

the opposite would be true, and that advising as to potential illegal and dangerous uses and planting a seed of thought would be what public policy would seek to curtail, not encourage.

Here, the question could not be clearer, and public policy should side with the seller of a legal, non-defective product who does not advise customers of ways to illegally alter the products that they sell.

CONCLUSION

For the above stated reasons, Midwest respectfully requests the Court certify the above questions of law for interlocutory appeal. In the meantime, as Ill. Sup. Ct. Rule 308(f) allows this Court to stay discovery pending resolution of any of certification and appeal proceedings, and as the reasons and analysis that led the Court stay discovery in its January 29, 2025 ruling remain unchanged, Midwest further requests that discovery be stayed until all questions of certification and subsequent appeals are concluded.

Dated: October 16, 2025

Respectfully submitted,

By: /s/ Timothy R. Rudd

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CERTIFICATE OF SERVICE

I, an attorney licensed in Illinois *pro hac vice*, on oath, state that I served a copy of the above-mentioned document via email to counsel of record on October 16, 2025.

/s/ Timothy R. Rudd

Timothy R. Rudd (ARDC 6338284, PHV)

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.