IN THE CIRCUIT COURT OF MARYLAND FOR BALTIMORE CITY

MAYOR & CITY COUNCIL OF BALTIMORE, *et al*.,	*	
Plaintiffs,	*	
v.	*	Case No. C-24-CV-25-001450
GLOCK, INC., *et al*.,	*	
Defendants.	*	

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS THE COMPLAINT

Defendants Glock, Inc. and Glock Ges.m.b.H. (collectively "Glock"), through their attorneys, submit this memorandum of law in support of their Motion to Dismiss Plaintiffs' claims against them with prejudice.

I. PRELIMINARY STATEMENT

Defendants Glock, Inc. and Glock Ges.m.b.H. manufacture and sell the most popular pistols in America, used by both law enforcement and private citizens. The popularity of Glock pistols is due in part to the simplicity of the design of their operating system, which has remained consistent since they were invented in the 1980s and results in the utmost reliability. Like all semi-automatic pistols, Glock pistols can be illegally converted to fire fully automatic through the installation of a machinegun conversion device (MCD), referred to by the City in its Complaint as an "auto sear." MCDs are considered to be machineguns for purposes of federal law and are illegal for private individuals to manufacture, import, and possess. Federal and Maryland law strictly regulate the possession and use of machineguns. Compl. ¶ 31. Although MCDs for Glock pistols have been around almost as long as the pistols themselves, in recent years, the Complaint alleges that an increasing number of criminals in Baltimore and other locations in Maryland have been

illegally modifying some Glock pistols by installing MCDs in them to make them fully automatic ("Modified Glock Pistols") and using them to commit crimes.

Plaintiffs seek to place the blame on Glock for crime involving the use of Modified Glock Pistols. Plaintiffs do not claim that Glock pistols fail to function properly when they are sold by Glock and, in light of their popularity and reliability, they do not seek to restrict their sale to, or use by, law enforcement personnel in Maryland. Through this lawsuit, however, Plaintiffs seek to have this Court issue an injunction barring Glock from selling Glock pistols to civilian consumers in Maryland. Plaintiffs claim that because certain Glock pistols are illegally modified through the installation of an MCD, Glock has a duty to change the design of the most popular pistols in America to make it more difficult for criminals to illegally modify them. Plaintiffs contend that by simply continuing to sell their pistols with their original, proven design, Glock has acted unlawfully or unreasonably, and created and contributed to a public nuisance.

Plaintiffs' claims fail for numerous reasons. First, the State of Maryland has expressly approved of the sale to civilian consumers the very same Glock pistols for which Plaintiffs now seek to hold Glock liable for purportedly creating a public nuisance. Plaintiffs' request for an injunction is also meritless because Maryland already has the statutory authority to restrict sales of what it deems to be "unsafe" handguns, but it has not made any such determination as to Glock pistols.

Second, Plaintiffs' claims fail because Maryland common law does not recognize a cause of action for public nuisance based on the sale and distribution of legal consumer products. Historically, public nuisance in Maryland has been restricted to claims involving the manner in which real property is used. Plaintiffs' claims should also be dismissed because they cannot establish that the conduct of Glock alleged in the Complaint is a proximate cause of the harm for

which they seek to recover, all of which was unquestionably caused by multiple criminal acts of third-parties.

Finally, even if Plaintiffs' claims did state a claim upon which relief could be granted pursuant to Maryland law, their claims against Glock, Inc. are barred by the federal statutory immunity provided by the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-03 ("PLCAA"). With limited exceptions, the PLCAA bars actions that seek to hold federally licensed firearm manufacturers, like Glock, Inc., liable for damages and other relief "resulting from the criminal or unlawful misuse" of a firearm by a third party. 15 U.S.C. § 7903(5)(A). One of the exceptions to the PLCAA's grant of immunity is for an action in which the defendant knowingly violated a state or federal statute applicable to the sale or marketing of firearms, where such violation was the proximate cause of the alleged harm. *Id*. § 7903(5)(A)(iii) (the "predicate exception"). Plaintiffs appear to be relying on an alleged violation of Md. Code, Cts & Jud. Proc. § 3-2502 (the "Public Nuisance Statute") to satisfy the predicate exception to the PLCAA; however, as will be discussed further *infra,* the Public Nuisance Statute does not satisfy the predicate exception. In addition, the Public Nuisance Statute is unconstitutional because it is preempted by the PLCAA, violates the Commerce Clause, the First Amendment right to free speech, the Second Amendment right to keep and bear arms, and is vague in violation of due process.

II. BACKGROUND

Based on the allegations in the Complaint, which are taken as true for purposes of this motion only, the "ease with which Glock pistols can be converted into machine guns makes them especially popular in the criminal market." Compl. ¶ 29. Glock pistols are semi-automatic, but can be illegally modified by installing an MCD into them to make them fire fully automatic

("Modified Glock Pistols"). *Id.* ¶¶ 33, 34. Other brands of semi-automatic pistols can also be modified to fire fully automatic through the installation of an MCD, but "Glock pistols are particularly easy to modify." *Id.* ¶ 42.

Glock does not manufacture MCDs. Compl. ¶ 45. Most MCDs are illegally imported from China, or illegally printed using 3D printers. *Id.* ¶ 37. Glock pistols have been sold in the United States for decades and their basic operating mechanism has remained the same. *Id.* ¶¶ 43-44, 51. An MCD for Glock pistols was invented "in the late 1980s," but Modified Glock Pistols only became an issue for law enforcement in recent years. *Id.* ¶¶ 55, 57, 59. The installation of an MCD to convert a semi-automatic Glock pistol to a machinegun is illegal. Compl. ¶¶ 2, 44. Fully automatic machineguns "have been heavily regulated at the federal level since the 1930s," and are also restricted in Maryland. *Id.* ¶¶ 31-32. MCDs themselves are considered to be machineguns and are illegal. *Id.* ¶ 35-36.

Plaintiffs contend that Glock:

> bears legal responsibility for its role in this escalating public health and safety crisis in Baltimore and Maryland. Glock created a pistol designed to accommodate semiautomatic or automatic firing, knew that the semiautomatic version could be easily modified with an MCD by civilians to fire fully automatically in violation of U.S. laws, promoted the fully automatic capabilities of the design, and continues to sell the pistol even as the illegal conversion of those pistols to fully automatic fire has become rampant and continues to severely and negatively impact public safety in Baltimore, elsewhere in Maryland, and across the United States.

Compl. ¶ 7. Based on the above allegations, the Complaint raises two public nuisance claims against Glock: Count I is based on an alleged violation of the Public Nuisance Statute, and Count II is based on Maryland's common law public nuisance. *Id.* ¶¶ 105-132.

Plaintiffs seek various forms of relief against Glock, including an injunction enjoining it from marketing and selling Glock pistols to non-law enforcement consumers in Maryland, compelling it to implement "reasonable" controls to prevent criminals from acquiring and

converting Glock pistols into illegal machineguns, ordering it to abate the public nuisance alleged attributable to easily modified Glock pistols, restitution and disgorgement of profits, and costs associated with the investigation and prosecution of this lawsuit.

III. LEGAL STANDARD

A complaint must "on its face, disclose[] a legally sufficient cause of action." *Paula v. Mayor & City Council*, 253 Md. App. 566, 580 (2022). Maryland Rule 2-322(b)(2) provides that dismissal of a complaint is appropriate where it fails to "state a claim upon which relief can be granted." "A motion to dismiss for failure to state a claim tests the sufficiency of the pleadings," and asserts that "despite the truth of the allegations, the plaintiff is barred from recovery as a matter of law." *Iglesias v. Pentagon Title & Escrow, LLC*, 206 Md. App. 624, 644-45 (2012). While a court "must assume the truth of all well-pled facts in the complaint," dismissal is proper where the alleged facts and inferences drawn from them nevertheless fail to afford relief to the plaintiff. *Id.* at 645. Further, Maryland Rule 2-303(b) requires that a pleading set forth facts, not mere conclusions. "[B]ald assertions and conclusory statements by the pleader will not suffice." *Aleti v. Metro. Balt., LLC*, 251 Md. App. 482,498 (2021)..

IV. ARGUMENT

A. THE PUBLIC NUISANCE CLAIMS MUST BE DISMISSED BECAUSE THE COMPLAINED-OF ACTIVITY WAS APPROVED BY THE STATE

Both of Plaintiffs' claims for relief are wholly premised on the allegation that Glock pistols can be more easily converted to fire fully automatic through the installation of an MCD than other semiautomatic pistols. The Complaint alleges that Glock pistols are not suitable for sale to civilian consumers and Glock should be enjoined from selling them to "non-law-enforcement consumers in Maryland." Compl. at 50 ¶ i.

Since 1988, Maryland has prohibited the sale of handguns to civilian consumers unless they have been approved by the Maryland Handgun Roster Board ("Board"). Md. Code, Public Safety §§ 5-401 to 406. The Board consists of persons with specialized knowledge regarding firearm safety, including representatives of: (1) the Association of Chiefs of Police; (2) the Maryland State's Attorney's Association; (3) a handgun dealer, gunsmith or manufacturer; (4) the NRA or affiliated association; (5) an organization that advocates against handgun violence; and (6) five public members, two of whom shall be mechanical or electrical engineers. *Id*. § 5-404(b). In determining whether a handgun should be approved, the Board is required to consider the following factors: (1) concealability; (2) ballistic accuracy; (3) weight; (4) quality of materials; (5) quality of manufacture; (6) reliability as to safety; (7) caliber; (8) detectability by the standard security equipment that is commonly used at an airport or courthouse and that is approved by the Federal Aviation Administration for use at airports in the United States; and (9) utility for legitimate sporting activities, self-protection, or law enforcement. *Id*. § 5-405(b).

Based on the above standards, Maryland approves the sale of Glock pistols to civilian consumers that Plaintiffs now argue constitutes the creation of a public nuisance.[1] In fact, Maryland currently approves of the sale of more than a hundred different models of Glock pistols to civilian consumers after it considered factors including their quality of materials and manufacture, reliability as to safety, and utility for legitimate sporting activities and self-protection by civilian consumers. If a pistol was deemed to be unreasonably dangerous to be possessed and used by civilian consumers because it too "easily accepts … MCDs," the Board tasked with approving only "safe" handguns would presumably not have approved such a pistol for sale.

[1] https://licensingportal.mdsp.maryland.gov/MSPBridgeClient/#/home.

Comment (f) to Section 821(B) of the Restatement (Second) of Torts states in relevant part that:

> Although it would be a nuisance at common law, conduct that is fully authorized by statute, ordinance or administrative regulation does not subject the actor to tort liability. In addition, if there has been established a comprehensive set of legislative acts or administrative regulations governing the details of a particular kind of conduct, the courts are slow to declare an activity to be a public nuisance if it complies with the regulations.

This court has previously applied this principle to dismiss a public nuisance based case. In *Agbebaku v. Sigma Aldrich, Inc.*, 2003 WL 24258219 (Md. Cir. Ct. June 24, 2003), Judge Berger issued an opinion finding that claims related to the release of mercury through the operation of a coal burning power plant that could otherwise be considered a public nuisance, was not legally cognizable based on Maryland law because the operation of the plant was authorized by the Maryland Public Service Commission and there was no claim that the plant failed to operate in accordance with the directives and licensing proceedings implemented by the Public Service Commission. *Id*. at *13. This court held:

> This Court finds, for the reasons that follow, that Plaintiffs' claim for public nuisance fails, as a matter of law. It is uncontradicted that Maryland has authorized Defendants to produce electricity by power plants that emit mercury. The Plaintiffs do not contend that Defendants have operated its power plants in contravention of such authorization and in derogation with directives and licensing proceedings implemented by the Public Service Commission. Pursuant to the Restatement (Second) of Torts § 821(B), "[a]lthough it would be a nuisance at common law, conduct that is fully authorized by statute, ordinance or administrative regulation does not subject the actor to tort liability." Restatement (Second) of Torts § 821(B) at Note F (1979).

Id.

The decision in *Agbebaku* is directly analogous to Plaintiffs' claims against Glock. Here, Maryland has specifically authorized the sale of Glock pistols to civilian consumers in this state. Plaintiffs do not contend that Glock is selling pistols in Maryland that are not approved for sale in the state. In fact, it is those very pistols that Maryland approved - based on their quality and utility

- that Plaintiffs now allege are causing a public nuisance. Since Maryland specifically approved of the sale of Glock pistols to civilian consumers based on an evaluation of the statutory criteria, the sale of those pistols cannot now constitute a public nuisance pursuant to Maryland law.

Furthermore, Maryland cannot seek injunctive relief because it already has the statutory authority to prohibit the sale of handguns the Board determines are not "safe," as such, it cannot resort to this Court for this purpose. Through these carefully legislated regimes, the General Assembly has occupied the field of handgun sales – specifically designating the handguns that are "safe" for use by civilians in the State. Notably, the State's comprehensive regime includes self-contained procedures and remedies for appealing the Board's determinations and holding persons civilly or criminally accountable. *See* Md. Code, Public Safety §§ 5-405 and 5-406). In so providing, "the legislature intended to make [the remedies available under the statutes] the exclusive remedies," "to the exclusion of other remedies that may normally be available for common-law negligence." *Cecil v. AFSCME*, 261 Md. App. 228, 260, 264 (2024).

Plaintiffs are asking this Court to bypass this existing regulatory regime. Plaintiffs are striving to use public nuisance as a workaround for a carefully calibrated, long-standing regulatory regime enacted by the General Assembly and administered by a dedicated administrative agency, the Board, with substantive expertise. *See Miller v. Maloney Concrete Co.*, 63 Md. App. 38, 53-54 (1985).

The *Miller* case is instructive. There, the Appellate Court overturned a county board's finding that a concrete batching plant constituted a public nuisance because of its noise, dust, and use of a traffic lane. *See Miller*, 63 Md. App. at 45-47. The court observed that, because the county had separately enacted precise requirements on those subjects, allowing the county to freely define

public nuisance would effectively "authorize[ ] [it] to prohibit that which may be perfectly legal" under existing regulations issued by agencies with substantive expertise. *Id*. at 53.

Just like the county board in *Miller*, Plaintiffs here seek to impose public nuisance liability on Glock based on conduct the State of Maryland has expressly authorized. And just like the county board in *Miller*, Plaintiffs here are attempting to use the "elusive concept of nuisance," *Miller*, 63 Md. App. at 49, to do so. This Court should not permit Plaintiffs to re-regulate this field through litigation. *See Central GMC, Inc. v. Gen. Motors Corp*., 946 F.2d 327, 334 (4th Cir. 1991) (noting that litigation can amount to "impermissible state regulation") (citation omitted).

Not only has Maryland approved their sale, the federal Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), approves the importation of all handguns, including Glock pistols made in Austria, Compl. ¶ 26, as being suitable for sale to civilian consumers for "sporting" purposes.[2] "Handguns …must obtain a certain numeric value before they are approved for importation. The factoring criteria are based upon certain considerations such as dimensions, material used in construction, weight, caliber, safety features, and miscellaneous equipment." *See* https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-and-implements-war-general. If the ATF thought Glock pistols were not suitable for sale to civilian consumers, it would not approve their importation for that purpose. Thus, the sale of Glock pistols to civilian consumers, of which both Maryland and the ATF have specifically approved, cannot be a public nuisance pursuant to Maryland law.

B. THE SALE OF PRODUCTS IS NOT A RECOGNIZED BASIS FOR PUBLIC NUISANCE LIABILITY IN MARYLAND

1. Centuries of Maryland Case Law Confirm that a Public Nuisance Must Involve Unreasonable Use of and Unreasonable Interference With Real Property

[2] https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-and-implements-war-general.

"There is perhaps no more impenetrable jungle in the entire law than that which surrounds the word 'nuisance.'" *Miller*, 63 Md. App. at 49 (citation omitted). However, until a recent spate of novel claims involving legal products, including lead paint, opioids and firearms, public nuisance was always narrowly applied to the maintenance of "a thing or condition on the premises, or adjacent to the premises, offensive or harmful to those who are off the premises." *Sherwood Bros. v. Eckard*, 204 Md. 485, 493 (1954). Further, the complained of condition must arise from use of the "property," and it must unreasonably interfere with or "affect[]" the "property rights of the public." *Wietzke v. Chesapeake Conf. Ass'n*, 421 Md. 355, 374-75 (2011). The absence of these elements defeats the claim. To go beyond these narrow elements, which the Plaintiffs here ask this Court to do, puts the case squarely in the "impenetrable jungle" warned of in *Miller*.

2. A Public Nuisance Requires Unreasonable Use of Real Property

The Supreme Court of Maryland has recognized three categories of public nuisances: (1) nuisances *per se*, (2) nuisances in fact, and (3) "those which prejudice public health or comfort." *Burley v. City of Annapolis*, 182 Md. 307, 312 (1943); *accord Prins v. Schreyer*, 43 Md. App. 500, 506 (1979). But all three have always involved the use of real property. *See Air Lift, Ltd. v. Bd. of Cnty. Comm'rs of Worcester Cnty.*, 262 Md. 368, 394 (1971) (citing *Burley* for the proposition that "[a] landowner may not use his property to create a public nuisance").

"A nuisance *per se*, or a nuisance at law, involves the use of one's land" that is "so unreasonable . . . it is deemed to constitute an actionable nuisance at all times and under any circumstances." *Wietzke*, 421 Md. at 374-75 (citation omitted) (emphasis added). "Such nuisances are typically found only where a particular land use is motivated by malice toward the plaintiff landowner, is forbidden by law, or is flagrantly contrary to generally accepted standards of conduct." *Id*. at 375 (citation omitted). A legislature may also declare by statute or ordinance that

certain uses of property constitute a nuisance per se. *See, e.g.*, Md. Code, Crim. Law § 5-605 (defining "a '[c]ommon nuisance' as "a dwelling, building, vehicle, vessel, aircraft, or other place" where certain illicit activities occur and prescribing that "[a] person may not keep a common nuisance").

"A nuisance in fact is an act, occupation, or structure, not a nuisance *per se*, but one which becomes a nuisance by reason of the circumstances, location, or surroundings." *Adams v. Comm'rs of Town of Trappe*, 204 Md. 165, 170 (1954). Nuisances in fact include a "slaughter-house [that] can be shown to be, by reason of location or . . . by reason of manner of construction or operation, a nuisance," *Mayor & Council of Mt. Airy v. Sappington*, 195 Md. 259, 268 (1950), or "[a]n electric light pole" that "is not of itself a nuisance, although it may become one by reason of its location," *E. Coast Freight Lines v. Consol. Gas, Elec. Light & Power Co. of Balt.*, 187 Md. 385, 397-98 (1946). A nuisance in fact depends on the circumstances surrounding the real property on which the alleged nuisance is maintained. *See Horner v. State*, 49 Md. 277, 284 (1878) (when "determining what constitutes" a nuisance in fact, "reference must always be had to the local situation of the nuisance complained of").

The same is true for the third category of public nuisance: activities that "prejudice public health or comfort." *Burley*, 182 Md. at 312. This category typically involves noxious conditions emanating from property, such as "slaughterhouses" and "livery stables." *Id*. at 312; *Bishop Processing Co. v. Davis*, 213 Md. 465, 474 (1957). The nuisances in this category again involve the unreasonable use of property. *See, e.g., Hamilton v. Whitridge*, 11 Md. 128, 144 (1857) (keeping of a bawdy-house).

Maryland's highest court has never deviated from "the traditional requirement[] that a nuisance emanate from" the unreasonable use of real property. *Cofield v. Lead Indus. Ass'n, Inc.*,

2000 WL 34292681, at *7 n.9 (D. Md. Aug. 17, 2000) (collecting cases). This Court must follow its lead and hold that the manufacture and sale of firearms, unconnected with the manner in which they are manufactured and sold on real property in Maryland, cannot form the basis for public nuisance liability under Maryland's common law.

3. The Restatement (Third) of Torts and the Laws of Numerous States Support Limiting Nuisance Claims to Real Property

The Restatement (Third) of Torts has observed that "most courts" have appropriately "rejected" attempts to extend public nuisance beyond its property origins to claims alleging harm from products like "tobacco, firearms, and lead paint" because "the common law of public nuisance is an inapt vehicle for addressing [such] conduct." Restatement (Third) of Torts: Liab. for Econ. Harm § 8 cmt. G (emphasis added).[3] The Third Restatement's rejection of product-based public-nuisance claims is consistent with the long-standing articulation of public nuisance under Maryland law.

Confining public nuisance to claims involving property is in step with "a clear national trend to limit public nuisance to land or property use." *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719, 730 (Okla. 2021) (collecting cases). Other appellate courts have agreed that the "law of nuisance" concerns "the use or condition of property, not products." *Detroit Bd. of Educ. v. Celotex Corp.*, 493 N.W.2d 513, 521-22 (Mich. Ct. App. 1992) (plaintiff failed to state a public-nuisance claim against a manufacturer of asbestos product when the claim failed to allege "a wrongful use of property," which is "basic to the legal concept of nuisance") (citation omitted); *see also, e.g., State v. Lead Indus. Ass'n*, 951 A.2d 428, 452 (R.I. 2008) ("if 'nuisance' is to have any meaning at all, it is necessary to dismiss a considerable number of cases which have applied

[3] The Maryland Supreme Court frequently relies on the Restatement of Torts, including the Third Restatement. *See, e.g., Barclay v. Castruccio*, 469 Md. 368, 383-86 (2020); *Plank v. Cherneski*, 469 Md. 548, 600-02 (2020).

the term to matters not connected either with land or with any public right, as mere aberration."); *Tioga Pub. Sch. Dist. No. 15 v. U.S. Gypsum Co.*, 984 F.2d 915, 920 (8th Cir. 1993) ("North Dakota cases applying the state's nuisance statute all appear to arise in the classic context of a landowner or other person in control of property conducting an activity on his land in such a manner as to interfere with the property rights of a neighbor."); *In re Lead Paint Litig.*, 924 A.2d 484, 495 (N.J. 2007) ("public nuisance has historically been tied to conduct on one's own land or property as it affects the rights of the general public").

4. Glock's Manufacture and Sale of Pistols Does Not Concern Their Use of Real Property

Glock pistols are manufactured and sold in Austria and Georgia; this conduct does not involve any use of real property in Maryland. Further, the Plaintiffs' suit is not about the manner in which Glock pistols are sold by dealers located in Maryland, it is about the design of Glock pistols and contains no factual allegations to support a claim that that Glock's "authorized dealers" somehow interfered with the property rights of the public in any respect. Compl. ¶ 113. Outside of the rote allegations that "Glock's conduct has created, maintained, and contributed to a public nuisance in Baltimore and Maryland by unreasonably interfering with the right of the general public to life, health, the use and enjoyment of property," the Complaint does not even mention the words "property" or "land" in the context of a nuisance. Because there is "nothing in the complaint suggesting how the property rights of the public at large have been in any way affected," the allegations in the Complaint cannot give rise to a public-nuisance claim. *Walser v. Resthaven Mem'l Gardens, Inc.*, 98 Md. App. 371, 397 (1993) (Wilner, J.).

Just as public nuisance requires an unreasonable use of property, it also requires an unreasonable interference with a property interest of the public. Nuisance originated in "ancient concepts in the Anglo–American common law" and was "originally conceived to protect private

landholders from being dispossessed of their property." *Wietzke*, 421 Md. at 373 (citation omitted). The doctrine evolved in the private-nuisance context to become "one of the primary tools for protecting private landholders against substantial interferences" with their interest in "the use and enjoyment of their own lands." Id. at 373–74 (quotations omitted); *see Evans v. Burruss*, 401 Md. 586, 610 (2007); *Exxon Corp. v. Yarema*, 69 Md. App. 124, 149 (1986). Public-nuisance law developed similarly, "evolv[ing] to protect the *property* rights of the public as well." *Wietzke*, 421 Md. at 374 (emphasis added) (citation omitted). Public nuisances were uses of land "tending to obstruct the passage of [highways], or navigation of [rivers] . . . punishable, by fine, at the suit of the King." *Miller v. Lord Proprietary, 1 H. & McH. 543, 549* (Md. Prov. Ct. 1774). They arose from "purprestures, which were encroachments upon the royal domain or the public highway and could be redressed by a suit brought by the King." Restatement (Second) of Torts § 821B cmt. a (1979).

However, when an asserted public-nuisance claim lacked any "interference" with public property, the suit could not be maintained. *City of Baltimore v. Radecke*, 49 Md. 217, 227 (1878). In *Radecke*, for example, the Maryland Supreme Court considered whether the maintenance and operation of a stationary steam engine was a public nuisance. 49 Md. at 227. The Court explained that "a stationary steam engine is not in itself a nuisance even if erected and used in the midst of a populous city, unless it interferes with the safety or convenience of the public in the use of the streets." *Id*. (emphasis added). Because there was "no proof in th[e] record of any such interference" with public property rights, the Supreme Court held the steam engine was not a public nuisance. *Id*. at 227–28; *see also Arnsperger v. Crawford*, 101 Md. 247, 258 (1905) ("The obstruction of the King's highways always constituted a public nuisance, . . . [b]ut the obstruction of a private road could not be regarded as a public nuisance.").

Thus, Maryland public nuisance claims require both an unreasonable use of property, as well as an unreasonable interference with real property. Plaintiffs' Complaint, on its face, fails to state a claim upon which relief can be granted, given that it fails to allege the essential elements of both the unreasonable use of property and unreasonable interference with property to sustain a public nuisance claim.

5. The Maryland Supreme Court is Currently Considering Whether the Law of Public Nuisance Should be Expanded to Cover the Distribution of Products

As discussed above, there is no support in Maryland law for Plaintiffs' argument that the sale and distribution of products, unconnected to the manner in which real estate is used, is a basis for a public nuisance claim. As addressed in Glock's simultaneously filed motion to stay, however, the Maryland Supreme Court is set to consider this very issue in two cases being decided this term. *See Express Scripts, Inc. v. Anne Arundel County*, No. 1, Sept. Term 2025 and *Mayor & City Council of Baltimore, et al. vs. BP, Inc*., No. 11, Sept. Term 2025. Because those decisions will result in binding precedent regarding one of the primary issues addressed in this motion to dismiss, further proceedings in this case, including briefing on this motion to dismiss, should be stayed pending the Maryland Supreme Court's decision in the above cases.

C. PLAINTIFFS' CLAIMS MUST BE DISMISSED FOR LACK OF DUTY AND PROXIMATE CAUSE

1. Duty

"Maryland has long adhered to the rule that proof of nuisance focuses not on the possible negligence of the defendant but on whether there has been unreasonable interference with the plaintiff's use and enjoyment of his or her property." *Washington Suburban Sanitary Comm'n v. CAE-Link Corp*., 330 Md. 115, 126 (1993) (citing *Susquehanna Fertilizer Co. v. Malone*, 73 Md. 268, 276 (1890)). However, a duty requirement remains, and "[T]he cases fail often to distinguish between violation of the duty which creates a nuisance and violation of a duty which constitutes

negligence." *Sherwood Bros. v. Eckard*, 204 Md. 485, 493 (1954). "Any theory of liability sounding in negligence is predicated on the existence of the following elements: (1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Warr v. JMGM Grp., LLC*, 433 Md. 170, 181 (2013) (internal citation omitted). The *Warr* court went on to hold, "[d]uty, in this regard, is 'an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another.'" *Id.* (citing *Patton v. USA Rugby Football*, 381 Md. 627, 636–37 (2004).

With respect to nuisance in Maryland, "[A] nuisance exists because of a violation of an absolute duty so that it does not rest on the degree of care used but rather on the degree of danger existing with the best of care." *Sherwood Bros*., 204 Md. at 493. The *Sherwood Bros.* case is instructive. There, a person was injured when an automobile "rolled from a hydraulic greasing lift." *Id.* at 487. Plaintiff argued that the lift constituted a nuisance, and therefore, the owner was strictly liable. The Court disagreed, stating, "The lift in the present case was not dangerous or potentially dangerous, unless it was negligently used." *Id.* at 493. "In other words, the lift in this case was not then, properly used, any more potentially dangerous than if it had been equipped with the safety device, and cannot be held to be a nuisance." *Id*. at 494. "The real danger in the lift was not in its failure to have safety bars when it was leased, but rather, the manner of its use by the tenant." *Id*. at 495. Just like the lift in Sherwood Bros., the Glock pistols do not become a "danger" to the citizens of Maryland and Baltimore, as alleged in the Complaint, until they are "used" illegally. Thus, Glock has no duty to Plaintiffs when the public nuisance claims are solely based on misuse.

Furthermore, as noted in *Warr*, "when the harm is caused by a third party, rather than the first person, as is the case here, our inquiry is not whether the harm was foreseeable, but, rather, whether the person or entity sued had control over the conduct of the third party who caused the harm by virtue of some special relationship." *Warr*, 433 Md. at 183.

There are no allegations here that Glock forced any person to convert a legal Glock pistol into an illegal machinegun using an MCD. In fact, the Complaint concedes that Glock does not even manufacture or sell MCDs. Furthermore, the public nuisance, as alleged, is the use of the illegally converted Glock pistols by persons with no connection to Glock to injure and kill citizens of Maryland. Glock clearly has no control over the persons illegally converting and using these illegal pistols, and such, Glock is under no duty to prevent the public nuisance as alleged. Finally, as the *Warr* court noted, "we [previously] expressly stated that, '[t]he fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not itself impose upon him a duty to take such action.'" *Id*. at 184 (citing *Barclay v. Briscoe*, 427 Md. 270, 295 (2012). Thus, even assuming Plaintiffs' allegation that Glock knew about the ease of which the pistols could be converted and that such conversions were contributing to a public nuisance, which is expressly denied, Glock has no duty to take any further action to prevent the criminal use of these pistols.

2. Proximate Cause

The conduct of Glock is not a proximate cause of the harm of which Plaintiffs complain as a matter of law. Even in cases where two or more independent acts bring about an injury, a defendant's conduct is considered a cause of the injury only if it is more likely than not that the defendant's conduct was a substantial factor in producing the plaintiff's injury. *See Gambrill v. Bd. of Educ.*, 481 Md. 274, 316-317 (2022). To be a substantial factor, each independent act, standing alone, must be sufficient to cause the harm. *See id.* at 317 n.19; *Pittway Corp. v. Collins*,

409 Md. 218, 245 (2009); Restatement (Second) of Torts § 433; *Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 261 (2015); *State v. Exxon Mobil Corp.*, 406 F. Supp. 3d 420, 455 (D. Md. 2019).

The following factors are relevant to determining whether substantial factor causation is satisfied:

> (a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it; (b) whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; (c) lapse of time.

Gambrill, 481 Md. at 317 n.19 (quoting Restatement (Second) of Torts § 433).

Based on the allegations in the Complaint, the alleged public nuisance at issue does not occur until the third-party actors/criminals illegally modify legal Glock semi-automatic pistols into illegal machineguns through the installation of an MCD. *See* Compl. ¶¶ 1-4, 9-14. Multiple intervening crimes are necessary before anything involving a Glock pistol can constitute a public nuisance. Thus, as to the first *Gambrill* factor, the sources of the MCDs are outside the control of Glock. The MCDs that are causing the alleged public nuisance are made by manufacturers in China or privately made domestically using 3D printers. Compl. ¶ 37. Without the availability of illegal MCDs, there is no public nuisance. The other actors outside the control of Glock are the non-parties installing the MCDs into Glock pistols and using the Modified Glock Pistols to commit crimes. Again, if this illegal conduct does not occur, there is no public nuisance as alleged.

As to the second *Gambrill* factor, the only alleged offensive conduct from Glock is that the design of the Glock pistol is too easily modified through the installation of illegal MCDs and Glock somehow promotes "automatic fire" because it also manufactures the G18 pistol exclusively for law enforcement and military customers (which are not part of Plaintiffs' public nuisance claim).

Compl. ¶¶ 42-44, 51-55. However, as discussed in Section I.A., Maryland law specifically authorizes the sale of these Glock pistols to civilian consumers, so the only "force" created by Glock is the legal manufacture and distribution of state-sanctioned Glock pistols. As the U.S. Supreme Court recently held, "[firearm] manufacturers cannot be charged with assisting in criminal acts just because [criminals] like those guns too … [t]hose guns may be 'coveted by the cartels,' as Mexico alleges; but they also may appeal, as the manufacturers rejoin, to "millions of law-abiding Hispanic Americans.'" *Smith & Wesson vs. Estados Unidos Mexicanos*, 145 S. Ct. 1556, 1569 (2025). Here, Plaintiffs are seeking legal redress from Glock because criminals "covet" Glock pistols, but so do "thousands" of law-abiding citizens in Maryland. *See* Compl. ¶ 113. Further, the multiple intervening criminal acts break the "continuous and active" requirement.

As to the third *Gambrill* factor, Plaintiff do not address the time that has elapsed between Glock's alleged conduct and the illegal use of Modified Glock Pistols creating this alleged public nuisance. Glock pistols have been sold in the United States since "1985 or early 1986." Compl. ¶ 43. Thus, the Glock pistols being illegally modified with the MCDs could be forty years old and have traveled through multiple owners and jurisdictions before ending up in Maryland. Potentially holding Glock legally responsible for all of their pistols ever sold in any jurisdiction at any time, just because some of them fortuitously end up in Maryland, in the hands of a criminal wrongdoer, should be *per se* a lack of proximate cause as to these claims. Accordingly, this Court should dismiss Plaintiffs' claims because they cannot, as a matter of law, establish proximate causation.

D. THE PLCAA PROVIDES IMMUNITY TO FIREARM MANUFACTURERS FROM LAWSUITS PREMISED ON THE CRIMINAL MISUSE OF THEIR FIREARMS

Plaintiffs' claims against Glock, Inc. should independently be dismissed because they are barred by the federal statutory immunity provided by the PLCAA. This lawsuit must be viewed

against the background of a decades-long history of state and local governments pushing anti-gun agendas by unjustly suing members of the firearms industry to make the operation of their lawful business financially burdensome. Leading up to the early 2000s, state and local governments "pursued civil actions against firearm manufacturers, alleging negligent distribution of firearms and creation of a public nuisance." *Congress Passes Prohibition of Qualified Civil Claims Against Gun Manufacturers and Distributors—Protection of Lawful Commerce in Arms Act, Pub. L. No. 109-92, 119 Stat. 2095 (2005)*, 119 Harv. L. Rev. 1939, 1939 (2006) (hereinafter *Harv. L. Rev. PLCAA Article*). While "these suits generally were not successful" because of "court decisions and legislative intervention," the "claims were still damaging to the gun industry, as [state and local government] leaders pressed on regardless of their chance of success, spending taxpayers' money in a war of attrition against the firearms industry" in a seemingly endless cycle. *Id.* at 1940.

That "cycle ended on October 26, 2005, when President George W. Bush signed the [PLCAA] into law, dismissing all current claims of this nature in both federal and state courts and preempting future claims." *Harv. L. Rev. PLCAA Article* at 1940. The PLCAA was plainly intended "to chastise political subdivisions for trying to regulate guns nationally through litigation." *Harv. L. Rev. PLCAA Article* at 1940-41.

To these ends, the PLCAA expressly prohibits the filing of a "qualified civil liability action" in any state or federal court, and mandated that any pending qualified civil action that was pending when it was enacted " be immediately dismissed by the court in which the action was brought or is currently pending." 15 U.S.C. §§ 7902(a) & (b). One of the stated purposes of the PLCAA is to "prohibit causes of action against manufacturers, distributors…, and importers of firearms . . . for the harm solely caused by the criminal or unlawful misuse of firearm or ammunition products by others when the product functioned as designed and intended." 15 U.S.C.

§ 7901(b)(1). In other words, the very purpose of the PLCAA is to preclude the filing of qualified civil liability actions, such as the present action.

Congress made a number of findings regarding the necessity for the PLCAA, including:

- Lawsuits have been commenced against manufacturers, distributors, dealers and importers of firearms that operate as designed and intended which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

- The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

- Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

Id. §§ 7901(a)(3)-(5). As the Supreme Court recently explained in a unanimous decision, "Congress enacted the [PLCAA] in response to a spate of litigation trying to hold gun companies liable in tort for harms 'caused by the misuse of firearms by third parties, including criminals.'" *Smith & Wesson Brands, Inc.,* at 1562 (quoting 15 U.S.C. § 7901(a)(3)). The PLCAA provides substantive immunity from being sued for a qualified civil liability action, not just a defense from liability, and, therefore, whether its immunity applies must be decided at the earliest available opportunity. *In re Academy, Ltd.*, 625 S.W.3d 19, 35-36 (Tex. 2021) (unanimously granting petition for mandamus and holding that requiring defendant to present a defense on the merits to a case barred by the PLCAA would defeat the substantive immunity provided by the statute). *See also S&W*, 145 S. Ct. at 1571.

1. This Case is a Qualified Civil liability Action

As defined by the PLCAA, and subject to six limited exceptions, a "qualified civil liability

action" is a:

> civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product or a trade association, for damages, punitive damages, injunctive or declaratory relief, or penalties or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party . . . .

15 U.S.C. § 7903(5)(A). Based on the allegations in the Complaint, this case is a civil proceeding brought by persons[4] (the City of Baltimore and State of Maryland), against a manufacturer[5] (Glock, Inc.) of a qualified product[6] (Glock pistols) for damages and other relief based on the criminal misuse of the qualified products (the illegal conversion of Glock pistols to machineguns by the installation of MCDs and the use of the Modified Glock Pistols to commit crimes) by third parties (the criminals who illegally modify them into machineguns through the installation of MCDs and use them to commit various crimes, including murder, carjacking, robbery, and assault and battery). *See generally* Compl. Thus, the Complaint constitutes a qualified civil liability action,

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[4] The PLCAA broadly defines the term "person" to include "any governmental entity." 15 U.S.C. § 7903(3).

[5] The PLCAA defines a "manufacturer," with respect to a qualified product, as "a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code." 15 U.S.C. § 7903(2). Chapter 44 of title 18 of the United States Code, in turn, defines a manufacturer as "any person engaged in the business of manufacturing firearms . . . for purposes of sale or distribution; and the term 'licensed manufacturer' means any such person licensed under the provisions of this chapter." 18 U.S.C. § 921(a)(10). As a federally licensed manufacturer of firearms, Glock, Inc. is a "manufacturer" pursuant to the terms of the PLCAA. Compl. ¶¶ 24, 120. The PLCAA defines the term "engaged in the business" with reference to 18 U.S.C. § 921(a)(21). The term "engaged in the business," relative to a manufacturer of firearms, is defined as "a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured." 18 U.S.C. § 921(a)(21)(A).

[6] The PLCAA defines a "qualified product," in relevant part, as "a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code) . . . that has been shipped or transported in interstate or foreign commerce." 15 U.S.C. § 7903(4). Pursuant to 18 U.S.C. §§ 921(a)(3)(A) & (B), a firearm is defined as "any weapon . . . which will or is designed to or may readily be converted to expel a projectile by the action of an explosive" or "the frame or receiver of any such weapon. . . ." Pursuant to the allegations in the Complaint, Glock pistols are qualified products pursuant to the terms of the PLCAA. *See generally* Compl.

from which the PLCAA provides Glock, Inc. with immunity by prohibiting this action from being "brought in any Federal or State court," unless one of the statute's narrow exceptions applies.

2. No Exceptions to the PLCAA Apply

There are six narrow categories of claims that the PLCAA excludes from the definition of a qualified civil liability action and therefore does not bar. Only one of those narrow exceptions, the so-called predicate exception, could potentially be at issue in this case.

a. The Predicate Exception Does Not Apply

Although the Complaint does not mention the PLCAA or include arguments why the PLCAA does not prohibit Plaintiffs' claims, Plaintiffs will most likely attempt to rely on the PLCAA's predicate exception, just as the Attorney General did in opposing a motion for a preliminary injunction in the case of *National Shooting Sports Fourndation, Inc. v. Anthony G. Brown,* pending in the District of Maryland, 1:25-cv-01115-RDB, Docket No. 17.[7] The predicate exception excludes from the definition of a prohibited qualified civil liability action, 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) (emphasis added). For the reasons set forth below, the predicate exception does not apply to Plaintiffs' claims. As such, the claims against Glock, Inc. must be dismissed on this additional basis.

[7] This case is discussed in greater detail in Glock's Motion to Stay filed concurrently with this motion.

b. The Only Statute Plaintiffs Allege that Glock Violated is the Public Nuisance Statute

The only statute that the Plaintiffs allege Glock violated is the Public Nuisance Statute.[8] Maryland enacted the Public Nuisance Statute in 2024, the very purpose of which is to attempt to negate the immunity provided by the PLCAA. Md. Code, Cts & Jud. Proc. § 3-2502. To achieve this objective, the State drafted the Public Nuisance Statute to be as broad as possible. For example, the Public Nuisance Statute applies to any "'[f]irearm industry member,'" which is defined to include any "person engaged in the sale, manufacture, distribution, importation, or marketing of a firearm–related product." *Id*. at § 3-2501(c). The Public Nuisance Statute likewise broadly defines "[f]irearm-related product" to include "a firearm, ammunition, a component or part of a firearm, or a firearm accessory." *Id*. at § 3-2501(d).

The Public Nuisance Statute purports to create liability for a public nuisance when a firearm industry member:

> knowingly create[s], maintain[s], or contribute[s] to harm to the public through the sale, manufacture, distribution, importation, or marketing of a firearm–related product by engaging in conduct that is: (1) Unlawful; or (2) Unreasonable under the totality of the circumstances;" or if a firearm industry member fails to "establish and implement reasonable controls regarding the sale, manufacture, distribution, importation, marketing, possession, and use of the firearm industry member's firearm–related products.

Md. Code, Cts & Jud. Proc. § 3-2502. And on either of those bases, the Attorney General, a county attorney, or the Baltimore City Solicitor "may bring an action against a firearm industry member for a public nuisance caused by a violation of § 3–2502 of this subtitle," and may seek injunctive relief, restitution, compensatory and punitive damages, and reasonable attorney's fees and costs. *Id.* at § 3-2503.

[8] The Complaint references federal and state statutes regulating the possession, sale, and transfer of machineguns and MCDs. Compl. ¶¶ 31-36. Plaintiffs do not—because they cannot— allege that Glock violated any of these statutes.

There is no requirement in the Public Nuisance Statute that the firearms industry member have even violated a law, Md. Code, Cts & Jud. Proc. § 3-2502(a)(2) and (b), much less knowingly violated a state or federal statute applicable to the sale or marketing of firearms. Rather, it authorizes a suit based on: (1) conduct that is "either unlawful . . . or unreasonable" if the gun industry member "knowingly" caused a public nuisance; or (2) failure to "establish . . . reasonable controls," without any intent requirement whatsoever. *Id.* (emphasis added). Because the predicate exception requires a "knowing" violation, the Public Nuisance Statute cannot suffice as a predicate act.

The Public Nuisance Statute also attempts to eviscerate any notion of proximate cause by providing that, "[a] violation of this section is a public nuisance." *Id.* at § 3-2502(c). This provision is in direct conflict with another Maryland law which states that a "person is not strictly liable for damages for injuries to another that result from the criminal use of a firearm by a third person," Md. Public Safety Code § 5-402(b(1). This is exactly what the Plaintiffs are trying to hold Glock liable for in this case.

Furthermore, the PLCAA imposes a freestanding proximate-cause requirement as a matter of federal law, which means that federal proximate-cause standards apply. When Congress incorporates "proximate cause" into a federal statute, it has a "well established" meaning that allows liability only if "the harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Bank of Am. Corp. v. City of Miami*, __U.S. __, 137 S. Ct. 1296, 1305 (2017). Thus, since Congress incorporated a proximate-cause requirement into the predicate exception, it does not allow any claim unless the plaintiff can show a "close connection" between the alleged harm and the violation of the predicate statute. *Id*.

The Supreme Court has held, "[P]roximate cause 'generally bars suits for alleged harm that is "too remote" from the defendant's unlawful conduct.'" *Id.* at 1306. The federal remoteness doctrine applies under all types of federal laws[9] and it has firm grounding in the common law. *See, e.g.*, *Petitions of Kinsman Transit Co*., 388 F.2d 821, 825 & n.8 (2d Cir. 1968) (even where harm "foreseeable," causal link "too tenuous and remote to permit recovery"). Further, the Supreme Court has recognized that proximate cause requires "some direct relation between the injury asserted and the injurious conduct alleged." *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010). "A link that is 'too remote,' 'purely contingent,' or 'indirec[t]' is insufficient." *Id*. And "[t]he general tendency of the law, in regard to damages at least, is *not to go beyond the first step*" in the causal chain. *Id*. at 10. Here, even if Glock somehow acted "unreasonably" in selling Glock pistols to civilian consumers based on the design specifically approved by Maryland as alleged in the Complaint, the illegal conversion of Glock pistols using illegal MCDs manufactured by third-parties, and then the use of the now illegal machinegun to assault and murder others, clearly is well-beyond the legal chain of events envisioned by Congress when it drafted the predicate exception.

c. An Alleged Violation of the Public Nuisance Statute Cannot Satisfy the Predicate Exception

An alleged violation of the Public Nuisance Statute cannot satisfy the predicate exception because it does not impose concrete obligations on members of the firearms industry that can be knowingly violated. A crucial aspect of any statute that could potentially satisfy the predicate exception is scienter as to violation of the law—because the predicate exception applies only if the

[9] *Bank of Am. Corp*., 137 S. Ct. at 1305 (Fair Housing Act); *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 532 (1983) (Sherman Act); *Barber Lines A/S v. M/V Donau Maru*, 764 F.2d 50, 52 (1st Cir. 1985) (admiralty); *Fields v. Twitter, Inc*., 881 F.3d 739, 746 (9th Cir. 2018) (Anti-Terrorism Act).

defendant knowingly violated a predicate statute. *See* 15 U.S.C. § 7903(5)(A)(iii)). The Public Nuisance Statute allows a firearms industry member to be held liable for either: (1) "unlawful" conduct, regardless of whether the firearms industry member knowingly violated the underlying law; and (2) even worse, conduct that is not in violation of any law, but that the Plaintiffs subjectively find to be "unreasonable," or not in accordance with "reasonable controls." Md. Code, Cts & Jud. Proc. § 3-2502. In comparison, well-defined laws and regulations buttress the knowledge requirement in the predicate exception. For example, a manufacturer and seller of firearms can knowingly comply (or not) with a command to conduct a background check, to keep specified records, or to not sell to someone known to be prohibited from possessing a firearm.

Congress supplied illustrative examples in the PLCAA of "a State or Federal statute applicable to the sale or marketing of the product," 15 U.S.C. §7903(5)(A)(iii), which reinforces the conclusion that Congress was focused on laws that impose concrete commands, not vague duties of care that could be alleged to have been violated years after the sale or marketing at issue. As the Second Circuit has recognized, "the general language . . . providing that predicate statutes are those 'applicable to' the sale or marketing of firearms[] is followed by the more specific language referring to statutes imposing record-keeping requirements on the firearm industry, . . . and statutes prohibiting firearms suppliers from conspiring with or aiding and abetting others in selling firearms directly to prohibited purchasers." *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 402 (2d Cir. 2008). And each of those examples requires a knowing violation[10] of a concrete standard, including a knowing violation of a recordkeeping requirement and a knowing

[10] In the context of the predicate exception to the PLCAA, to "knowingly" violate a statute, the defendant must have knowledge of the law that it is allegedly violating, not just the existence of the underlying factual conduct forming the basis of the alleged violation. *See Ruan v. United States*, 597 U.S. 450, 466-67 (2022); *Rehaif v. United States*, 588 U.S. 225, 231 (2019); *Liparota v. United States*, 471 U.S. 419, 426 (1985).

violation of the obligation not to knowingly facilitate straw purchases. 15 U.S.C. § 7903(5)(A)(iii)(I).

Those examples look nothing like the Public Nuisance Statute, which commands industry members to conduct their operations "reasonably," without giving any guidance as to which controls and procedures are "reasonable," or what conduct is "[u]nreasonable under the totality of the circumstances," and which could cover circumstances that become evident only long after the sale or marketing of the firearm at issue. *See* Md. Code, Cts. & Jud. Proc. §3-2502(a)-(b). It is difficult to fathom how a manufacturer or seller of firearms, who complies with all of the multitude of federal, state, and local laws that explicitly state what it may and may not do, could "knowingly" violate the Public Nuisance Statute by failing to employ "reasonable controls," or conducting its lawful business in a manner so "[u]nreasonable under the totality of the circumstances" that it can be said to have "contribute[d] to" some undefined "harm to the public." Md. Code, Cts. & Jud. Proc. §3-2502(a)-(b). This is even more egregious in Maryland where the State has specifically authorized the sale of Glock pistols to the civilian market, the very conduct that Plaintiffs now claim to be "unreasonable" and violative of the Public Nuisance Statute.

The PLCAA's expressly enumerated findings reinforce the conclusion that the predicate exception applies only to laws that impose concrete obligations or prohibitions, not just duties of care included in the Public Nuisance Statute. As the PLCAA explains, its chief aim is to foreclose efforts to hold those engaged in "the lawful design, manufacture, marketing, distribution, importation, or sale . . . of firearms or [related] products . . . liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended." 15 U.S.C. § 7901(a)(5). Further, the Second Circuit has recognized, the term "lawful" there means "done in compliance with statutes like those described in" the

immediately preceding finding—i.e., "the Gun Control Act of 1968, the National Firearms Act, and the Arms [Export] Control Act." *City of New York*, 524 F.3d at 402-03; *see* 15 U.S.C. § 7901(a)(4). Those statutes do not impose amorphous commands to act "reasonably," leaving judges and juries to decide what that means later. They are comprehensive regimes that impose concrete obligations and prohibitions with which industry members can confidently comply. In fact, Justice Thomas recently noted the problem with using generalized statutes as predicate acts in the context of the PLCAA's predicate exception in his concurrence in S&W:

> In future cases, courts should more fully examine the meaning of "violation" under the PLCAA. It seems to me that the PLCAA at least arguably requires not only a plausible allegation that a defendant has committed a predicate violation, but also an earlier finding of guilt or liability in an adjudication regarding the "violation." Allowing plaintiffs to proffer mere allegations of a predicate violation would force many defendants in PLCAA litigation to litigate their criminal guilt in a civil proceeding, without the full panoply of protections that we otherwise afford to criminal defendants.

Smith & Wesson Brands, Inc., at 1570.

The State's clear intent in enacting the Public Nuisance Statute is to subject members of the firearms industry – like Glock – to virtually unlimited liability for harm caused by intervening criminal actions. Indeed, the Public Nuisance Statute is the very thing that the PLCAA sought to prohibit. Reading the predicate exception to exempt statutes like the Public Nuisance Statute would effectively gut the PLCAA. Congress's objective in passing the PLCAA was to foreclose efforts to impose liability on manufacturers engaged in lawful commerce in firearms through novel "theories without foundation in hundreds of years of the common law and jurisprudence of the United States." 15 U.S.C. § 7901(a)(7). As courts recognized, the problem Congress had with the pre-PLCAA tort suits was that they sought to "expand civil liability" well beyond its traditional moorings, constituting "an abuse of the legal system." *Id.* § 7901(a)(6)-(7). Congress thus opted "[t]o prohibit [such] causes of action" entirely, without regard to whether they are brought pursuant

to tort law or a statute codifying it and no matter how monikered. *Id*. §7901(b)(1). This is exactly what Plaintiffs in this case are trying to achieve by using a statute codifying common law nuisance (Claim I) and the common law itself (Claim II). In short, "Congress clearly intended to preempt common-law claims, such as general tort theories of liability," like "negligence and nuisance." *Ileto v. Glock*, 565 F.3d 1126, 1135 (9th Cir. 2009). And as the Ninth Circuit squarely held in *Ileto*, the PLCAA effectuates that intent by preempting such claims even when they are premised on a statute codifying those common-law theories. *Id*. at 1135-36. This Court should follow Congress's clear intent and the guidance in *Ileto* and hold that an alleged violation of the Public Nuisance Statute based on the sale of Glock pistols to civilian consumers being "unreasonable" cannot be used to satisfy the predicate exception to the PLCAA.

E. THE COMPLAINT MUST BE DISMISSED BECAUSE THE PUBLIC NUISANCE STATUTE IS PREEMPTED BY THE PLCAA AND UNCONSTITUTIONAL

If the Court finds that the Public Nuisance Statute suffices to implicate the PLCAA's predicate exception, the Public Nuisance Claims must still be dismissed because the Public Nuisance Statute is preempted by the PLCAA and is otherwise unconstitutional.

1. Federal Law Provides for Preemption of State Law

The Supremacy Clause of the U.S. Constitution states that the "Laws of the United States . . . shall be the supreme law of the Land." U.S. Const. art. VI, cl. 2. When a federal law "imposes restrictions" and "a state law confers rights . . . that conflict with the federal law, the federal law takes precedence and the state law is preempted." *Kansas v. Garcia*, 589 U.S. 191, 202 (2020) (quotation marks omitted). Here, Congress took away the ability to sue firearms manufacturers based on public nuisance causes of action and Maryland has unconstitutionally attempted to reinstate that ability.

"Express preemption occurs when a federal law contains express language providing for the preemption of any conflicting state law." *Kurns v. A.W. Chesterton Inc.*, 620 F.3d 392, 395 (3d Cir. 2010)). "Implied conflict preemption occurs when it is either impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Kurns*, 620 F.3d at 395-96. For issues related to statutory interpretation, the Supreme Court has observed, "[o]ur analysis begins and ends with the text[.]" *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 553 (2014)). "[W]here the [legislature's] will has been expressed in language that has a reasonably plain meaning, that language must ordinarily be regarded as conclusive." *Byrd v. Shannon*, 715 F.3d 117, 122 (3d Cir. 2013) (citing *Negomott v. Samuels*, 507 U.S. 99, 104 (1993)). Reasonable statutory interpretation must account for both the "specific context in which . . . language is used" and the broader context of the statute as a whole. *Utility Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 321 (2014) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). A "provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988).

2. Congress Expressly Intended for the PLCAA to Preempt State Law

"[T]he PLCAA contains a clear statement of Congress's intent to preempt the states." *Travieso v. Glock Inc*., 526 F. Supp. 3d 533, 541 (D. Ariz. 2021). "The PLCAA clearly states Congress's intent to intrude on [a state's] authority to hear qualified civil liability actions." *Id.* (citing 15 U.S.C. § 7902(a)). "As such, the role of the Court is merely to construe the scope of that preemption in light of the congressional purpose of the statute as revealed by the text and statutory framework." *Id.* (citing *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008); *Bates v. Dow*

Agrosciences LLC, 544 U.S. 431, 449 (2005); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485-86 (1996); *Cipollone v. Liggett Group*, 505 U.S. 504, 530 n.27 (1992); *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 111, 112 (1992)).

3. The Public Nuisance Statute is Unconstitutional Under the Commerce Clause

As an initial matter, the Public Nuisance Statute is not limited to firearm industry members that conduct business in the state, as it defines "firearm industry member" to "mean[] a person engaged in the sale, manufacture, distribution, importation, or marketing of a firearm-related product." Md. Code, Cts. & Jud. Proc. § 3-2501(c). None of that conduct—i.e., the conduct that violates the statute—needs to take place in Maryland for an industry member to come within its terms. Comparatively, the definition of "firearm-related product is limited to a product "that is . . . [s]old, manufactured, distributed, or marketed in the State" (or "[i]ntended to be"). *Id*. §3-2501(d) (emphasis added). But the Public Nuisance Statute does not regulate products; it regulates conduct. And nothing in the statute requires the defendant being sued to be the one whose conduct took place in Maryland. Thus, all of a firearm manufacturer's "sale[s], manufactur[ing], . . . [and] marketing" are fair game for liability in Maryland, no matter where that conduct occurs, in the country or in the world, anytime any of the manufacturer's products "is . . . [s]old" in Maryland, even if it is sold by someone else. *Id*. §§3-2501(d), 3-2502(a)-(b). Such is the case here, where Glock manufactures and distributes firearms in Austria and Georgia.

The Supreme Court has long held that a state law that has "'the practical effect' of regulating commerce occurring wholly outside [the] State's borders" "exceeds the inherent limits of the enacting State's authority" and is "virtually per se invalid." *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 335-36 (1989) (footnote omitted). "'Although the [Commerce] Clause is framed as a positive grant of power to Congress,'" courts "have long held that this Clause also prohibits state laws that unduly restrict interstate commerce." *Tennessee Wine & Spirits Retailers Ass'n v.*

Thomas, 588 U.S. 504, 514 (2019) (quoting *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 549 (2015)). *See also Philadelphia v. New Jersey*, 437 U.S. 617, 623-624 (1978); *Cooley v. Board of Wardens of Port of Philadelphia ex rel. Soc. for Relief of Distressed Pilots*, 53 U.S. (12 How.) 299, 318-19 (1852); *Willson v. Black Bird Creek Marsh Co.*, 27 U.S. (2 Pet.) 245, 252 (1829). "This ''negative' aspect of the Commerce Clause' prevents the States from adopting protectionist measures and thus preserves a national market for goods and services." *Tennessee Wine & Spirits*, 588 U.S. at 514 (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273 (1988)).

The Public Nuisance Statute allows Maryland to impose liability on Glock even if they do not manufacture or sell any products in Maryland, but rather in Georgia, and Austria respectively. Plaintiffs' claims are not even limited to Glock pistols that are sold directly to dealers in Maryland for purposes of resale to civilian consumers in that state. Thus, if Glock sells a pistol to a wholesale firearms distributor in Arizona, which is then sold to a retail firearms dealer in Kansas, who sells it to a citizen of Kansas, but that pistol somehow gets into the hands of a criminal in Maryland, the Public Nuisance Statute claims the power to punish Glock and force it to change its business practices based on conduct that was not directed at Maryland. If any Glock pistols end up being used to cause some sort of harm in Maryland and a judge or jury thinks Glock could have done more to prevent that outcome, Glock faces the prospect of far-reaching consequences, including having its out-of-state conduct enjoined, even though that conduct is lawful in Georgia and Austria, and was not directed at Maryland.

None of the above is constitutional. The U.S. Supreme Court and the Fourth Circuit have long and consistently held that the Commerce Clause, U.S. Const. art. I, §8, cl. 3, prohibits a state from "'directly regulat[ing]'"—that is, imposing liability based upon—conduct that takes place

"'wholly outside the State' and involve[s] individuals 'having no connection with [it].'" *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 n.1 (2023) (italics omitted) (quoting *Edgar v. MITE Corp*., 457 U.S. 624, 641-43 (1982) (plurality op.)); *see also Ass'n for Accessible Meds. v. Frosh* ("*AAM*"), 887 F.3d 664, 666 (4th Cir. 2018) (invalidating Maryland law because it "directly regulates . . . transactions that occur outside Maryland"). Because the Plaintiffs are using the Public Nuisance Statute in an attempt to hold Glock liable based on their conduct that takes place entirely outside of Maryland, it is unconstitutional as applied to Plaintiffs' claims against Glock in this case. As the Fourth Circuit held in *AAM*, a Maryland law that "effectively seeks to compel manufacturers and wholesalers to act in accordance with Maryland law outside of Maryland" violates the Commerce Clause, even if that out-of-state conduct "has effects within the State." 887 F.3d at 671-72.

a. The Public Nuisance Statute Unconstitutionally Imposes Excessive Burdens on Interstate Commerce

A state law will be invalid under the Commerce Clause if its "burdens on interstate commerce are clearly excessive in relation to the putative local benefits." *Am. Trucking Associations, Inc. v. Whitman*, 136 F. Supp. 2d 343, 349 (D.N.J. 2001) (citing *Pike v. Bruce Church, Inc.,* 397 U.S. 137 (1970)). The need to prevent onerous restrictions on interstate commerce is particularly compelling here, where Congress has explicitly and accurately recognized that the firearms industry is a critical part of interstate commerce, *see* 15 U.S.C. §§ 7901(a)(1)-(8), and enacted the PLCAA to protect its members and remove any unreasonable burdens inflicted by litigation on their ability to conduct business:

> Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

> The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.
>
> * * * *
>
> The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

Id. §§ 7901(a)(5)-(6), (8) (emphasis added).

The Public Nuisance Statute violates these bedrock principles. To the extent it allows Plaintiffs to hold Glock liable for manufacturing in and selling pistols from Austria and Georgia, and distributing them throughout the United States, based on a purely subjective standard to be determined by a judge or jury in Baltimore and the criminal acts of third parties, the Public Nuisance Statute is certain to have a chilling effect on a vital part of interstate and foreign commerce.

4. The Public Nuisance Statute Unconstitutionally Restricts Free Speech

The Public Nuisance Statute further regulates (and allows courts to enjoin) speech protected by the First Amendment based on subjective, vague, and unconstitutional standards. It authorizes liability for conduct related to "marketing" that is "unreasonable under the totality of the circumstances." Md. Code, Cts & Jud. Proc. § 3-2502. This provision violates the First Amendment. *See 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 489 (1996) (marketing is protected speech).

"[A] State 'cannot advance some points of view by burdening the expression of others.'" *Moody v. NetChoice, LLC*, 603 U.S. 707, 744 (2024) (quoting *Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 20 (1986).) "To give government that power is to enable it to control the expression of ideas, promoting those it favors and suppressing those it does not. And that is what the First Amendment protects all of us from." *Id.*

a. Content-Based Restrictions on Speech Invoke Special Protection

Laws that single out speech on the basis of content or viewpoint are subject to the strictest of scrutiny, which they "rare[ly]" survive. *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 790-91, 799 (2011). The Public Nuisance Statute does both of those things and Plaintiffs' Complaint articulates exactly how the Public Nuisance Statute is being used to suppress protected speech. And far from being narrowly tailored or even closely drawn to achieve a compelling government interest, it is radically overbroad in relation to any legitimate objective it may further. The Public Nuisance Statute plainly regulates speech based on its content, or "the topic discussed." *City of Austin v. Reagan Nat'l Advert. Of Austin, LLC*, 596 U.S. 61, 69 (2022). After all, the Public Nuisance Statute itself states it applies to "marketing of a firearm-related product." Md. Code, Cts. & Jud. Proc. § 3-2502(a)-(b). The statute does not even apply to all speech about firearm related products—only speech by "firearm industry member[s]." *Id.* § 3-2502(a). And as exemplified by the factual allegations in the Complaint, the Public Nuisance Statute fixates on speech by firearm industry members because Plaintiffs find their viewpoints on the legal use of firearms unfavorably. *See Sorrell v. IMS Health Inc*., 564 U.S. 552, 564 (2011).

Moreover, while the First Amendment does not preclude imposing liability for false, deceptive, or otherwise "misleading" commercial speech, the Complaint does not allege any statements made by Glock that could fall outside the protections of the First Amendment. This is because the Public Nuisance Statute is not aimed at speech that is false, deceptive, or misleading.

Instead, it provides for the imposition of liability for speech about lawful and constitutionally protected products—even when that speech is truthful—if the Plaintiffs somehow determine, in their opinion, that a firearm industry member failed to "establish and implement reasonable controls" regarding the truthful speech used in its marketing of firearm-related products. Md. Code, Cts & Jud. Proc. § 3-2502(b).

Plaintiffs seek to impose liability on Glock for entirely truthful and accurate statements about their lawful products, including accurate product specifications and subjective feelings about shooting certain types of products, as well as for statements made by third parties about Glock's pistols. The Complaint quotes language on Glock, Inc.'s Facebook page and complains about what third-parties independently comment regarding certain posts by Glock, Inc. Compl. ¶¶ 61-63. It also quotes product specifications for the Model G18 pistol published on Glock Ges.m.b.H.'s separate website for non-U.S. customers. *Id.* ¶ 60. But the Complaint does not so much as suggest that anything about these statements—or any other aspect of the websites—are false, deceptive, or misleading. Plaintiffs simply complain that Glock does not include additional compelled speech communicating their desired message that "fully automatic Glock pistols are highly dangerous and illegal for civilians in the United States, and that semiautomatic Glocks should never be modified to be fully automatic, like their advertised product—the G18." *Id*.

Truthful speech promoting a lawful product is protected by the First Amendment, even if the product is known to have deleterious health effects. *See*, *e.g.*, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001) (tobacco); *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173, 184-85 (1999) (gambling); *44 Liquormart*, 517 U.S. at 504 (liquor); *Bigelow v. Virginia*, 421 U.S. 809, 818-25 (1975) (abortion). The mere fact that a product is dangerous does not transform speech about that product (including the marketing and advertisement of the product)

into a tort for which liability may be imposed. And with respect to Glock's products specifically, the speech concerns handguns that are both legal and constitutionally protected by the Second Amendment.[11]

b. The Public Nuisance Statute Unconstitutionally Restricts Protected Speech

Consistent with the aforementioned principles, Maryland must prove that the Public Nuisance Statute satisfies heightened scrutiny. Given the speaker, viewpoint, and content discrimination inherent in the Public Nuisance Statute, strict scrutiny is required. *See Greater Phila. Chamber of Com. v. City of Philadelphia*, 949 F.3d 116, 139 (3d Cir. 2020) ("[M]ore than intermediate scrutiny" is required for commercial speech restrictions that single out "some messages or some speakers based on the content of the speech or the identity of the speaker."). But no matter which version of heightened scrutiny applies, Plaintiffs must prove that Public Nuisance Statute is "narrowly tailored to the interest it promotes." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 609-10 (2021). When a law pursues the government's purported aims "by means that are" both "seriously underinclusive" and "seriously overinclusive," that "raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown*, 564 U.S. at 802, 805.

The Public Nuisance Statute is "seriously underinclusive" under the *Brown* test because it does nothing to police the conduct of third parties who criminally discharge firearms thereby endangering public health and safety, and cause other harms that allegedly arise from the criminal acquisition, possession, and use of MCDs. The Public Nuisance Statute also fails to regulate the

[11] "[P]ro-firearm speech" is "undisputedly" a "protected First Amendment." *Nat'l Rifle Ass'n of Am. v. City of Los Angeles*, 441 F. Supp. 3d 915, 941 (C.D. Cal. 2019) ("pro-firearm speech" constitutes "[c]ore political speech," which "include[es] issue-based advocacy" and "is well-established as a constitutionally protected activity that triggers the First Amendment's highest level of protection").

majority of the speech that is a focal point of the Complaint—namely, the statements of various third parties entirely unrelated to Glock, including those that are alleged to have been posted on social media and are replete with direct incitements to violence by criminals, *see*, *e.g.*, *Compl.* ¶¶ 61-69 (referencing various posts and third-party posts on social media). The statute is thus wildly underinclusive even concerning the regulation of speech. *Brown*, 564 U.S. at 801-02. Thus, Plaintiffs seek to use the Public Nuisance Statute to impose liability on Glock for speech that was made and constitutionally protected by consumers, artists, or video game designers.

The Ninth Circuit recently held a similar California statute to be unconstitutional. *See Junior Sports Mags. Inc. v. Bonta*, 80 F.4th 1109 (9th Cir. 2023). At issue in *Junior Sports* was "whether California can ban a truthful ad about firearms used legally by adults and minors – just because the ad 'reasonably appears to be attractive to minors.'" *Id.* at 1113. The Ninth Circuit explained that the ban "would include messages about legal use of guns." *Id.* at 1116. Therefore, the court held that the statute was unconstitutional because it "facially regulates speech whose content concerns lawful activities and is not misleading" and that "the First Amendment requires more than fact-free inferences to justify governmental infringement on speech." *Id.* at 1117-18. The Ninth Circuit further explained that "[e]ven if California's advertising restriction significantly slashes gun violence and unlawful use of firearms among minors, the law imposes an excessive burden on protected speech." *Id.* at 1119.

The Public Nuisance Statute is no different; it likewise expressly allows Plaintiffs to take action against "speech whose content concerns lawful activities and is not misleading." *Junior Sports*, 80 F.4th at 1117-18. In fact, the Public Nuisance Statute goes so far as to impose liability on firearm industry members for the "marketing of a firearm related product" that the State or City declares to be "unlawful," "unreasonable," *or* not in accordance with "reasonable controls." Here,

Plaintiffs are attempting to regulate Glock's alleged subjective statements that, "use of the G18 in full-auto mode [is] 'more fun' and 'better' than semi-automatic firing" and "only thing more fun that a GLOCK is full-auto GLOCK," even though this is a legal use and this viewpoint or subjective "feeling" cannot be misleading, and Plaintiffs fail to allege otherwise. Compl. ¶ 64. In other words, Plaintiffs are trying to use the Public Nuisance Statute to impose harsh civil penalties for speech by Glock that these governmental entities do not find "reasonable," in their subjective opinion, even if the speech is otherwise lawful. Such infringement on the right to free speech is unconstitutional.

c. The Public Nuisance Statute Further Violates the Right to Free Speech Because it is Unconstitutionally Vague

"When the language of a regulation is vague, speakers are left to guess as to the contours of its proscriptions." *Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307 F.3d 243, 266 (3d Cir. 2002). "They are left without 'fair notice' of the regulation's reach." *Id.* "Commonly, this uncertainty will lead them to 'steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.'" *Id.* (quoting *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964)). "The need for specificity is especially important where, as here, the regulation at issue is a 'content-based regulation of speech. The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech.'" *Id.* (quoting *Reno v. ACLU*, 521 U.S. 844, 871-72 (1997)). As the Second Circuit has noted, "vagueness in the law is particularly troubling when First Amendment rights are involved." *See Farrell v. Burke*, 449 F.3d 470, 485 (2d Cir. 2006); *see also id.* at 496 (noting that "[t]he general rule disfavoring facial vagueness challenges does not apply in the First Amendment context"). "There is also a second, 'more important aspect of vagueness doctrine.'" *Sypniewski*, 307 F.3d at 266 (quoting *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)). "A vague rule 'may authorize and even encourage arbitrary

and discriminatory enforcement,'" *id.* (quoting *City of Chicago v. Morales*, 527 U.S. 41, 111 (1999)), "by failing to 'establish minimal guidelines to govern . . . enforcement.'" *Id.* (quoting *Kolender*, 461 U.S. at 358).

A law "can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *VIP of Berlin, LLC v. Town of Berlin*, 593 F.3d 179, 186 (2d Cir. 2010) (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2000)); *see also United States v. Williams*, 553 U.S. 285, 304 (2008). Laws that impose criminal penalties are subject to a strict vagueness test, "and laws that might infringe constitutional rights [are subject] to the strictest of all." *Rubin v. Garvin*, 544 F.3d 461, 467 (2d Cir. 2008).

The Public Nuisance Statute is impermissibly vague as to what speech is prohibited. By allowing liability to be imposed for conduct that Plaintiffs deem to not be "reasonable," but which is otherwise completely lawful, and in this case sanctioned by the State, the Public Nuisance Statute establishes a subjective standard for these government entities to use the power of their offices to attack firearm industry members who sell lawful products. At the same time, the Public Nuisance Statute makes it virtually impossible for Glock to determine what speech is and is not permitted. Any advertisement for a lawful product anywhere – even those solely intended for customers in other countries, *see, e.g.*, Compl. ¶ 60, or claims that shooting a full-auto legal firearm is "fun," *see, e.g.*, Compl. ¶ 64 - can be grounds to seek liability against Glock because it is alleged to have indirectly contributed to gun-related problems in Maryland.

The uncertainty as to what the Plaintiffs deem to be "reasonable" not only "raises special First Amendment concerns because of its obvious chilling effect on free speech," but creates a

"risk of discriminatory enforcement," which is exactly what the Plaintiffs have done by filing this action against Glock. *Reno*, 521 U.S. at 871-72. The Public Nuisance Statute's limitless and undefined grant of authority to Plaintiffs to censor Glock's speech they find offensive, but legal, cannot survive constitutional scrutiny.

5. The Public Nuisance Statute is Unconstitutionally Vague under Due Process

The Public Nuisance Statute is also unconstitutionally vague under the Due Process Clause with respect to all other conduct it polices because it provides Glock with no meaningful guidance on how they are supposed to act — or, more to the point, how they can conduct their businesses without running afoul of the statute.

The Fourteenth Amendment prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, §1. A law that forbids or requires an act "in terms so vague that men of common intelligence must necessarily guess at its meaning . . . violates the first essential of due process of law." *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 390 (1926). The same is true of a law with terms so malleable that it authorizes "arbitrary [or] discriminatory enforcement." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

A more "stringent" vagueness test applies for statutes that "threaten[] to inhibit the exercise of constitutionally protected rights" of any kind, as well as for statutes that impose "quasi-criminal" penalties. *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982). The Public Nuisance Statute restricts the conduct of those engaged in the lawful business of selling products protected by the Second Amendment to law-abiding citizens who are constitutionally entitled to possess them. The liability this statute threatens is no small matter—"[i]njunctive relief;" "[r]estitution;" "[c]ompensatory and punitive damages;" "[r]easonable attorney's fees and costs;" and "[a]ny other appropriate relief." Md. Code, Cts. & Jud. Proc. § 3-2503(a)(2). It thereby brings with it the possibility of imposing liability not only on Glock, but "on

an entire industry," which "threatens the diminution of a basic constitutional right" enabled by that industry—namely, individuals' Second Amendment rights to keep and bear arms. 15 U.S.C. § 7901(a)(6). As a result, the Public Nuisance Statute is subject to a "stringent" vagueness test even apart from its direct regulation of speech.

The Public Nuisance Statute's prohibitions are hopelessly vague. The statute renders it unlawful to, among other things, "contribute to harm to the public through the sale, manufacture, distribution, importation, or marketing of a firearm-related product by engaging in conduct that is" either "[u]nlawful" or "[u]nreasonable under the totality of the circumstances." Md. Code, Cts. & Jud. Proc. § 3-2502(a). The text thus confirms that, to fall into the disjunctive "unreasonable" category, conduct must be lawful. Moreover, "the totality of the circumstances" that a court must consider include the circumstances of any nuisance itself, which may not come into being until long after the manufacturer or seller has engaged in "the sale, manufacture, distribution, importation, or marketing of a firearm-related product." *Id*. There is no way for Glock to know if their conduct will or will not be deemed unreasonable under "the totality of the circumstances."

That is not the worst of it. It remains a mystery what "[r]easonable controls" Glock should implement, or even worse, what it should have implemented before the Public Nuisance Statute became a law — especially since the term is defined to mean something more than simply complying with the law. Md. Code, Cts. & Jud. Proc. § 3-2501(f). And the statute's modest effort to supply a definition only makes matters worse: Rather than detail a firearm industry member's concrete obligations with specificity, the statute commands Glock to adopt any and all procedures "designed . . . [t]o" prevent or ensure a litany of abstract goals including, but not limited to, preventing the loss or theft of firearms, preventing illegal arms trafficking, and so on. *Id.* Furthermore, the Public Nuisance Statute tasks industry members with looking into a crystal ball

and predicting which actions or inactions might lead to a "harm to the public," or even what that "harm" even entails.

To be clear, "[w]hat renders [this] statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is." *United States v. Williams*, 553 U.S. 285, 306 (2008). The problem is the failure to articulate any cognizable standard for Glock to follow. The Public Nuisance Statute is "so standardless that it invites arbitrary enforcement," *Johnson v. United States*, 576 U.S. 591, 595 (2015), which is problematic in any context, and is exemplified by this lawsuit.

6. The Public Nuisance Statute Unconstitutionally Infringes the Second Amendment

The U.S. Supreme Court has made clear "that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022) (citing *McDonald v. Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008)). Under that framework, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* "To justify its regulation, the government may not simply posit that the regulation promotes an important interest." *Id.* "Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* "Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n.10 (1961)).

The Public Nuisance Statute plainly seeks to regulate conduct protected under the Second Amendment because it targets "firearm industry member[s]" with respect to their "sale, manufacture, distribution, importation, marketing, possession, and use of the firearm industry

member's firearm–related products." Md. Code, Cts & Jud. Proc. § 3-2502(b); *See Radich v. Guerrero*, No. 1:14-CV-00020, 2016 WL 1212437, at *7 (D. N. Mar. I. Mar. 28, 2016) ("If the Second Amendment individual right to keep and bear a handgun for self-defense is to have any meaning, it must protect an eligible individual's right to purchase a handgun, as well as the complimentary right to sell handguns."); *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (*en banc*) (the "core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms").[12]

To survive a Second Amendment challenge, the Plaintiffs must demonstrate that there is a historical tradition of banning the sale of legal firearms simply because they could subsequently be illegally modified by third parties into prohibited firearms. *See Atkinson v. Garland*, 70 F.4th 1018, 1020 (7th Cir. 2023) (that is the "only one way" "the government" can "defend [a] regulation" "when the Second Amendment's 'plain text' covers the regulated conduct") (quoting *Bruen*, 597 U.S. at 17). That they cannot do. For example, while legal rifles and shotguns could be illegally modified into prohibited short-barreled rifles and shotguns simply by sawing off a section of their barrel so that it is less than the required length, a categorical ban on rifles and shotguns solely because they could be illegally modified would be patently unconstitutional. This is especially true with certain classes of weapons that, like Glock's semi-automatic pistols, are extraordinarily popular and are commonly owned and used for lawful purposes, such as self-defense. *See*, *e.g.*, *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin*, 742 F.Supp.3d

[12] S*ee also Second Amend. Arms v. City of Chicago*, 135 F. Supp. 3d 743, 761-62 (N.D. Ill. 2015) ("At least one court in this district has already concluded, based on the evidence provided in that case, that the City failed to establish that gun sales were categorically unprotected by the Second Amendment"; "[a]nd the fact that *Heller* and *McDonald* instruct that restrictions on firearms sales are presumptively valid under the Second Amendment – as opposed to categorically unprotected by the Second Amendment – implies that, at least in part, the sale of firearms is protected by the Second Amendment").

421, 447 (D.N.J. 2024) (holding that the "AR-15 Provision of [New Jersey's] Assault Firearms Law is unconstitutional for the Colt AR-15 for use for self-defense in the home."); Compl. ¶ 113.

The Public Nuisance Statute also undermines the Second Amendment by effectively imposing unlimited liability on members of the firearms industry. As explained above, the statute's vague terms related to "unreasonable conduct" and "reasonable controls" make it virtually impossible for Glock to structure their conduct to ensure compliance with the law and avoid liability.

Further, the Public Nuisance Statute is, as recognized by Congress in enacting the PLCAA, the very type of law that is at complete odds with historical traditions of regulating the firearms industry and infringes on the Second Amendment:

> The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.
>
> * * * *
>
> The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

15 U.S.C. §§ 7901(2), (7) (emphasis added). *See also Camden County*, 273 F.3d at 540-41 (noting that expanding "Public Nuisance Statute to embrace the manufacture of handguns would be unprecedented"). Thus, this Court should dismiss Plaintiffs' first cause of action because the Public Nuisance Statute is unconstitutional under the Second Amendment based on the manner in which Plaintiffs seek to apply it to their claims against Glock.

IV. CONCLUSION

For the foregoing reasons, Glock respectfully requests that this Court grant its motion, dismiss the Complaint, and all claims therein, with prejudice, and grant such other relief as it deems just and appropriate.

Dated: July 23, 2025

Respectfully submitted,

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