

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 21-2492

**SMITH & WESSON BRANDS, INC.; SMITH & WESSON SALES
COMPANY; and SMITH & WESSON INC.,**

Plaintiffs-Appellants,

v.

**ATTORNEY GENERAL OF THE STATE OF NEW JERSEY; NEW
JERSEY DIVISION OF CONSUMER AFFAIRS,**

Defendants-Appellees.

EMERGENCY MOTION FOR A TEMPORARY STAY

**On Appeal from the United States District Court for the
District of New Jersey, No. 20-CV-19047**

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August 10, 2021

INTRODUCTION

Plaintiffs-Appellants Smith & Wesson Brands, Inc., Smith & Wesson Sales Company, and Smith & Wesson Inc. (“Smith & Wesson”) respectfully request that this Court issue a temporary stay, staying a document production deadline contained in orders issued by the New Jersey Superior Court in *Grewal v. Smith & Wesson Sales Co., Inc.*, No. ESX-C-000025-21 (“Production Orders,” attached hereto). A temporary stay will allow Smith & Wesson’s forthcoming emergency motion for an injunction and stay pending appeal to be fully heard in this Court before Smith & Wesson suffers the constitutional harm attendant with producing documents responsive to a subpoena that violates the U.S. Constitution. At 11:51 a.m. today, Smith & Wesson provided notice by e-mail to opposing counsel that it would file motions for a temporary stay and a stay pending appeal; Defendants-Appellees do not consent. **Smith & Wesson respectfully requests that the Court issue a temporary stay by 5:00 p.m. today.**

In October 2020, the Attorney General served the unconstitutional Subpoena on Smith & Wesson. Among other constitutional infirmities, the Subpoena constitutes classic viewpoint discrimination because: (1) it was issued only because of Smith & Wesson’s public stance on Second Amendment issues, which are directly contrary to the stance taken by the Attorney General, and (2) the purpose of its issuance is obviously to chill Smith & Wesson’s participation in a very public debate. Such targeted efforts by the state to curb protected speech is specifically

prohibited by the U.S. Constitution. *See, e.g., Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828-29 (1995). Smith & Wesson promptly filed a complaint in federal court, which set forth in great factual detail, supported by citations to the public record, how the Attorney General's Subpoena is the culmination of a targeted campaign against the company based on Smith & Wesson's viewpoint. Despite Smith & Wesson properly filing in federal court, the District Court recently dismissed the case on *Younger* abstention grounds. *See* Attached order and opinion, citing *Younger v. Harris*, 401 U.S. 37 (1971).

In the meantime, a New Jersey trial court has ordered Smith & Wesson to respond fully to the Subpoena. But the state court's opinion failed to address the majority of Smith & Wesson's constitutional arguments, and improperly limited the holding of *NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958), and its progeny to freedom of association cases. Smith & Wesson's merits appeal is currently pending in the New Jersey Appellate Division and, on August 9, the New Jersey Supreme Court denied a stay pending appeal of the Production Orders. With the agreement of the Attorney General, Smith & Wesson made its first document production, consisting only of public documents, yesterday. Thus, Smith & Wesson has not yet produced private corporate documents that are responsive to the Subpoena.

In this § 1983 action, this Court has the authority to enjoin and stay enforcement of the state court's Production Orders under well-established precedent

under the All Writs Act, 28 U.S.C. § 1651, and the Anti-Injunction Act, 28 U.S.C. § 2283. *In re Diet Drugs Prod. Liab. Litig.*, 369 F.3d 293, 305 (3d Cir. 2004). Here, an injunction staying enforcement of the Production Orders is proper because Congress expressly authorized federal courts to stay state-court proceedings in actions under 42 U.S.C. § 1983, and an injunction is necessary to aid the Court's jurisdiction.¹ *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 314 F.3d 99, 103 (3d Cir. 2002).

In this case, Smith & Wesson faces irreparable harm because it will be forced to produce documents or suffer a contempt ruling, all without having the merits of its constitutional objections ever heard. Production of documents would constitute a violation of Smith & Wesson's constitutional rights, most notably its First Amendment rights because, among other things, the Subpoena targets Smith & Wesson for its viewpoints and forced production will chill Smith & Wesson's protected speech. Smith & Wesson will file an emergency motion, including supporting declaration and exhibits, as soon as possible. That motion will document numerous public statements that demonstrate that the Attorney General is investigating Smith & Wesson for its Second Amendment viewpoints, including

¹ This Court has jurisdiction under 28 U.S.C. § 1291 because Smith & Wesson appeals from an order abstaining under *Younger*, *see Lui v. Comm'n, Adult Entm't, Del.*, 369 F.3d 319 (2004), and this appeal involves the denial of a preliminary injunction, 28 U.S.C. § 1292(a)(1); *see also Helfant v. Kugler*, 484 F.2d 1277, 1283 (3d Cir. 1973); *Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d 716, 730-31 (9th Cir. 2017).

publicly promising to “turn the heat up” on firearms manufacturers, issuing “reports” that, without justification, falsely tied Smith & Wesson to “gun crimes,” and hiring and deploying of private law firms to bring suit on behalf of the Attorney General on a contingency basis, effectively creating a bounty system. The Attorney General will not be harmed by a temporary stay because the parties have entered into a tolling agreement that diminishes statute-of-limitations concerns. In short, a temporary stay will merely pause the production deadlines while the parties brief Smith & Wesson’s forthcoming motion.

Respectfully submitted,

Dated: August 10, 2021

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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| SMITH & WESSON BRANDS, INC., et al, | : | |
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| Plaintiffs, | : | Civil Action No. 20-19047 (JXN) (ESK) |
| | : | |
| v. | : | |
| | : | ORDER |
| GURBIR S. GREWAL, et al | : | |
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| Defendants. | : | |
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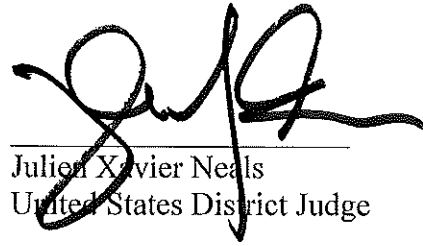
NEALS, District Judge:

THIS MATTER comes before the Court on two motions: (1) a motion by Defendants Gurbir S. Grewal (“Attorney General”) and New Jersey Division of Consumer Affairs (collectively, “Defendants”) to dismiss the Amended Complaint [ECF No. 17] pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and based upon the abstention principles set forth by the United States Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971), and subsequent cases; and (2) a motion for an order to show cause for a temporary restraining order and preliminary injunction by Plaintiffs Smith & Wesson Brands, Inc., Smith & Wesson Sales Company, and Smith & Wesson Inc. (collectively, “Plaintiffs” or “Smith & Wesson”), [ECF No. 41]; and the Court having heard oral argument and in consideration of the parties’ submissions; and for the reasons expressed on the record and in the Opinion issued on this date;

IT IS on this 2nd day of August, 2021

ORDERED that Defendants’ Motion to Dismiss [ECF No. 29] is **GRANTED**. Plaintiffs’ Amended Complaint [ECF No. 17] is **DISMISSED WITHOUT PREJUDICE**. Plaintiffs’ Motion for an Order to Show Cause for a temporary restraining order and preliminary injunction

[ECF No. 41] is **DENIED**. Plaintiffs' request to stay the Court's Order pending an appeal is **DENIED**.



Julien Xavier Neals
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SMITH & WESSON BRANDS, INC., et al,

Plaintiffs,

v.

GURBIR S. GREWAL, et al

Defendants.

Civil Action No. 20-19047 (JXN) (ESK)

OPINION

NEALS, District Judge:

THIS MATTER comes before the Court on two motions: (1) a motion by Defendants Gurbir S. Grewal (“Attorney General”) and New Jersey Division of Consumer Affairs (collectively, “Defendants”) to dismiss the Amended Complaint [ECF No. 17] pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and based upon the abstention principles set forth by the United States Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971), and subsequent cases; and (2) a motion for an order to show cause for a temporary restraining order and preliminary injunction by Plaintiffs Smith & Wesson Brands, Inc., Smith & Wesson Sales Company, and Smith & Wesson Inc. (collectively, “Plaintiffs” or “Smith & Wesson”), [ECF No. 41]. Having heard oral argument and in consideration of the parties’ submissions, for the reasons set forth below and, on the record, Defendants’ Motion to Dismiss [ECF No. 29] is **GRANTED** and Plaintiffs’ Motion for an Order to Show Cause for a temporary restraining order and preliminary injunction [ECF No. 41] is **DENIED**.

I. BACKGROUND

The Court writes primarily for the parties who are familiar with the factual and procedural history in this case.¹ On October 13, 2020, the New Jersey Attorney General, Gurbir S. Grewal, served a subpoena *duces tecum* on Defendants Smith & Wesson. Amended Complaint (“Am. Compl.”), ECF No. 17 ¶ 65. The subpoena requests, among other things, copies of all [a]dvertisements for [Smith & Wesson] [m]erchandise that are or were available or accessible in New Jersey [c]oncerning home safety, concealed carry, personal protection, personal defense, personal safety, or home defense benefits of a [f]irearm.” Am. Compl., ¶ 74. The subpoena also seeks documents relating to tests conducted regarding claims of advertisement. *Id.*

The subpoena had a November 13, 2020 return date, which Defendants extended to December 14, 2020, at Smith & Wesson’s request. Am. Compl., Ex. 1 at 54, Ex. 2 at 72. On December 14, 2020, in lieu of document production, Smith & Wesson responded in writing to Defendants, raising various constitutional objections to the document demands. *Id.* The following day, on December 15, 2020, Smith & Wesson initiated this lawsuit, wherein they similarly asserted constitutional objections to the subpoena. Complaint, ECF No. 1.

On February 12, 2021, Defendants commenced a summary action to enforce the subpoena in New Jersey Superior Court, asking the state court to direct production of the subpoenaed documents and to issue any other appropriate relief under the New Jersey Consumer Fraud Act (“CFA” or “Act”). Am. Compl., ¶ 127. Plaintiffs filed a response and cross-motion, again asserting constitutional challenges to the subpoena and the enforcement action. Scheideman Decl., Ex. 6, ECF No. 41-8.

¹ For a fuller recitation of the facts and procedural history, please see the Honorable Jodi Lee Alper, J.S.C. Opinion and Order filed on June 30, 2021, ECF No. 41-13.

On March 10, 2021, Smith & Wesson filed their Amended Complaint that reasserted substantially all the claims from the initial Complaint, added First Amendment claims and included claims that the subpoena enforcement action was filed in state court as “retaliation” for the filing of this federal case. Am. Compl., ¶ 133. Shortly thereafter, on April 26, 2021, Defendants moved to dismiss this federal action pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and based upon the abstention principles set forth by the United States Supreme Court in *Younger*, 401 U.S. at 91. Brief on Behalf of Defendants’ Motion to Dismiss (“Defs.’ Br.”), ECF No. 29-1.

On May 27, 2021, the parties appeared for oral argument in the Superior Court action before the Honorable Jodi Lee Alper, J.S.C. On June 30, 2021, Judge Alper issued an opinion and order granting Defendants’ motion to enforce the subpoena and denying Smith & Wesson’s motions to dismiss, stay or quash the subpoena. *See* Jodi Lee Alper, J.S.C, Opinion and Order (“Superior Court Op.”), ECF No. 41-13.² In rejecting Smith & Wesson’s constitutional arguments, Judge Alper explained that the subpoena was valid on its face and “neither bans speech nor does it ‘directly regulate the content, time, place, or manner of expression.’” *Id.* at 14, 15 (citation omitted). In the court’s order, Judge Alper directed Smith & Wesson to respond fully to the subpoena within thirty days. *Id.* at 2.

Following the entry of Judge Alper’s order, Smith & Wesson filed a motion with the Superior Court to stay the state trial court’s June 30, 2021 order pending Plaintiffs’ appeal of the order. Following a hearing on the matter, Smith & Wesson’s motion was denied. *See* Scheideman Decl., Ex. 14, ECF No. 41-16. On July 22, 2021, Smith & Wesson filed an application with the New Jersey Appellate Division to file an emergent motion to stay the June 30, 2021 Order pending

² For the sake of clarity, when citing to the Superior Court Opinion, the Court cites to the page numbers listed in the ECF header.

an appeal. Scheideman Decl., Ex. 16, ECF No. 41-18. The Appellate Division granted the application, set a briefing schedule, and issued an interim stay the same day. Scheideman Decl., Ex. 17, ECF No. 41-19. On July 29, 2021, the Appellate Division denied Plaintiffs' motion to stay execution of the state trial court's June 30, 2021 Order. Scheideman Decl., Ex. 30, ECF No. 41-32.

On July 30, 2021, Smith & Wesson, by way of an order to show cause, filed a motion for a temporary restraining order and preliminary injunction in the instant action. ECF No. 41. Smith & Wesson's current motion requests that this Court stay enforcement of the New Jersey Superior Court of Defendants' October 13, 2020 administrative subpoena until the threshold questions of its constitutionality are resolved by this Court. *Id.* at 1. Smith & Wesson argues that Plaintiffs will suffer irreparable harm by having its fundamental constitutional rights violated if production proceeds. *Id.*

II. LEGAL STANDARD

Defendants move to dismiss Plaintiffs' Amended Complaint for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6). "When a motion under Rule 12 is based on more than one ground, the court should consider the 12(b)(1) challenge first because if it must dismiss the complaint for lack of subject matter jurisdiction, all other defenses and objections become moot." *Dickerson v. Bank of Am., N.A.*, CIV. No. 12-03922 (RBK), 2013 WL 1163483, at *1 (D.N.J. Mar. 19, 2013) (citing *In re Corestates Trust Fee Litig.*, 837 F. Supp. 104, 105 (E.D. Pa. 1993)). Because the Court finds that *Younger* abstention applies and requires dismissal, it will not recite the Rule 12(b)(6) standard.

A district court may treat a party's motion to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1) as either a facial or factual challenge to the court's jurisdiction. *Gould Elecs.*,

Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000). “In reviewing a facial attack, the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the plaintiff.” *Id.* (citing *PBGC v. White*, 998 F.2d 1192, 1196 (3d Cir. 1993)). “In reviewing a factual attack, the court may consider evidence outside the pleadings.” *Id.* (citing *Gotha v. United States*, 115 F.3d 176, 178–79 (3d Cir. 1997)); see *United States ex rel. Atkinson v. Pa. Shipbuilding Co.*, 473 F.3d 506, 514 (3d Cir. 2007). A district court has “substantial authority” to “weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977). “[N]o presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” *Id.*

Although courts generally treat a pre-answer motion under Rule 12(b)(1) as a facial challenge, see *Cardio-Med. Assoc., Ltd. v. Crozer-Chester Med. Ctr.*, 721 F.2d 68, 75 (3d Cir. 1983), a “factual challenge under Rule 12(b)(1) may be made prior to service of an answer” if the defendant contests the plaintiff’s allegations. *Knauss v. United States DOJ*, No. 10–26–36, 2010 U.S. Dist. LEXIS 108603, at *6 (E.D. Pa. Oct. 7, 2010) (citing *Berardi v. Swanson Mem’l Lodge No. 48 of Fraternal Order of Police*, 920 F.2d 198, 200 (3d Cir. 1990)). When a defendant raises a factual challenge to jurisdiction, the plaintiff bears the burden of establishing jurisdiction. *Gould Elecs. Inc.*, 220 F.3d at 176–77.

III. DISCUSSION

A. Younger Abstention

Smith & Wesson seeks entry of a temporary restraining order and a preliminary injunction staying the execution of the New Jersey Superior Court’s July 30, 2021 Order. Pls. Br., ECF No.

41-1. Defendants argue that this Court should abstain from exercising jurisdiction in this action under *Younger* for multiple reasons, including that the subpoena-enforcement action involves orders in the furtherance of state court judicial function. Defs.' Br., ECF No. 29-1 at 12-13, 16. The Court agrees and will dismiss Plaintiffs' Amended Complaint.

The *Younger* abstention doctrine gives a federal court the "discretion to abstain from exercising jurisdiction over a particular claim where resolution of that claim in federal court would offend the principles of comity by interfering with an ongoing state proceeding." *Addiction Specialists, Inc. v. Twp. of Hampton*, 411 F.3d 399, 408 (3d Cir. 2005) (citing *Younger v. Harris*, 401 U.S. 37 (1971)). "[A]bstention rarely should be invoked," *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992), however, and is only appropriate "in a few carefully defined situations." *Gwynedd Properties, Inc. v. Lower Gwynedd Twp.*, 970 F.2d 1195, 1199 (3d Cir. 1992). *Younger* abstention is only appropriate where the following three requirements are satisfied: (1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise the federal claims. *Id.* at 1200 (citing *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982); *Schall v. Joyce*, 885 F.2d 101, 106 (3d Cir. 1989)).

In *Sprint Comms., Inc. v. Jacobs*, 571 U.S. 69 (2013), the Supreme Court "narrowed *Younger's* domain." *Malhan v. Sec'y of U.S. Dep't of State*, 938 F.3d 453, 462 (3d Cir. 2019). Consequently, a court must first determine whether the parallel state action falls within one of "three exceptional categories": (1) criminal prosecutions, (2) "certain civil enforcement proceedings," and (3) "civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint*, 571 U.S. at 78.

To determine whether the *Younger* abstention applies, the Court will first analyze Defendants' contentions to determine whether the parties' state court action falls into one of the three exceptional categories described in *Sprint*. Then the Court will assess whether Defendants meet the *Middlesex* factors.

Civil Proceedings Involving Certain Orders Uniquely in Furtherance of the State Courts' Ability to Perform their Judicial Functions

Defendants contend that "this Court should find the subpoena-enforcement action in New Jersey Superior Court involves 'certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions'—in particular, the ability to enforce state subpoenas." Defs.' Br. at 16 (citation omitted). Defendants further contend that "[b]ecause the State and its courts have critical interests in ensuring subpoena compliance, the State's motion in state court to enforce a subpoena 'requires [the court] to abstain under the third category of the *Younger* Doctrine[.]'" *Id.* at 17 (citations omitted). In opposition, Smith & Wesson argues that *Younger* abstention does not apply because "no . . . 'unique' order has issued in this case, let alone an order on the motion to compel." Pls.' Br. at 9, ECF No. 30.

As an initial matter, following the filing of the parties' submissions in connection with the Motion to Dismiss, the New Jersey Superior Court and Appellate Division have issued multiple opinions and orders in the subpoena-enforcement action. *See* Superior Court Op., ECF No. 41-13; *see also* Scheideman Decl., Ex. 30, ECF No. 41-32. Thus, Smith & Wesson's argument regarding this step of the *Younger* abstention analysis is moot.

This Court must determine whether ruling on Plaintiffs' application for a preliminary injunction and temporary restraining order would improperly interfere with the state court's "contempt process," and that "court's ability to perform its judicial functions." *Sprint*, 571 U.S. at 78; *Juidice v. Vail*, 430 U.S. 327, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977). The CFA authorizes

the New Jersey Superior Court to compel compliance with a subpoena issued by the Attorney General and adjudge persons in contempt of court. *See* N.J. Stat. Ann. § 56:8-6. Following full briefing and oral argument on the parties' disputes raised in the subpoena-enforcement action, which included Smith and Wesson's constitutional arguments, the Superior Court exercised its authority under the CFA and issued an order denying Smith and Wesson's motions and directing Smith & Wesson to comply with the Attorney General's subpoena. Superior Court Op., ECF No. 41-13 at 2; 41-14 at 2.³ Smith & Wesson now calls on this Court to enjoin the ongoing state court litigation. ECF No. 41. A federal injunction in this case would not only interfere with the execution of the state court's judgment, but also interfere with the very process by which that judgment was obtained. Because this federal action would improperly interfere with "civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial function," the Court finds that an "exceptional circumstance" exists to justify this Court's decision to exercise *Younger* abstention.⁴ *Sprint*, 571 U.S. at 78; *see also Juidice*, 430 U.S. 327 (holding that a federal court should have abstained from adjudicating a challenge to a state's contempt process).

Middlesex Factors

Having determined that the state court proceeding is exceptional, the Court will now assess whether the *Middlesex* factors are met. *See Greco v. Grewal*, Civ. No. 3:19-19145 (BRM) (TJB), 2020 WL 7334194, at *7 (D.N.J. Dec. 11, 2020); *see also Middlesex Cnty. Ethics Comm. v. Garden*

³ Plaintiffs subsequently appealed that order to the New Jersey Appellate Division which was denied on July 29, 2021. *See Scheideman Decl.*, Ex. 30, ECF No. 41-32.

⁴ Because the Court finds that an exceptional circumstance exists to abstain from exercising jurisdiction under category three of *Younger*, the Court need not address Defendants' contention that the subpoena-enforcement action is a qualifying civil enforcement proceeding. *See Defs.' Br.* at 13.

State Bar Ass'n, 457 U.S. 423, 432 (1982). These factors require this Court to consider the following: (1) whether there is an ongoing judicial proceeding; (2) whether an important state interest is implicated in the state proceeding; and (3) whether the state proceedings provide an adequate opportunity to present constitutional arguments. *PDX N., Inc. v. Comm'r New Jersey Dep't of Lab. & Workforce Dev.*, 978 F.3d 871, 879 (3d Cir. 2020) (citing *Middlesex*, 457 U.S. at 432).

Here, all three factors are met. First, the subpoena-enforcement action is “ongoing” as it is still being litigated in New Jersey State Courts. *See* ECF No. 41-1 at 12 (“Smith & Wesson is applying to the New Jersey Supreme Court for a stay”). Second, the state litigation involves a challenge to the state’s contempt process, which authorizes courts to adjudge persons in contempt of court who fail to comply with a subpoena issued by the state’s Attorney General. *See* Superior Court Op., ECF No. 41-13 at 10 (“This case *involves state interests* that overcome the consideration of comity raised by the first-filed rule.”) (emphasis added). Third, there is nothing that precludes Smith and Wesson from raising their constitutional concerns in the New Jersey state courts, as evidenced by their multiple state court filings before the New Jersey Superior Court, Appellate Division and Supreme Court. *See* Scheideman Decl., Ex. 6, ECF No. 41-8; *Id.*, Ex. 16, ECF No. 41-18; *see also* Pls.’ Br. at 12 (“Smith & Wesson is applying to the New Jersey Supreme Court for a stay”). This Court is confident that the state court can “fairly and fully adjudicat[e] the federal issues before it.” *Kugler v. Helfant*, 421 U.S. 117, 124-25 (1975). Therefore, this Court must follow the dictates of *Younger* and its progeny and abstain from reaching the merits of Plaintiffs’ claims.

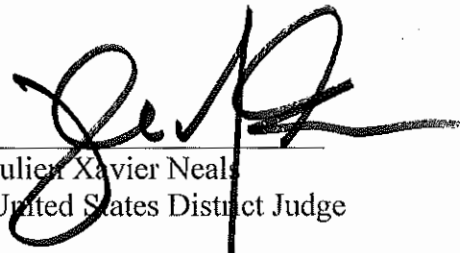
Motion for an Order to Show Cause

Because the Court abstains from exercising jurisdiction based on *Younger*, Smith & Wesson’s motion for an order to show cause for a temporary restraining order and preliminary injunction is denied. The Court declines to consider the merits of Smith & Wesson’s motion. *See, e.g., Luellen v. Luellen*, Civ. No. 12-496, 2013 WL 1182958, at *5 n.9 (W.D. Pa. Mar. 21, 2013) (denying motion for preliminary injunction where complaint is dismissed in its entirety).

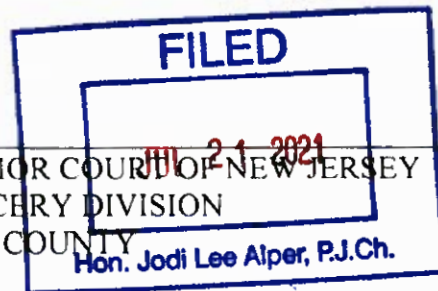
IV. CONCLUSION

For the reasons discussed herein, Defendants’ Motion to Dismiss [ECF No. 29] is **GRANTED**. Plaintiffs’ Amended Complaint [ECF No. 17] is **DISMISSED WITHOUT PREJUDICE**.⁵ Plaintiffs’ Motion for an Order to Show Cause for a temporary restraining order and preliminary injunction [ECF No. 41] is **DENIED**. Plaintiffs’ request to stay the Court’s Order pending an appeal is **DENIED**. An Appropriate order will follow.

DATED: August 2, 2021


Julien Xavier Neals
United States District Judge

⁵ The Third Circuit has clarified when there is no merits-based decision, dismissal of a federal case “does not implicate claim preclusion or otherwise prevent [a plaintiff] from returning to federal court if [their] ongoing state prosecution concludes without a resolution of [their] federal claims.” *Eldakrouy v. Attorney Gen. of New Jersey*, 601 F. App’x 156, 158 (3d Cir. 2015). “Such a non-merits dismissal is by definition without prejudice.” *Id.* (citing *Semtek Int’l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505–06 (2001)). As the Court has not made a merits-based decision here, it will dismiss Plaintiffs’ Complaint without prejudice. *See Zahl v. Warhaftig*, 655 F. App’x 66, 70-71 (3d Cir. 2016) (stating District Court’s finding that *Younger* abstention operated as a dismissal with prejudice was “incorrect” and an “overly broad reading of our *Younger* abstention precedent”).



PREPARED BY THE COURT

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| <p>GURBIR S. GREWAL, Attorney General of the State of New Jersey, and KAITLIN A. CARUSO, Acting Director of the New Jersey Division of Consumer Affairs</p> <p style="text-align: right;">Plaintiffs,</p> <p>vs.</p> <p>SMITH & WESSON SALES CO., INC., a/k/a AMERICAN OUTDOOR BRANDS SALES CO., A/K/A SMITH & WESSON CORP.,</p> <p style="text-align: right;">Defendant.</p> | <p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION ESSEX COUNTY</p> <p>DOCKET NO.: C-25-21</p> <p style="text-align: center;">CIVIL ACTION</p> <p>ORDER DENYING STAY OF DEADLINE FOR DEFENDANT TO PRODUCE DOCUMENTS</p> |
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THIS MATTER having been opened to the Court by counsel for defendant Smith & Wesson Sales Company (improperly named Smith & Wesson Sales Co., Inc.) (“Smith & Wesson”) seeking an Order pursuant to R. 2:9-5(b) granting Smith & Wesson’s motion for a stay of the 30-day deadline for defendant to produce documents pending the outcome of Smith & Wesson’s appeal; and the Court having reviewed the papers and arguments of counsel, and good cause having been shown, and for the reasons stated on the record;

IT IS on this **21st** day of **July**, 2021 hereby:

1. **ORDERED** that Smith & Wesson’s Motion to Stay the 30-day deadline for defendant to produce documents is hereby **DENIED**; and it is further
2. **ORDERED** that enforcement of the portion of the Court’s Order dated June 30, 2021, directing Smith & Wesson to comply with the Subpoena within 30 days is not stayed pending the resolution of Smith & Wesson’s appeal; and it is further

3. **ORDERED** that a copy of this Order shall be served on all parties within seven (7) days of the date of entry of this Order.



Jodi Lee Alper, J.S.C.

FILED
JUN 30 2021
Hon. Jodi Lee Alper, P.J.Ch.

PREPARED BY THE COURT

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| <p>GURBIR S. GREWAL, Attorney General of the State of New Jersey, and KAITLIN A. CARUSO, Acting Director of the New Jersey Division of Consumer Affairs</p> <p style="text-align: right;">Plaintiffs,</p> <p>vs.</p> <p>SMITH & WESSON SALES CO., INC., a/k/a AMERICAN OUTDOOR BRANDS SALES CO., A/K/A SMITH & WESSON CORP.,</p> <p style="text-align: right;">Defendant.</p> | <p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION ESSEX COUNTY</p> <p>DOCKET NO.: C-25-21</p> <p style="text-align: center;">CIVIL ACTION</p> <p>ORDER FOR SUBPOENA RESPONSES</p> |
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THIS MATTER having been opened to the Court by way of a summary action pursuant to R. 4:67-1(a) by Chanel Van Dyke, Deputy Attorney General, for plaintiffs Gurbir S. Grewal, Attorney General of the State of New Jersey, and Kaitlin A. Caruso, Acting Director of the New Jersey Division of Consumer Affairs, and the Court having considered the supporting papers, opposition papers, and oral arguments placed on the record on May 27, 2021, and for the reasons set forth in the attached Statement of Reasons:

IT IS on this 30th day of June, 2021 hereby:

1. **ORDERED** that defendant shall respond fully to the subject Subpoena within thirty (30) days; and it is further
2. **ORDERED** that defendant is enjoined from the destruction of any documents specifically requested in the Subpoena; and is further
3. **ORDERED** that a copy of this Order shall be served on all parties within seven (7) days of the date of entry of this Order.



Jodi Lee Alper, J.S.C.

Opposed
 Unopposed

STATEMENT OF REASONS

Re: Gurbir S. Grewal, Attorney General of the State of New Jersey, et al. v. Smith and Wesson Corp.

C-25-21

Background

On October 13, 2020 plaintiffs, New Jersey Attorney General, Gurbir Grewal, served a subpoena *duces tecum* on defendant, Smith and Wesson Corp. (“S&W”) pursuant to the N.J. Consumer Fraud Act, N.J.S.A. 56:8-1 to 226. Among other things, the subpoena requests advertisements for S&W merchandise made available in New Jersey concerning home safety, “concealed carry”, personal protection/safety/defense, or home defense benefits of a firearm. The subpoena also seeks documents relating to tests conducted regarding claims made in the advertisements.

The subpoena had a November 13, 2020 return date which was extended thirty days at the request of defendant. On December 14, 2020, S&W produced no documents but responded in writing to plaintiffs, citing its various constitutional objections to the document demands. On December 15, 2020 S&W filed a lawsuit in the U.S. District Court for the District of New Jersey asserting constitutional objections to the subpoena.

On February 12, 2021, the NJ Attorney General and the NJ Division of Consumer Affairs filed this Order to Show Cause to enforce the subpoena. S&W has cross-moved to dismiss the complaint, stay this enforcement action or quash the subpoena essentially for the following reasons:

1. S&W responded to the subpoena in writing raising issues of the validity and constitutionality of the subpoena followed by the federal lawsuit challenging its constitutionality;

2. S&W cannot be held in contempt because no final order has been issued;
3. The Attorney General has not established that the subpoena is reasonably related to a legitimate area of inquiry;
4. The actions of the Attorney General should be stayed, if not dismissed, because S&W filed its federal action challenging the subpoena two months before the Attorney General filed this enforcement action;
5. The Attorney General has not addressed the assertion that he is overreaching under the First and Second Amendments.

Defendant's Argument

S&W argues that the Attorney General does not present a legitimate inquiry into “purported” fraud under the Consumer Fraud Act because the subpoena targets opinions and protected speech regarding Second Amendment issues. It argues that the subpoena requests documents on “opinions and value judgements” in that it demands:

- a. Copies of advertisements for S&W merchandise available in New Jersey concerning home safety, concealed carry, personal protection, personal defense, personal safety, or home defense benefits of a firearm, and
- b. Documents regarding tests, etc. relating to claims made in the advertisements..

As a counter to this enforcement action, S&W asserts that it responded to the subpoena with its written objections. Even if these objections were inadequate, without a court order having been in place, there are no grounds to warrant sanctions. The Attorney General has not made a showing that the subpoena is reasonably related to a legitimate purpose; “a substantial showing” that the records contain evidence relevant and material to the issue, citing Greenblatt v. NJ Bd. Of Pharmacy 214 N.J. Sup. 269, 275 (App. Div. 1986).

S&W claims that the Attorney General improperly relies on NJAC 13:45A-4.1(b) relating to an unconscionable practice which would constitute fraud. This provision applies where a business entity markets or advertises “a consumer product that is illegal to possess or use in this state without a valid permit or license, where the possession or use, or the possession or use without a valid permit or license, would subject the person possessing or using the product to criminal prosecution” without clear and conspicuous disclosure that the product is illegal to possess or use in the state, or to possess or use in the state without a valid permit or license.

However, S&W argues that any such obligation to inform consumers of the concealed carry permit requirement under this regulation would be on the State or retailer, not the manufacturer.

S&W also argues the New Jersey regulation is unconstitutional because it impermissibly compels speech and is nothing more than an attack on opinions.

Thus, according to S&W, this matter should be stayed pending resolution of the federal claims relating to these issues. It relies upon the “first filed” rule that the court which first acquires jurisdiction has precedence in the absence of special equities citing to Sentient Colors v. Allstate 193 N.J., 387 (2008).

According to S&W, the subpoena should be quashed as unconstitutional on several grounds:

1. Unlawful Viewpoint Discrimination

The entire subpoena targets one specific viewpoint – those advocating for the Second Amendment and specifically that firearms may be used for self-defense.

2. S&W’s Protected Political Speech Rights are being Violated.

The Court must apply strict scrutiny because speech does not retain its commercial character when it is inextricably intertwined with otherwise fully protected speech. Riley v. Nat’l

Fed. of the Blind of N. Carolina, Inc. 487 U.S. 781, 796 (1988). The Attorney General targets S&W to stop it from speaking. S&W asserts that its marketing and advertising is not merely and purely commercial speech. Under the First Amendment, when speech is neither misleading nor related to unlawful activity, the government can only restrict commercial speech if 1) the government interest is substantial, 2) the regulation directly advances the interest asserted, and 3) the regulation is no more extensive than necessary to serve that interest. Central Hudson G&E v. Pub. Serv. Comm'n NY 447 U.S. 557 (1980).

The Attorney General cannot chill S&W's speech through the "punitive" subpoena which targets the view of S&W. Furthermore, "prosecuting" S&W for "non-misleading" speech is beyond the powers of the Attorney General.

3. S&W's Equal Protection, Due Process, and Fourth Amendment Rights against Illegal Searches and Seizures

S&W contends that the Attorney General has "an axe to grind" against gun manufacturers and that he is violating S&W's rights against illegal searches and seizures. It concedes that an investigation may proceed "merely on the suspicion that the law is being violated, or even just because the State wants assurance that it is not." Univ. of Med. & Dentistry of NJ v. Corrigan 347 F.2d 57, 64 (3d Cir. 2003). However, a subpoena of corporate books must be limited in scope, relevant in purpose, and specific – not unreasonably burdensome. See v. City of Seattle 387 U.S. 541, 544 (1967). While acknowledging that the Attorney General may launch an investigation under the CFA if he merely believes it to be in the public interest, N.J.S.A. 56:8-3, it cannot be conducted as to "vague and ill-defined opinions."

For these reasons, S&W asserts that the Complaint to enforce the subpoena must be dismissed or the subpoena quashed or stayed pending the federal litigation relating to these issues.

Plaintiffs' Argument

The Attorney General argues that the subpoena is legally sufficient. The CFA bars deceptive advertising through knowing omission, intentional misrepresentation, or a statement that unintentionally misleads a consumer. N.J.S.A. 56:8-2. Requests One and Two of the subpoena seek drafts of final versions of S&W advertisements to New Jersey consumers. Requests 3 and 6 seek studies, analyses, or evaluations regarding advertising claims related to safety risks and benefits of its products. Request 4 requests documents relating to advertising claims that S&W firearms are designed to be safer, more reliable, accurate, and effective than those of other manufacturers and claims that novice, untrained consumers could successfully and effectively use an S&W firearm for personal or home defense.

According to the Attorney General, these are run of the mill requests that will help ascertain whether or not misrepresentations were made to NJ consumers or if there was a failure to disclose pertinent information. There are numerous examples in the context of consumer fraud matters where Courts have determined that product claims which are specific and measurable are not puffery. Such a case, as cited by the Attorney General, is In re General Motors, LLC Ignition Switch Litig. where the Court determined that claims discussing “world-class engineering and advanced safety and security features” in vehicles could be objectively measured and thus were not puffery. 257 F. Supp. 3d. 372, 457 (S.D.N.Y. 2017).

Numerous other examples are provided by the Attorney General in which routine inquiries are made through CFA subpoenas and used to ascertain the veracity of advertising statements directed to NJ consumers. The CFA provides broad investigative tools and it is “intended to confer on the Attorney General the broadest kind of power to act in the interest of the consumer public” Kugler v. Romain 58 N.J. 522, 537 (1971).

Analysis

First Filing

Smith & Wesson asserts that because its federal lawsuit was filed prior to this subpoena enforcement action that this State action must be stayed or dismissed or the subpoena must be quashed. S&W relies upon Sentient Colors, Inc. v. Allstate Ins. Co. 193 N.J. 373 (2008).

It is noteworthy that the Sentient matter took place with filings in two states, not in a state and federal court.

Under the first filed rule, a New Jersey court will ordinarily stay or dismiss a civil action in deference to an already pending substantially similar lawsuit in “another state” unless compelling reasons dictate that it retain jurisdiction. Id. at 386.

However, the first filed rule is not an inflexible doctrine. If special equities exist, such as forum shopping to deny benefit of the natural forum to the other party, or when a party acting in bad faith filed first where the opposing party was anticipated to file suit in a less favorable forum, then the court could insist on proceeding with an action. Id. at 387.

Whether special equities allow a court to put aside the first filed rule is a fact specific inquiry, weighing fairness and comity generally with the discretion of the trial court. In carrying the initial burden, S&W must establish that the state court case should be stayed or dismissed because 1) there is a first filed action in “another state” and, 2) the parties, claims, and legal issues are substantially similar. If this initial burden is met, the burden will then shift to the Attorney General to establish special equities for this state court action to proceed. Id. at 392.

A stay or dismissal of a second filed action should be denied if an “injustice would be perpetrated” on a party in the first filed action and “no hardship, prejudice, or inconvenience”

would be inflicted on the other by proceeding in the second filed action. Id. at 389 citing Gosschalk v. Gosschalk 48 N.J. Super. 566, 579 (App. Div. 1958).

This court finds that in weighing fairness and comity, this enforcement action is appropriately filed in state court by the Attorney General and should not be stayed, dismissed, nor should the subpoena be quashed.

Even if this court accepts for the sake of argument that the parties' claims and legal issues are substantially similar on the "first-filed" federal action, special equities exist for this subpoena enforcement action to continue in this state court. Special equities are reasons of a compelling nature that favor the retention of jurisdiction by the court in the later-filed action and may exist "when one party has engaged in jurisdiction shopping to deny the other party the benefit of its natural forum." Sensient Colors Inc. v. Allstate Ins. Co., 193 N.J. 373, 387-388 (2008) (identifying cases where one party preemptively files suit to prevent the "natural plaintiff" from initiating an action as proof of special equities). Furthermore, when a party acting in bad faith has filed first "in anticipation of opposing party's imminent suit in another, less favorable forum, deference to a first filed action is disfavored." Id. at 388. Of equal importance, when an action concerns "significant state interests...and when deferring to a proceeding in another jurisdiction 'would contravene the public or judicial policy' of the forum state, special equities are found to exist." Id. at 388-89; Am. Home. Prods. Corp. v. Adriatic Ins. Co. 286 N.J. Super. 24, 40-41 (App. Div. 1995) (recognizing New Jersey's interest in pollution remediation as a special equity that weighed against the first-filed rule).

This Court finds that the expected action in regard to the decision of Smith & Wesson not to comply with the subpoena would be for the Attorney General and the Division of Consumer Affairs – the natural plaintiffs in this case – to bring an action to enforce the Subpoena or, at least,

for Smith & Wesson to have brought what is now its cross-motion as an action in this court to dismiss, quash, or stay the subpoena. Instead, Smith & Wesson filed its suit in federal court before plaintiffs had the opportunity to initiate a subpoena enforcement action. See Wearly v. Federal Trade Comm'n., 616 F.2d 662, 665 (3d Cir. 1980).

This case involves state interests that overcome the considerations of comity raised by the first-filed rule. It is noteworthy that Smith & Wesson sought and received from plaintiffs a thirty-day adjournment to respond to the subpoena and the day after its compliance was expected, it filed a federal declaratory judgment action seeking a ruling on defenses to the subpoena. Thus, it appears, at worst, to have been a tactical maneuver, or at best an action that would create confusion and unnecessary lawsuits.

State courts routinely hear claims relating to state consumer protection laws and enforcement actions for related subpoenas.

Reportedly, Smith & Wesson initially filed its federal action seeking a preliminary injunction and temporary restraining order. Smith & Wesson has now apparently withdrawn that application and is pursuing the lawsuit through the normal course. Thus, the issues in the federal case will take months and more likely years to be litigated. In the meantime, the obligation of the Attorney General to investigate potential violations of the Consumer Fraud Act remain stymied. This is a situation where special equities justify the continuation of the enforcement action.

Defendant argues that NAACP v. Alabama requires that all constitutional issues related to a subpoena be resolved before it can be enforced and that before compulsion of information that trespasses on First Amendment freedoms can occur, the State must present a compelling subordinate State interest. NAACP v. Alabama, 357 U.S. 449, 463 (1958). The defendant's interpretation of NAACP is overly broad. There, the Supreme Court was concerned about how

Alabama's interest in obtaining an NAACP members list interfered with those members right to freely associate and pursue private interests as protected by the Fourteenth Amendment. Other cases, such as Local 1814, are similarly concerned with the freedom of association. Local 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. Waterfront Cmm'n of N.Y. Harbor, 512 F. Supp. 781 (S.D.N.Y. 1981). Here, the freedom of association is not implicated. The Attorney General does not seek information regarding S&W's association with other individuals or corporations, only information relating to representations they made about their products to the public.

The Subpoena

The intention of the Consumer Fraud Act is to "confer on the Attorney General the broadest kind of power to act in the interest of the consumer public." Kugler v. Romain, 58 N.J. 522, 537 (1971). The subpoena in this case is not dissimilar to many subpoenas issued under the CFA and it is "reasonably related to a legitimate purpose" under the statute. On its face, the subpoena is tailored to determine whether Smith & Wesson engaged in (1) deceptive advertising as to product safety, benefits, and effectiveness and (2) failure to disclose that products marketed are unlawful to possess or use in the State without permit. The potential misrepresentations and omissions being investigated here are not different from those whose subject could be one of many products other than guns.

The CFA prohibits deceptive advertising, regardless of the subject, whether accomplished by knowing omission, intentional misrepresentation, or even a statement that unintentionally has the capacity to mislead a credulous consumer. N.J.S.A. 56:8-2.

On its face, this subpoena seeks information which may establish whether or not Smith & Wesson has engaged in any deceptive advertising by making misleading statements or omissions concerning the safety and effectiveness of the firearms it markets to New Jersey consumers.

Specifically, among other things, the subpoena requests:

- a. Advertisements that are or were available or accessible in New Jersey concerning home safety, concealed carry, personal protection, personal defense, personal safety, or home defense benefits of a firearm, including a Smith & Wesson Firearm.
- b. Documents concerning any test, study, analysis, or evaluation considered or relating to any claim made in the advertisements produced.
- c. Documents relating to:
 - Whether Smith & Wesson Firearms can be legally carried and concealed by any consumer while in New Jersey;
 - Whether the concealed carry of a firearm enhances one's lifestyle;
 - Whether it is safer to conform a perceived threat by drawing a firearm rather than seeking to move away from and avoid the source of the perceived threat;
 - Whether having a Smith & Wesson firearm or other firearm makes a home safer;
 - Whether Smith & Wesson firearms are designed to be more safe, reliable, accurate, or effective than firearms made by other firearm manufacturers for use it in personal or home defense or other activities; and
 - Whether novice, untrained consumers could successfully and effectively use of a Smith & Wesson firearm for personal or home defense.

These documents, if any exist, would establish whether Smith & Wesson made any promises or representations to consumers and whether its document supported or belied those

claims. Thus, the document requests go to the very core of whether Smith & Wesson may have violated the CFA.

Contrary to the argument of Smith & Wesson, there is a distinction between puffery/opinion and statements which have the capacity to mislead or which address product attributes and are measurable by research. See e.g., Leon v. Rite Aid Corp., 340 N.J. Super. 462, 471-72 (App. Div. 2001); EP Henry Corp. v. Cambridge Pavers, Inc., 383 F. Supp. 3d 343, 349-51 (D.N.J. 2019); see also In re. Gen. Motors LLC Ignition Switch Litig., 257 F. Supp. 3d 372, 457 (S.D.N.Y. 2017) (claims discussing vehicles' "world class engineering" and "advanced safety and security and security features" were not puffery as they could be "objectively measured.")

It is common for the Attorney General to investigate under the CFA various industries that advertise to New Jersey consumers. This subpoena is not arguably different from those for products from other industries.

The subpoena also reasonably seeks documents relating to the Hazardous Product Regulations which make it unlawful to advertise a product to New Jersey consumers which is illegal to possess or is in this State without a permit unless the advertiser "clearly and conspicuously disclose[s]" the fact. N.J.A.C. 13:45A-4.1(b). These regulations are "designed to promote the disclosure of relevant information to enable the consumer to make intelligent decisions in the selection of products and services," Div. of Consumer Affairs v. Gen. Elec. Co., 244 N.J. Super. 349, 353 (App. Div. 1990). A violation of this regulation does not require a showing of intent but rather constitutes strict liability. See Cox, 138 N.J. at 18; Int'l Union of Operating Eng'rs Local # 68 Welfare Fund v. Merck & Co., Inc., 384 N.J. Super. 275, 287 (App. Div. 2006).

Application of this regulation is within the realm of the investigation of Smith & Wesson by the Attorney General. Specifically, the subpoena seeks information as to whether Smith & Wesson violated these regulations by making advertisements available to New Jersey consumers depicting the concealed carry of firearms without disclosing that a permit is required for such concealed carry in New Jersey. See N.J.A.C. 13:54-2.2 (requiring a permit to conceal and carry a firearm in the State).

To be clear a subpoena need only be “sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.” Greenblatt v. N.J. Bd. of Pharmacy, 214 N.J. Super. 269, 275-76 (App. Div. 1986) (quoting See v. Seattle, 387 U.S. 541, 544-45 (1967)); State v. Cooper, 2 N.J. 540, 556 (1949). As stated above, this Court generally finds the subpoena to come within these bounds at this very early stage of this investigation. Plaintiffs have demonstrated the relevance of the documents to its CFA investigation.

This Court rejects the argument that the subpoena itself violates constitutional rights. It neither bans speech nor does it “directly regulate the content, time, place, or manner of expression.” SEC v. McGoff, 647 F.2d 185, 187-88 (D.C. Cir. 1981). This is merely an investigation. The Attorney General and the Division have not made any determinations regarding CFA violations by Smith & Wesson. Compliance with a subpoena which comes within the bounds of the CFA is not obviated in the face of constitutional objections.

Finally, this Court rejects the argument of Smith & Wesson that this subpoena must be quashed as a result of an “improper motive” by the Attorney General. Specifically, the defendant argues that “[t]he Attorney’s General’s personal views are the same as those of anti-Second Amendment activists seeking to undermine the constitutional right to bear arms” and that he has a “singular focus...limited to reducing gun ownership.”

In Exxon Mobil Corp. v. Schneiderman, 316 F. Supp. 3d 679 (S.D.N.Y. 2018), the court rebuffed a nearly identical challenge by Exxon attempting to evade compliance with subpoenas, finding that Exxon's Complaint could "not allege any direct evidence of an improper motive" and found that the "circumstantial evidence put forth" was insufficient. Id. at 712. The theory of improper motive set forth by Smith & Wesson is speculative and fails to demonstrate that the Attorney General lacks a valid basis to believe that Smith & Wesson may have committed fraud.

The subpoena is valid on its face. Public officials, including the Attorney General, frequently make statements of public concern. This Attorney General has not impugned Smith & Wesson nor suggested that he has concluded that it should be charged with violations of the Consumer Fraud Act. It is possible that a review of the subpoenaed documents will raise no basis for such a claim.

Conclusion

For the foregoing reasons, plaintiffs' motion to enforce the Subpoena is hereby granted, and defendant's motion to dismiss, stay or quash the Subpoena is denied in its entirety.

CERTIFICATE OF SERVICE

I certify that this on August 10, 2021, I caused the foregoing Emergency Motion for a Temporary Stay to be served on all counsel of record listed on the CM/ECF Service List by CM/ECF and e-mail at Robert.McGuire@dol.lps.state.nj.us (Robert McGuire), Mayur.Saxena@law.njoag.gov (Mayur Saxena) and Chanel.VanDyke@law.njoag.gov (Chanel Van Dyke).

/s/ Courtney G. Saleski
Courtney G. Saleski