

ESSEX COUNTY SUPERIOR COURT

OCTOBER 14, 2025

FILED

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DENIED

*Attorneys for Defendants GLOCK, Inc. and
GLOCK Ges.m.b.H.*

MATTHEW J. PLATKIN, Attorney General
of the State of New Jersey,

Plaintiff,

v.

GLOCK, INC.; GLOCK Ges.m.b.H., an
Austrian company

Defendants.

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY
CHANCERY DIVISION
GENERAL EQUITY PART

DOCKET NO. ESX-C-000286-24

Civil Action

**DENYING
~~[PROPOSED]~~ ORDER ~~GRANTING~~
DEFENDANTS' MOTION TO DISMISS**


Upon consideration of the motion to dismiss filed by defendants GLOCK, Inc. and GLOCK Ges.m.b.H. ("Defendants"); and the Court having reviewed the moving papers and the opposition thereto, if any; and the Court having considered the arguments of counsel; and for good cause shown;

It is on this ^{14TH} day of OCTOBER, 2025,

ORDERED that Defendants' motion is **DENIED** ~~GRANTED~~.

~~**IT IS FURTHER ORDERED** that the entire Complaint is hereby **DISMISSED WITH**
PREJUDICE.~~

IT IS FURTHER ORDERED that a copy of this Order shall be served on all counsel and any unrepresented parties promptly upon receipt thereof by Calcagni & Kanefsky, LLP.

A handwritten signature in black ink, appearing to read "Lisa M. Adubato", written in a cursive style.

Hon. Lisa M. Adubato, P.J.Ch.

OPPOSED

Statement of Reasons attached

STATEMENT OF REASONS
PLATKIN v. GLOCK INC., et al.
C-286-24

I. INTRODUCTION

This matter comes before the Court on a motion to dismiss the Complaint filed by Defendants Glock, Inc. and Glock Ges.m.b.H (collectively, “Glock” or “Defendants”). Plaintiff is the Attorney General of New Jersey (“State” or “Plaintiff”). Glock raises multiple arguments regarding preemption under the federal Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§7907-03 (“PLCAA”), constitutional challenges to the New Jersey Public Nuisance Law, N.J.S.A. 2C:58-35 (“§58-35”), as well as product liability and proximate cause opposition to the State’s claims. For the reasons set forth below, Defendants’ motion to dismiss is DENIED.

II. RELEVANT BACKGROUND

A. Plaintiff’s Allegations

The Complaint alleges that Defendants have deliberately designed, manufactured, marketed, and distributed handguns in New Jersey that are easily and rapidly convertible (“switched”) into fully automatic machine guns using a widely available aftermarket “switch” or “auto sear.” It is alleged that these switches, often resembling “a small Lego brick,” can be installed in minutes for under \$20, enabling a Glock handgun to fire up to 1,200 rounds

per minute—faster than some military-issue automatic weapons—with uncontrolled spray and dangerous levels of recoil (Complaint ¶¶ 2, 4, 100).

Glock is alleged to have knowingly retained a handgun design whereby the trigger bar is externally accessible and readily manipulated, despite Glock’s awareness of the corresponding public safety risks and repeated requests by law enforcement and government officials to implement design modifications (Id. at ¶¶ 5, 6, 17, 19, 123, 128). The State alleges that the company has taken no meaningful steps to redesign its handguns to prevent switching, despite having demonstrated the technical ability to do so in other markets, such as Europe (Id. at ¶¶ 17, 127).

The Complaint details Glock’s historical knowledge of its handguns’ unique susceptibility to switching. (Id. at ¶¶ 7, 83–85). Glock has manufactured a handgun which incorporates a selector switch for machine gun functionality, which Plaintiff here contends further evidences Glock’s promotion and awareness of the automatic capabilities inherent in its platform. (Id. at ¶¶ 65–72).

Plaintiff alleges a widespread and ongoing public safety crisis in New Jersey, with switched Glock machine guns increasingly recovered by law enforcement in connection with homicides, aggravated assaults, robberies, burglaries, carjackings, and crimes involving minors—both as victims and

perpetrators. (Id. at ¶¶ 10–12). The Complaint provides numerous examples of recent incidents within New Jersey, and nationwide, including but not limited to:

- An April 2023 Newark shooting where 28 rounds were fired in just over one second at a public housing complex, injuring three. (Id. at ¶ 1, 10b).
- Recovery of switched Glock machine guns with extended magazines from suspects in Trenton, Vineland, Haledon, New Brunswick, Paterson, and Asbury Park. (Id. at ¶¶ 10e–10g, 149a–149p).
- A marked increase in recoveries of switched Glock machine guns by ATF and local law enforcement departments, with the Complaint citing a 400% increase nationwide. (Id. at ¶¶ 101–107, 133, 138–141).

Plaintiff further alleges that the proliferation of switched Glock machine guns has become a cultural and social phenomenon, illustrating the strong association between Glock’s brand and the illicit automatic weapons market. (Id. at ¶¶ 13–15, 113–116).

In New Jersey, Glock is alleged to have built and maintained a deliberate distribution network including a formal affiliate relationship with at least 50 authorized local dealers, some of which have been identified by ATF as outsized sources of crime guns. Allegedly, Glock provides direct marketing benefits to these dealers and exercises significant contractual control over their operations. (Id. at ¶¶ 35, 133–140).

B. Defendants' Arguments in Support of Motion

Glock characterizes its products as lawful, popular handguns used by civilians and law enforcement. Defendants assert the harms alleged by the State are the result of criminal third-party modifications, not Glock's design or sales practices. Glock moves to dismiss the Complaint on the following grounds:

1. PLCAA Preempts the State's Action, and the Suit is Barred as a "Qualified Civil Liability Action."

Defendants argue that the claims asserted by the State are exactly the type Congress intended to bar through PLCAA. The Complaint is a "qualified civil liability action" as defined by 15 U.S.C. § 7903(5)(A), because the harm arises from criminal third-party misuse of Glock pistols modified with illegal auto sears. (Defendants' Brief in Support of Motion at 11-13, 15-16.) Glock, Inc. is a federally licensed manufacturer covered by PLCAA and thus immune from such suits. (*Id.* at 12). Defendants emphasize that under federal law, mere possession of an auto sear constitutes unlawful possession of a machinegun independent of any firearm. (*Id.* at 1, 7).

2. No Exceptions to PLCAA Apply

Defendants contend that the so-called "predicate exception" to PLCAA does not apply, because §58-35 does not require knowing violation of an applicable statute by the manufacturer or proximate causation which Glock

argues is required by PLCAA. (*Id.* at 14-17, 23-25). Glock highlights that §58-35 allows liability based simply on “unreasonable” conduct or failure to adopt “reasonable controls,” rather than proof of specific statutory violations or knowing misconduct. (*Id.* at 15-16). Further, according to Defendants, that Law attempts to bypass proximate cause requirements by statutorily deeming the conduct of an industry member to be a proximate cause of harm even in the face of intervening criminal actions by third parties. (*Id.* at 16, citing N.J.S.A. § 2C:58-35(e)).

Defendants also reject applicability of the “product defect exception” under PLCAA. They assert the State is not seeking relief for actual product defects present at the time of sale, but for post-sale criminal misuse that transforms their lawfully manufactured pistols into machine guns. (*Id.* at 19-20, 45-46). Defendants maintain that criminal misuse by third parties constitutes the sole proximate cause of harm under PLCAA, barring product liability claims based on subsequent illegal modifications. (*Id.* at 20, 45).

3. Section 58-35 Is Preempted and Unconstitutional

Defendants argue that §58-35 is explicitly preempted by PLCAA, which contains express Congressional intent to bar state-law actions of this type. (*Id.* at 21-25, quoting 15 U.S.C. § 7901(b)(1)).

Defendants further contend §58-35 is unconstitutional on multiple grounds:

- Commerce Clause: §58-35 excessively burdens interstate commerce and regulates conduct outside New Jersey, including the manufacture and sale of handguns by out-of-state entities, contrary to longstanding federal constitutional constraints. (Id. at 26-29).
- First Amendment: §58-35 impermissibly restricts protected commercial speech about lawful products, targeting truthful marketing and advertising solely because it relates to firearms. (Id. at 30-35).
- Due Process (Vagueness): §58-35 is impermissibly vague, subjecting manufacturers to liability based on subjective standards of “reasonableness” without clear notice of prohibited conduct, thus encouraging arbitrary and discriminatory enforcement. (Id. at 36-38).
- Second Amendment: Defendants assert Glock pistols are in common lawful civilian use, and §58-35 seeks to restrict their sale based on speculative third-party future misuse, in direct conflict with constitutional protections of the right to acquire and possess firearms for self-defense. (Id. at 39-41).

4. Product Liability and Proximate Cause Defenses

Glock submits that the State’s product liability claims fail because Glock pistols are safe for their intended and designed purpose as semi-automatic handguns. Any alleged dangerous condition arises only through criminal modification after sale, not from a defect present when the product left Glock’s control. (Id. at 45-46). Defendants claim that a criminal act by a third-party user severs proximate causation as a matter of law under New Jersey and federal precedent. (Id. at 16-18, 42-43, 45-46).

5. Claims Predicated on New Jersey Product Liability Act Are Prohibited

Defendants contend that the New Jersey Product Liability Act, N.J.S.A. 2A:58C-2 (“NJPLA”), cannot be used by the State as a basis for a public nuisance action under §58-35, as it is expressly prohibited by statute. (*Id.* at 43-44, citing N.J.S.A. § 2C:58-36).

C. Plaintiff’s Arguments in Opposition to Motion

1. PLCAA Does Not Categorically Bar §58-35 Actions or Preempt Causes of Action

The State argues that PLCAA does not categorically preempt state law causes of action, specifically §58-35. PLCAA operates only as a bar to certain narrowly defined "qualified civil liability actions," not as a general preemption of statutes or claims. PLCAA does not protect manufacturers who are not federally licensed (e.g., Glock Ges.m.b.H), and thus Glock Limited cannot invoke PLCAA immunity at all. (Plaintiff’s Brief in Opposition to Motion at 13–15).

2. This Action Is Not a "Qualified Civil Liability Action"

The State contends that the present suit is not a PLCAA-barred "qualified civil liability action" because it is not based solely on harm resulting from third-party criminal misuse of firearms. It is predicated on Glock’s own misconduct—specifically, its deliberate design, marketing, and distribution of

handguns susceptible to illegal automatic conversion, and its failure to implement feasible design changes despite long-standing awareness of the risk and repeated governmental warnings. (*Id.* at 16–20).

3. PLCAA’s Predicate Exception Permits This Suit

The State argues that even if the case qualified under PLCAA’s general bar, it fits squarely within the “predicate exception,” which allows suits where a gun manufacturer “knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of harm.” The Complaint pleads four predicate statutory violations: (1) causing manufacture of illegal machine guns (N.J.S.A. 2C:39-9(a)); (2) aiding and abetting machine gun possession, manufacture, and distribution (N.J.S.A. 2C:39-5, 2C:39-9(a)); (3) violation of the Product Liability Act (N.J.S.A. 2A:58C-2); and (4) violation of §58-35 itself. The State contends these are “knowing” violations that proximately caused the harm alleged. (*Id.* at 20–36)

The State argues that the U.S. Supreme Court’s most recent decision on PLCAA, Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos, 605 U.S. 280 (2025), supports the position that the predicate exception authorizes liability for violations of applicable statutes proximately causing harm, regardless of the statutory cause of action or whether harm is the result of

criminal misuse, so long as the defendant's own conduct is at issue. (Id. at 21, 32–33)

D. Constitutional Violations

1. Commerce Clause

The State maintains §58-35 does not violate the Commerce Clause because it is not discriminatory and does not unduly burden interstate commerce: its scope and effects are strictly tied to New Jersey sales and public safety and extraterritorial effects are not per se invalid under the Commerce Clause unless they discriminate specifically against out-of-state businesses, which §58-35 does not. (Id. at 40–42).

2. First Amendment

The State asserts that §58-35 does not infringe protected speech under the First Amendment, as the Statute targets conduct associated with the marketing and sale of gun-related products, and any effect on speech is incidental and constitutionally permissible. The State further argues that statutes regulating commercial activity integral to illegal acts are not invalid under the First Amendment, and any challenge based on facial overbreadth fails. (Id. at 43–45).

3. Vagueness (Due Process)

The State contends that §58-35 is not unconstitutionally vague in its application because its reasonableness standard mirrors well-established tort and statutory frameworks. The Complaint provides extensive factual detail regarding Glock's unreasonable conduct, making it clear how the statute applies to the facts alleged. (*Id.* at 45–47).

4. Second Amendment

The State argues that §58-35 regulates the sale and distribution of firearms—not the possession or bearing of arms by individuals—and is therefore presumptively lawful under District of Columbia v. Heller, 554 U.S. 570, 582-83 (2008) and subsequent Supreme Court precedent. There is no recognized Second Amendment right to sell firearms, and Glock's claims of a “right to sell” are unsupported. (*Id.* at 48–49).

E. Product Liability Act (NJPLA) Claims

1. NJPLA Design Defect Liability

The State asserts that Glock is liable for design defects under the NJPLA (N.J.S.A. 2A:58C-2) because a manufacturer must account for foreseeable misuse or alteration—even if criminal—when designing products. Glock’s unique handgun design, which enables simple conversion to machine

gun operation, constitutes a dangerous defect foreseeable to Glock. (Id. at 49–52)

2. NJPLA Violations as Section 58-35 “Unlawful in Itself” Claims

The State asserts that NJPLA violations may serve as the basis for a §58-35 claim as unlawful in itself, and that statutory construction of the law supports this approach. The State rebuts Glock’s argument that §58-36 prohibits relying on NJPLA violations and that NJPLA does not preclude or subsume public nuisance claims under §58-35 brought by the Attorney General. (Id. at 53–54).

III. LEGAL ANALYSIS

A. Motion to Dismiss Standard

The standard for analyzing a motion to dismiss is whether a cause of action is “suggested” by the facts in the Complaint. All well-pleaded allegations must be accepted as true. The case must be examined “in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned ... opportunity being given to amend if necessary.” Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989).

Additionally, at such a preliminary state of the litigation, the Court need not be concerned with the ability of a plaintiff to prove the allegations contained

in the Complaint and a plaintiff is entitled to every reasonable inference of fact. Independent Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956).

B. PLCAA Applicability

On June 5, 2025, following submission of the State's opposition to defendants' Motion to Dismiss, the United States Supreme Court decided Smith & Wesson, supra. Defendants' Reply in Further Support of Motion to Dismiss included analysis of that case. Permission was granted to Plaintiff to provide a sur-reply to do the same. Thus, all parties have provided arguments regarding the impact of that case on the instant motion. The Court's unanimous decision in Smith & Wesson clarified the proper interpretation of PLCAA in several material respects directly applicable to this case. This court finds the reasoning of Smith & Wesson supports the State's position and not that of Glock.

The Court confirmed that PLCAA does not generally "preempt" all state statutory claims or insulate firearm manufacturers from every conceivable lawsuit. Instead, as the Supreme Court stated, the statute only bars "certain lawsuits against manufacturers and sellers of firearms"—those that qualify as "qualified civil liability actions" (QCLAs) under the specific terms of PLCAA. That Act further contains explicit exceptions, most

importantly the “predicate exception,” which permits otherwise-barred actions when a defendant “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). As set forth in Smith & Wesson, “the predicate exception ... opens a path to making a gun manufacturer civilly liable for the way a third party has used the weapon it made.” 605 U.S. at 286. See Nat’l Shooting Sports Found., Inc. v. James, 144 F.4th 98 (2d Cir. 2025).

Glock’s claim of broad, categorical immunity is undermined by Smith & Wesson’s reasoning. The Supreme Court noted that:

PLCAA’s general bar on these suits has ... an exception, usually called the predicate exception, relevant here. That exception applies to lawsuits in which the defendant manufacturer or seller ‘knowingly violated a State or Federal statute applicable to the sale or marketing’ of firearms, and the ‘violation was a proximate cause of the harm for which relief is sought.’
Id. at 280. Thus, actions predicated on a knowing violation of such a statute—even when criminal misuse is involved—may proceed.

The Smith & Wesson opinion specifically rejects the notion that manufacturers can never be liable when third-party conduct is involved. “If a plaintiff can show that provision is satisfied—that, say, a manufacturer committed a gun-sale violation proximately causing the harm at issue—then

a suit can proceed, even though it arises from a third party's later misuse of a gun." Id. at 286.

The instant matter is in the same procedural posture as that in Smith & Wesson, and the Supreme Court confirmed that the inquiry at the pleading stage is whether the complaint "has plausibly alleged conduct falling within the statute's predicate exception." Id. at 280. Mexico's complaint failed because it did not plead facts showing that the manufacturers "aided and abetted" illegal gun sales with the requisite knowledge and purpose. Id. at 281. Notably, the Court found Mexico's allegations wanting because it could not sufficiently tie the defendant manufacturers' conduct to specific statutory violations or to specific criminal transactions. Id. at 302 (J. Jackson, concurring.)

By contrast, the State's Complaint here sets forth, in detail, allegations of Glock's knowing violation of several specific New Jersey statutes "applicable to the sale or marketing" of firearms, including causing or aiding and abetting the manufacture or possession of illegal machine guns and violations of the NJPLA. The Complaint further alleges that Glock's design choices and continued distribution of handguns, despite knowledge of their ready convertibility to machine guns, constitute such violations. Smith & Wesson makes clear that had Mexico's complaint met this threshold of

plausible, well-pleaded statutory violations with proximate causation, the case would have survived the motion to dismiss under PLCAA.

Glock contends that general knowledge of third-party criminal misuse cannot suffice for liability. Smith & Wesson does in fact confirm that “an ordinary merchant does not become liable for all criminal misuses of her goods, simply by knowing that, in some fraction of cases, misuse will occur.” Id. at 281. Aiding and abetting liability cannot rest on mere indifference. Id. at 282. However, the Court did not hold that aiding and abetting liability is never available. When a plaintiff pleads that a defendant participated in the violation as “in something that he wishes to bring about” and “seek by his action to make it succeed” liability may attach. Id. at 291 (quoting United States v. Peoni, 100 F. 2d 401, 402 (2d Cir. 1938)). The standard requires plausible allegations of “pervasive, systemic, and culpable” participation. Id. at 294.

Here, unlike Mexico’s generalized and conclusory allegations, the State sets forth factual claims that Glock “deliberately designed” its handguns to be readily convertible to illegal machine guns, marketed those products, and failed to employ reasonable controls or modify the design despite numerous warnings and increasing harm. These facts, if proven, go beyond general

awareness of misuse and approach the conscious and culpable participation in another's wrongdoing that the Supreme Court requires.

The Supreme Court's ruling underscores that allegations, such as those made in the State's Complaint, which show the requisite statutory violations and proximate causation, fall within the predicate exception and are not subject to dismissal under PLCAA. Thus, Glock's position that PLCAA entirely bars the State's suit at the threshold is foreclosed by Smith & Wesson. The Supreme Court has confirmed that PLCAA does not grant blanket immunity to firearm manufacturers and that actions on well-pled statutory predicate violations may proceed. Here, the State's complaint plausibly alleges knowing violations of specific predicate statutes proximate to the harm suffered, and therefore it is not subject to dismissal under PLCAA. Whether the State's factual allegations can be proven at a later stage is not a question for this motion.

C. Constitutional Challenges to §58-35

1) Commerce Clause

Defendants argue that §58-35 violates the dormant Commerce Clause by impermissibly burdening interstate commerce and regulating out-of-state conduct. This court finds no merit in these claims. Section 58-35 regulates the conduct of gun industry members who sell, market, or distribute products in

New Jersey and is aimed at protecting New Jersey residents from local dangers created by the influx of switched Glock handguns. The regulatory focus is local and non-discriminatory, imposing no greater burden on out-of-state actors than in-state actors, and is fully consistent with Supreme Court precedent rejecting the notion that incidental out-of-state effects amount to a Commerce Clause violation. See National Pork Producers Council v. Ross, 598 U.S. 356 (2023).

2) First Amendment

Defendants contend that §58-35 targets protected speech or is facially overbroad by restricting commercial advertising. This argument fails because the Complaint is based on conduct—design, manufacturing, and distribution decisions—not speech. To the extent that Glock’s marketing or communications are referenced, they are evidentiary, not the basis for liability. It has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949); see also State v. Hill, 256 N.J. 266, 282 (2024). Any restriction is justified by the substantial government interest in preventing public nuisance and harm from illegal firearms.

3) Due Process (Vagueness)

Vagueness "is essentially a procedural due process concept grounded in notions of fair play." State v. Lashinsky, 81 N.J. 1, 17 (1979). Generally speaking, "[a] statute 'is void if it is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.'" State v. Lenihan, 219 N.J. 251, 267 (2014) (quoting Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 279-80 (1998)). A statute that "is challenged as vague as applied must lack sufficient clarity respecting the conduct against which it is sought to be enforced." State v. Maldonado, 137 N.J. 536, 563 (1994).

Where the language of a given statute is "sufficiently clear," "the speculative danger of arbitrary enforcement does not render the ordinance void for vagueness." Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 503 (1982). See Nat'l Shooting Sports Found., Inc. v. James, supra, 144 F.4th at 118.

Defendants' claim that §58-35 is void for vagueness is unsupported by the record. The statutory "reasonableness" standards invoked are commonplace in civil regulatory and tort law and the Complaint provides detailed factual assertions describing Glock's alleged unreasonable conduct

and failures to implement safeguards. Defendants are fully apprised of what conduct is at issue and the nature of their alleged violations under the statute.

4) Second Amendment

Defendants' argument that §58-35 infringes its rights under the Second Amendment is rejected. The Statute regulates the conduct of commercial actors in the gun industry, specifically in their sale and distribution of firearms, not the ability of citizens to possess or use arms for self-defense. Well-established Second Amendment precedent affirms the constitutionality of conditions and qualifications on the commercial sale of firearms. District of Columbia v. Heller, 554 U.S. 570, 627 (2008); In re Appeal of the Denial of R.W.T., 477 N.J. Super. 443, 462 (App. Div. 2023).

D. Product Liability Act Claims

The State contends that Glock is liable under NJPLA for the foreseeable misuse (conversion to machine guns) arising from Glock's allegedly defective design. Glock asserts that criminal misuse of its handguns, via aftermarket switches, severs the causal link and precludes liability. Under New Jersey law, a manufacturer is not liable for damages where a person misuses the product, unless that misuse was "objectively foreseeable." Indian Brand Farms, Inc. v. Novartis Crop Prot., Inc., 617 F.3d 207, 225 (3d Cir. 2010); see Jurado v. W.

Gear Works, 131 N.J. 375 (1993); Glock’s alleged knowledge of the ease of switching its handguns and the foreseeability of criminal misuse, coupled with its alleged refusal to redesign despite viable alternatives, suffice to state a claim at this stage of the case under the NJPLA.

Defendants’ argue that on its face, N.J.S.A. 2C:58-36 of the Public Nuisance Act prohibits the State from relying on NJPLA. Section 58-36 sets forth that: "The provisions of P.L.1987, c.197 (C.2A:58C-1 et seq.) shall not apply to any public nuisance action brought by the Attorney General pursuant to section 3 of P.L.2022, c.56 (C.2C:58-35)." The State argues, however, that the Legislature’s intent in including that provision in the Public Nuisance Act was to explicitly allow for these types of actions by the Attorney General.

While in the normal course of pleadings, a plaintiff may state as many separate claims it wishes, “regardless of their consistency and whether based on legal or on equitable grounds or on both.” R. 4:5-6. NJPLA is an exception to this Rule because it subsumes other claims by requiring all legal theories within the PLA’s scope to be fashioned exclusively as PLA claims. See In re Lead Paint, 191 N.J. 405 (2007) (dismissing nuisance claims for deteriorating paint as within the PLA’s scope and thus subsumed).

In Sun Chem. Corp. v Fike Corp., 243 N.J. 319 (2020) our Supreme Court confirmed that private Consumer Fraud Act claims are foreclosed under

NJPLA when “premised upon a product’s manufacturing, warning or design defect.” *Id.* at 336-37. However, that holding did not encompass actions brought by the Attorney General as opposed to a private plaintiff. When the Legislature amended §58-35 to permit the Attorney General new enforcement authority, it also enacted §58-36 to explicitly set forth that NJPLA subsumption does not apply to claims under §58-35. This court accepts the argument set forth by the State that:

Section 58-36 does not say that the PLA “shall not apply in” a Section 58-35 case brought by the Attorney General. Section 58-36 says that the PLA “shall not apply to” the Attorney General’s Section 58-35 claims—a reference to the PLA’s power to subsume other claims. [State’s Brief in Opp. At 63.]

IV. CONCLUSION

For all the foregoing reasons, this Court finds that Plaintiff has adequately stated claims for relief in the Complaint. Defendants’ motion is **DENIED.**