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

CITY OF CHICAGO, Plaintiff, v. GLOCK, INC., GLOCK Ges.m.b.H., EAGLE GUN CLUB LLC f/d/b/a EAGLE SPORTS RANGE, RANGE PLUS LLC f/d/b/a EAGLE SPORTS RANGE, 5900 LLC d/b/a EAGLE SPORTS RANGE, and MIDWEST SPORTING GOODS CO., Defendants.	Case No.: 2024CH06875 Hon. Allen P. Walker

PLAINTIFF CITY OF CHICAGO'S OPPOSITION TO THE MOTIONS TO DISMISS OF DEFENDANTS (1) GLOCK, INC., (2) EAGLE GUN CLUB LLC, RANGE PLUS LLC, AND 5900 LLC, AND (3) MIDWEST SPORTING GOODS

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INTRODUCTION

Despite being banned in Illinois for nearly a century, the machine gun is back in Chicago. This time in the form of the Glock pistol, which can be easily modified into a machine gun using a simple, quarter-sized device called an auto sear. Once an auto sear is attached to the back of a Glock, the resulting weapon is an illegal machine gun that can fire fully automatically at a rate of 1,200 rounds per minute. This feature of the Glock pistol is no accident. Glock has known about the ease with which its pistols—unlike virtually all other pistols sold in the United States—can be modified into machine guns since they were first designed. Federal officials have even asked Glock to change this feature, but Glock has refused to do so, choosing to put profits over public safety. The consequence of Glock's conduct is both shocking in its scope and completely predictable.

From 2021 through May 2024, *over 1,300 Modified Glocks—i.e.*, machine guns—have been recovered in Chicago. These terrifying weapons are exacerbating the gun violence crisis in Chicago. Modified Glocks have been recovered in connection with homicides, assaults, batteries, home invasions, carjackings, and attempted robberies. These crime scenes are replete with casualties, shell casings, and bullet holes, leaving horrified Chicago communities in their wake.

To stop the proliferation of machine guns in its neighborhoods, the City brings this civil enforcement action against Glock, Inc., Glock Ges.m.b.H (Austrian corporate parent of Glock, Inc.), and two of Glock's authorized distributors: the Eagle Sports Range defendants ("Eagle") and Midwest Sporting Goods ("Midwest"). The City contends Defendants have engaged in unreasonably dangerous, unfair, and deceptive business practices in marketing, distributing, and selling Glocks to Chicago that can be easily modified into automatic weapons in violation of the Municipal Code of Chicago § 2-25-090(a) ("MCC") and, by incorporation, the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505 ("ICFA"). The City does not seek relief

in the form of damages as Defendants argue. Glock Mot. at 5, 8–10; Midwest Mot. at 4.[1] Instead, it seeks injunctive relief, disgorgement, and fines against Defendants, as the MCC authorizes.

Glock, Inc. ("Glock"), Midwest, and Eagle move to dismiss, arguing that the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901–03 ("PLCAA"), requires dismissal. But PLCAA is inapplicable here. PLCAA only prohibits those lawsuits against gun companies that seek relief for harm "resulting from the criminal or unlawful misuse" of a firearm by the plaintiff or a third party. *Id.* § 7903(5)(A). The City brings this civil action for injunctive relief and fines for *Defendants' own unlawful conduct*; it does not seek damages for the harms resulting from the unlawful conduct of third parties who illegally convert Glock's weapons. Even if this action initially fell within PLCAA's scope, it could still proceed because PLCAA only protects lawful commerce and explicitly exempts actions in which a gun company knowingly violates state (including municipal) laws applicable to the sale and marketing of firearms. Defendants have knowingly violated the MCC and ICFA, which are expressly applicable to the sale and marketing of firearms. And Defendants' contention that ICFA is unconstitutional as applied to them crumbles under the great weight of precedent.

Finally, Defendants argue that *Young v. Bryco Arms*, 213 Ill. 2d 433 (2004) and *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351 (2004) mandate dismissal under section 2-615. But those cases are inapposite, as they involved common law public nuisance claims, and the court determined that the General Assembly had not acted to recognize public-nuisance liability for gun companies. Here, by contrast, Chicago brings an enforcement action for Defendants' unlawful business practices under the MCC.

[1] Eagle's motion adopts Midwest's motion, *see* Eagle Mot. ¶ 3, thus any citation to Midwest's motion also applies to Eagle.

BACKGROUND

Machine guns, or fully automatic weapons, have long been heavily regulated at the state and federal level because of their frequent use in crime and the immense danger their rapid-fire capability poses to the public. Compl. ¶¶ 31–33. Despite these longstanding regulations, machine guns have returned to Chicago in the form of the Glock pistol, which can be easily modified into an illegal machine gun by attaching a small, quarter-sized device called an auto sear, allowing the Modified Glock to fire at a rate of 1,200 rounds per minute. *Id.* ¶¶ 1, 2, 7, 35. Anyone with $25 to spare can buy an auto sear and affix it to the back of a Glock with a screwdriver, in a process that usually takes less than five minutes. *Id.* ¶¶ 4, 42. This practice of installing auto sears onto Glock pistols is so prevalent that auto sears are commonly known as "Glock switches." *Id.* ¶ 5. Once affixed, an auto sear works by pushing the trigger bar down, allowing a gun to continue firing automatically with just one trigger pull. *Id.* ¶¶ 35, 39.

Glock designed its original pistol to function either semi- or fully automatically and has known since at least 1987 that its G17 semiautomatic pistol could be easily converted into automatic fire with an auto sear. *Id.* ¶¶ 50–51, 55. That year, Glock's founder met with the person who would later patent the "Fire Selector System," an auto sear designed for use with Glock pistols, even test-firing a Modified Glock himself. *Id.* ¶ 50. At that same time, Glock also created a fully automatic version of its gun, the G18. *Id.* ¶ 51. Glock markets the G18 as having "the same characteristics like other previous models and the frame size of the service pistol classic G17." *Id.* The G18 is so similar to the G17 that it functions fully automatically with just two internal alterations that function like an auto sear does on a G17. *Id.*

It is well known that, because of its design, Glock pistols are particularly easy to modify with auto sears, as compared to other available semiautomatic brands, making them a favorite of

criminals. *Id*. ¶¶ 3, 41, 55, 94, 99. Auto sears are cheap and easy to find or can even be 3D-printed at home. *Id*. ¶ 37. Many are even sold with the Glock logo printed on them. *Id*. ¶¶ 5, 54. For decades, Glock has been on notice of the alarming escalation of the illegal conversion and misuse of its pistols, including through countless high-profile prosecutions, news articles, and public events. *Id*. ¶¶ 52–53. Federal, state, and local law enforcement around the country have raised the alarm about the use of auto sears and Glock pistols. *Id*. ¶¶ 49, 52. Federal officials have even contacted Glock in search of ways to change the weapon to make it harder to modify. *Id*. ¶¶ 49, 52. Glock has remained silent or sought to cast blame elsewhere. *Id*. ¶ 56. Recently, Glock even publicly claimed that "the design of the pistol cannot be altered" to make it harder to modify into a machine gun. *Id.*

However, the design of Glock pistols *can* be changed to make their modification into fully automatic machine guns more difficult. *Id*. ¶ 57. Most other striker-fired pistols (such as those made by Smith & Wesson, Sig Sauer, Springfield Armory, or Walther Arms) would require time-consuming and difficult engineering, well beyond the capability of most civilians, to be modified into automatic weapons. *Id*. ¶¶ 6, 41, 58. But Glock continues to make the unconscionable decision to continue to sell its easily converted pistols without implementing any such change. *Id*. ¶ 57.

Glock exacerbates this problem by actively promoting the fully automatic capabilities of its pistol design, *id*. ¶ 98, and by willingly distributing its pistol through some of the most irresponsible gun stores in the country, including Midwest and Eagle, who have a history of violating gun laws and have been ranked as two of the top suppliers of crime guns into Chicago. *Id*. ¶¶ 8, 66–67. Eagle has even had its license revoked for legal violations but simply reorganized under a new corporate entity and continued doing business. *Id*. ¶¶ 72–79. Both stores know Glocks are easily modified into illegal machine guns and that criminals are doing so with alarming

frequency, yet both continue to market and sell them. *Id*. ¶ 8. Midwest sells and markets easily modified Glocks to Chicago consumers, all the while knowing it is a top supplier for the criminal firearms market in Chicago. *Id*. ¶ 139. Yet, Midwest fails to establish reasonable controls and procedures to ensure it does not promote the unlawful possession and use of Glocks. *Id.* Midwest (like Glock) also deceptively advertises Glocks as "safe," but fails to disclose they are exceedingly dangerous because they can be easily converted into machine guns. *Id*. ¶¶ 87–94, 102. Eagle takes it even further, marketing Modified Glocks as part of its "full auto experience" and inviting customers to "demo" a Glock with an auto sear, so that it can increase its Glock sales. *Id*. ¶¶ 82, 84, 131. In a video posted on its social media accounts, an Eagle employee holds a Glock with an auto sear and demonstrates how it shoots. *Id*. ¶ 82. Yet, Glock continues to supply these dealers with its easily converted weapons. *Id*. ¶ 65.

Defendants' conduct endangers public safety in Chicago. *Id*. ¶¶ 1, 57, 104. From 2021 through May 2024, over 1,300 Modified Glocks were recovered by the Chicago Police Department, an average of one a day. *Id*. ¶¶ 2, 104. These weapons have caused death and destruction and exacerbated gun violence and crime throughout the City. *Id*. ¶¶ 11–12, 106–09. An ATF agent described the use of guns with auto sears as "one of the scariest things" the agency has dealt with in decades. *Id*. ¶ 11.

To address Defendants' unlawful conduct, the City filed a three-count civil enforcement action, alleging Defendants violated MCC § 2-25-90(a), which makes it unlawful for a business to "engage in any . . . unfair or deceptive act or practice while conducting any trade or business in the city." "[A]ny conduct constituting an unlawful act or practice under [ICFA]" is a violation of the MCC. *Id.* Accordingly, Count I alleges Defendants violated the MCC by "knowingly creat[ing], maintain[ing], or contribut[ing] to a condition in Illinois that endangers the safety or health of the

public by conduct either unlawful in itself or unreasonable under all circumstances" in violation of 815 ILCS 505/2DDDD(b)(1) ("Unreasonably Dangerous provision" of ICFA).[2] Counts II and III allege that each of the Defendants engages in unfair and deceptive business conduct, which is prohibited by the MCC and, by incorporation, Section 2 of ICFA, 815 ILCS 505/2.

LEGAL STANDARD

Defendants first argue that dismissal is warranted under 2-619 because PLCAA applies. Under 2-619(a)(9), the movant "admits the legal sufficiency of the complaint but asserts another affirmative matter that defeats the claim." *Am. Family Mut. Ins. Co. v. Krop*, 2018 IL 122556, ¶ 13. A court ruling on a 2-619 motion must consider the complaint as a whole and interpret all pleadings and supporting documents in the light most favorable to the non-moving party. *Paszkowski v. Metro. Water Reclamation Dist. of Greater Chi.*, 213 Ill. 2d 1, 5 (2004). Disputed questions of fact are not to be decided on a 2-619 motion if the plaintiff has made a jury demand. *Nosbaum ex rel. Harding v. Martini*, 312 Ill. App. 3d 108, 114 (1st Dist. 2000).

Defendants also argue that the Complaint fails to state a claim under 2-615. A 2-615 motion tests "the legal sufficiency of a complaint based on defects apparent on its face." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). Like a 2-619 motion, a court evaluating a 2-615 motion must accept as true all well-pleaded facts and reasonable inferences drawn therefrom and construe the allegations in the light most favorable to the plaintiff. *Id*. A court should not grant a 2-619 or 2-615 motion unless it is clear no set of facts can be proven that would entitle the plaintiff to recovery. *Nosbaum*, 312 Ill. App. 3d at 113; *Redelman v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912, 917 (1st Dist. 2007).

[2] This section was renumbered from 505/2BBBB to 505/2DDDD by P.A. 103-605, § 630.

ARGUMENT

I. DEFENDANTS' 2-619 MOTION MUST BE DENIED BECAUSE PLCAA DOES NOT BAR THIS LAWSUIT AND ICFA IS CONSTITUTIONAL.

PLCAA requires the dismissal of a "qualified civil liability action," which is "[a] civil action" brought "against a manufacturer or seller of a qualified product" for "damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines or penalties, or other relief, resulting from the criminal or unlawful misuse of a [firearm] by the person or a third party[.]" 15 U.S.C. §§ 7902, 7903(5)(A). A court conducts a two-step inquiry to determine whether PLCAA applies. *See Adames v. Sheahan*, 233 Ill. 2d 276, 308–15 (2009). It first determines whether the definition of a qualified civil liability action is met. If so, the court considers whether one of PLCAA's six exceptions apply. *Id.* at 312; *see* 15 U.S.C. §§ 7903(5)(A)(i) –(vi) . Neither step is satisfied here.

A. This Action Is Not a Qualified Civil Liability Action Because It Is Based on Defendants' Own Violations, Not the Criminal or Unlawful Misuse by Others.

Defendants wrongly argue the City's enforcement action is a qualified civil liability action because the City seeks "damages and other relief arising from the criminal use of Glock pistols by third parties who illegally convert semiautomatic Glock pistols into fully automatic Modified Glock Pistols and use them to commit various crimes[.]" Glock Mot. at 7–10; Midwest Mot. at 1, 4–5. The City's case is not seeking remedies based on third parties' misuse of Glock pistols; instead, the City brings this action against Defendants for their *own* unlawful conduct.

The City alleges that Defendants' sale and marketing of firearms that are easily modified into illegal machine guns constitute unreasonably dangerous, unfair, and deceptive business practices in violation of MCC § 2-25-090(a) and ICFA §§ 2, 2DDDD(b)(1), (4). The City seeks injunctive relief and fines authorized by MCC §§ 2-25-090(g) and (h) against Defendants for these

violations; the City does not seek "damages and other relief" for harms resulting from criminal acts using Modified Glocks. None of the elements of the City's claims require that a shooting or illegal modification take place.

Defendants attempt to force a square peg into a round hole. When bringing an enforcement action under MCC § 2-25-090(a), the City does not have to allege "injury . . . or causation" *with respect to a defendant's unlawful conduct*, let alone that of a third party. *City of Chicago v. DoorDash, Inc.*, 2022 U.S. Dist. LEXIS 41635, at *2, *6 (N.D. Ill. Mar. 9, 2022); *see also City of Chicago v. Purdue Pharma L.P.*, 211 F. Supp. 3d 1058, 1071 (N.D. Ill. 2016) ("causation need not be alleged in public-enforcement actions"); *People ex rel. Madigan v. United Constr. of Am., Inc.*, 2012 IL App (1st) 120308, ¶ 16 ("Attorney General need not demonstrate that defendants' actions proximately harmed any consumers in order to establish her standing to litigate a violation of [ICFA] and to seek injunctive and other relief as authorized in [the statute]"). Unfair or deceptive practices are unlawful "whether any person has in fact been . . . damaged thereby." 815 ILCS 505/2; *see also City of Chicago v. Equte LLC*, 2022 U.S. Dist. LEXIS 105893, at *3 (N.D. Ill. June 14, 2022) ("[d]amages are not a required element in an enforcement action under MCC § 2-25-090"). ICFA's Unreasonably Dangerous provision also looks at whether *Defendants* engaged in "unlawful or unreasonable conduct" and does not require an injury in an enforcement action. *See* 815 ILCS 505/2DDDD(b)(1) (prohibiting firearm companies from knowingly contributing to a condition that endangers public safety by unlawful or unreasonable conduct); *see also People v. Collins*, 214 Ill. 2d 206, 214–15 (2005) ("To endanger means 'to bring into danger or peril of probable harm or loss' or 'to create a dangerous situation.'. . . The term does not refer to conduct that will result or actually results in harm, but rather to conduct that could or might result in harm.")

Thus, the fact that third parties later unlawfully convert and misuse Glock's pistols does not immunize Defendants from liability for their own unlawful business practices.

A court addressed similar facts in *People v. Blackhawk Mfg. Grp., Inc.*, a civil enforcement case brought by California officials against defendants who made, sold, and marketed "ghost guns"—firearms that do not have a serial number and therefore cannot be traced. No. CGC-21-594577, slip op. at 2 (Cal. Super. Ct., S.F. Cnty. May 2, 2023) (attached as Ex. A). The prosecutors there sought to "enjoin Defendants from engaging in prospective unlawful, unfair and fraudulent business practices and to recover penalties and restitution for Defendants' past [Unfair Competition] and [False Advertising Law] violations." *Id.* The court held that the lawsuit was not a qualified civil liability action because "the relief sought . . . does not result from the criminal or unlawful misuse of a qualified product by the [plaintiff] or a third party." *Id.* at 8. There, like here, criminals would ultimately take possession of the ghost guns and commit crimes. But these later unlawful actions did not protect the defendants from liability for their original unlawful conduct.

Similarly, New York sued a number of gun companies, alleging that the defendants engaged in repeated fraudulent and illegal business conduct, misrepresented their products, and created a statutory public nuisance. *New York v. Arm or Ally, LLC*, 718 F. Supp. 3d 310, 320 (S.D.N.Y. 2024), *appeal docketed*, No. 24-773 (2d Cir. Mar. 27, 2024). The court "easily rejected" the defendants' PLCAA arguments directed to statutory claims prohibiting fraudulent business conduct, holding "[t]hese claims are premised on the States' allegations of Defendants' *own* 'repeated or persistent illegal conduct[.]'" *Id.* at 329 (emphasis in original). The court likewise held that "the State's [statutory] public nuisance claim," which is similar to ICFA's Unreasonably Dangerous provision, "is also based on Defendants' own conduct—namely, violations of their duties to 'establish and utilize reasonable controls and procedures to prevent [firearms] from being possessed, used,

marketed or sold unlawfully'" and thus is not a "qualified civil liability action." *Id.* at 332; *see also Platkin v. FSS Armory Inc.*, No. MRS-C-000102-23, slip op. at 1, 5, 25 (N.J. Super. Ct., Morris Cnty. Aug. 28, 2024) (attached as Ex. B) (PLCAA did not bar New Jersey enforcement action against gun store for failure to implement reasonable controls to prevent theft because "the claims are not being brought on the basis of any allegation that there was 'criminal or unlawful misuse of a qualified product by the person or a third party'" but rather based on the defendant's own violation of state public nuisance statute).

As the Illinois Supreme Court has made clear, Congress intended PLCAA to "prohibit causes of action against [gun companies] for the harm *solely* caused by the criminal or unlawful misuse of [firearms] by others[.]" *Adames*, 233 Ill. 2d at 308 (quoting 15 U.S.C. § 7901(b)(1)) (emphasis added); Glock Mot. at 7 (same); Midwest Mot. at 4 (same). But here, the City brings a civil enforcement action against Defendants for their own violations of law. *See Blackhawk*, slip op. at 7 ("[b]ased on the PLCAA's purposes, the Court would be hard-pressed to find Congress intended to preempt public enforcement actions to enforce existing laws"). Thus, Defendants have not shown they are entitled to PLCAA's protection at the first step.

B. PLCAA's Predicate Exception Applies.

Even if Defendants could get past the first step, then PLCAA still does not apply because Defendants' conduct satisfies one of PLCAA's exceptions, which exempts any "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). "This exception has come to be known as the 'predicate exception,' because a plaintiff not only must present a cognizable claim, he or she also must allege a knowing violation of a 'predicate statute.'" *Ileto v. Glock, Inc.*, 565

F.3d 1126, 1132 (9th Cir. 2009). In some cases, this means that the statute itself provides the cause of action; in others, the cause of action differs from the statutory violation on which it is predicated. *Compare Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 67, 121 (2019) (violation of Connecticut Unfair Trade Practice Act served as both predicate violation and cause of action), *with Prescott v. Slide Fire Sols, LP*, 410 F. Supp. 3d 1123, 1130–31, 1134–41 (D. Nev. 2019) (permitting negligence claim based on violation of Nevada's Deceptive Trade Practices Act to proceed); *see also Williams v. Beemiller, Inc.*, 952 N.Y.S.2d 333, 336–39 (2012) (permitting negligence claims to proceed under predicate exception because plaintiffs alleged violation of Gun Control Act). Here, each element of the predicate exception is met: (i) the MCC and ICFA are "State . . . statute[s] applicable to the sale and marketing" of firearms; (ii) the City alleges these laws were knowingly violated; and (iii) these violations were "a" proximate cause of harm to the City.

i. The MCC and ICFA Are Predicate Statutes.

As Defendants acknowledge, a predicate statute is one that "(1) 'expressly regulate[s] firearms'; (2) 'courts have applied to the sale and marketing of firearms'; *or* (3) 'clearly can be said to implicate the purchase and sale of firearms.'" Glock Mot. at 12 (quoting *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 404 (2d Cir. 2008)) (emphasis added); *see* Midwest Mot. at 6–7. Each of the City's claims assert violations of statutes that satisfy the *City of New York* test.

As a threshold matter, Glock incorrectly asserts that MCC § 2-25-090(a) cannot be a predicate statute because it is a municipal ordinance. Glock Mot. at 10. But PLCAA defines "State" to include the "States of the United States" and "any political subdivision of any such place." 15 U.S.C. § 7903(7). Thus, legislation passed by a municipality like Chicago can qualify as a predicate statute. *See Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024) ("When Congress takes the trouble to define the terms it uses, a court must respect its definitions as virtually

conclusive.") (cleaned up); *see also Statute,* Black's Law Dictionary (12th ed. 2024) (defining "statute" as "[a] law enacted by a legislative body; specif. legislation enacted by any lawmaking body, such as a legislature, administrative board, or municipal court"); *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 12 (2009) (absent alternative indication from legislature, term "'statutory' encompasses municipal ordinances as well as state statutes"). In any case, Defendants acknowledge that each cause of action is predicated on a violation of ICFA, which is indisputably a state statute. *See* Glock Mot. at 3, 10; Midwest Mot. at 6.

Both the MCC and ICFA are also "applicable to the sale and marketing of [firearms]." Section 2-25-090(a) prohibits any "unfair or deceptive act or practice while conducting any trade or business in the city." "Trade" or "[b]usiness" means the "advertising," "distribution," or "sale" of "*any* good." MCC § 2-25-010 (emphasis added). ICFA Section 2 prohibits "unfair or deceptive acts or practices . . . in the conduct of any trade or commerce[.]" 815 ILCS 505/2. The terms "trade" and "commerce" mean "the advertising, offering for sale, sale, or distribution of . . . *any* property . . . and *any* other article, commodity, or thing of value wherever situated[.]" 815 ILCS 505/1(f) (emphasis added). Thus, on a plain reading of the statutes' text, they are "applicable to the sale and marketing" of firearms, which are plainly "goods," "articles," and "things of value." *See Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶ 24 ("[legislative] intent is best determined from the plain and ordinary meaning of the language used in the statute").

The General Assembly erased any doubt about the applicability of ICFA to the firearms industry when it amended ICFA to explicitly state that ICFA's prohibition on unfair or deceptive practices has always applied to the firearms industry. *See* 815 ILCS § 505/2DDDD. This section expressly governs the "[s]ale and marketing of firearms" and applies to a "firearm industry member." *Id.* § 505/2DDDD(a). Section 505/2DDDD(b)(4) prohibits "any firearm industry

member" from engaging in "unfair or deceptive acts or practices declared unlawful under Section 2 of this Act." "Paragraph[] . . . (4) of subsection (b) [is] declarative of existing law and shall not be construed as [a] new enactment[]." *Id.* 505/2DDDD(c). ICFA's Unreasonably Dangerous provision also expressly prohibits firearm companies, "through the sale, manufacturing . . . or marketing" of a firearm, from "[k]nowingly creat[ing], maintain[ing], or contribut[ing] to a condition in Illinois that endangers the safety or health of the public by conduct either unlawful in itself or unreasonable under all circumstances, including failing to establish or utilize reasonable controls." *Id.* 505/2DDDD(b)(1). Since "[a]ny conduct constituting an unlawful act or practice under [ICFA], as now or hereafter amended" is a violation of MCC § 2-25-090(a), the City's ordinance applies to the firearms industry too. So, both laws "expressly regulate firearms," *City of New York*, 524 F.3d at 404, and therefore qualify as predicate statutes.

Glock admits, as it must, that ICFA is "specifically applicable" and "directed at the firearm industry," but argues ICFA is not specifically applicable *in the way that PLCAA intended*. Glock Mot. at 10, 12–13. This argument has no support in PLCAA's text, legislative history, or the case law. All that PLCAA's predicate exception requires is the predicate statute at issue be "applicable to the sale or marketing of [firearms]." 15 U.S.C. § 7903(5)(A)(iii). There is no further requirement in PLCAA's text about how "amorphous" or non-amorphous, Glock Mot. at 13, 19—whatever that may mean—a predicate statute must be. *See Shawnee Cmty. Unit Sch. Dist. No. 84 v. Ill. Prop. Tax Appeal Bd.*, 2024 IL 128731, ¶ 45 ("The [party] is asking this court to read language into the Code that is not there. This, of course, we may not do.").[3]

[3] Glock argues that the statutory examples listed for the predicate exception provide gun companies with "clear commands" as to what is prohibited, whereas ICFA does not. Glock Mot. at 13. But words like "unfair," "deceptive," and "reasonable" are well understood. *Infra* Part I.B.ii.

As one court explained, interpreting a similar New York statute, "[n]o reasonable interpretation of 'applicable to' can exclude a statute which imposes liability exclusively on gun manufacturers for the manner in which guns are manufactured, marketed, and sold." *Nat'l Shooting Sports Found., Inc. v. James*, 604 F. Supp. 3d 48, 59 (N.D.N.Y. 2022), *appeal docketed*, No. 22-1374 (2d Cir. June 24, 2022); *see Platkin*, Ex. B at 24 ("explicit language of the PLCAA, which includes the predicate exception," allows New Jersey to bring civil enforcement action under New Jersey's firearm-specific nuisance law). Defendants hang their hats on the only case that held to the contrary, Glock Mot. at 14–15, Midwest Mot. at 7 (citing *Nat'l Shooting Sports Found. v. Platkin*, 2023 U.S. Dist. LEXIS 16459, at *6 (D.N.J. Jan. 31, 2023)), but that decision has been vacated. *Nat'l Shooting Sports Found. v. Attorney General of N.J.*, 80 F.4th 215 (3d Cir. 2023) (reversing for lack of standing).

Contrary to Glock's implication, *see* Glock Mot. at 13, there is nothing paradoxical about the requirement that a defendant "knowingly" violate a law that uses a reasonableness standard. *See, e.g.*, 720 ILCS 5/26.5-0.1 (defining "harass or harassing" as "knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances"); 815 ILCS 505/2Z (prohibiting knowingly violating the Automotive Repair Act, 815 ILCS 306/80(6), which prohibits charging for repairs "for which there is no reasonable basis for performing the service"). PLCAA itself includes as its second illustrative example of a predicate statute a law that incorporates a "reasonable cause to believe" standard. 15 U.S.C. § 7903(5)(A)(iii)(II).

In fact, unfair and deceptive trade practice laws such as the MCC and ICFA Section 2 were among the consumer protection statutes contemplated by Congress in enacting the predicate exception. *See Soto*, 331 Conn. at 121–22, 126. For this reason, *Soto* and others following its lead have consistently held that consumer protection laws qualify as predicate statutes. *Id*. at 157–58;

Prescott, 410 F. Supp. 3d at 1137–39 (Nevada Deceptive Trade Practices Act held to be predicate statute in case brought by victims of a mass shooting); *Goldstein v. Earnest*, No. 37-2020-00016638, slip op. at 3–5 (Cal. Super. Ct., San Diego Cnty. July 2, 2021) (California's Unfair Competition Law held to be predicate statute in case by shooting victims) (attached as Ex. C).

Defendants' reliance on *City of New York* and *Ileto* is also misplaced. Glock Mot. at 13, Midwest Mot. at 7. In *City of New York*, the Second Circuit held that New York's generally applicable nuisance statute, which—unlike ICFA—did not expressly regulate firearms and had not previously been applied to the sale and marketing of firearms, did not fit within any of the three categories set forth in that case. 524 F.3d at 404. In *Ileto*, the plaintiffs argued that "California's general tort law," which had been codified in California's civil code, could serve as predicate statutes. 565 F.3d at 1132–33. The court rejected this argument, pointing out that such a broad reading of "applicable to" would let the exception swallow the rule. *Id.* at 1134–35. It was in this context—a concern over "ordinary common-law claims" not directed specifically at the firearms industry—that *Ileto* stated "[t]hat 'judicial evolution' was precisely the target of the PLCAA." *Id.* Notably, a district court in the Ninth Circuit applying *Ileto* concluded that Nevada's consumer protection statute was a predicate statute. *Prescott*, 410 F. Supp. 3d at 1137–39 ("NDTPA specifically regulates the sale and marketing of goods" and "*Ileto* does not foreclose the NDTPA from serving as a predicate statute, and instead appears to permit it"). The same result should follow here with respect to ICFA.

ii. Defendants' Knowing Violation of the MCC and ICFA is a Proximate Cause of the City's Harm.

PLCAA's predicate exception requires that a defendant's violation of a predicate statute be both knowing and a proximate cause of the harm "for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). First, Glock is wrong that it cannot "knowingly" violate laws with a

reasonableness standard, like ICFA's Unreasonably Dangerous provision. *See supra* at 14; Glock Mot. at 13. PLCAA only requires that defendants knew the factual underpinnings giving rise to their violation of law, not that those laws proscribed their conduct. *Arm or Ally*, 718 F. Supp. 3d at 330 (holding, in the context of PLCAA's predicate exception, that "[i]t is well established . . . that the phrase 'knowingly violates' requires knowledge of facts and attendant circumstances that comprise a violation of the statute, *not* specific knowledge that one's conduct is illegal") (emphasis in original); *see also United States v. Stein*, 712 F.3d 1038, 1041 (7th Cir. 2013) ("unless the text of the statute dictates a different result, the term 'knowingly' merely requires proof of knowledge of the facts that constitute" the violation). Glock has been aware for decades that its pistols could be easily converted to illegal machine guns. Compl. ¶¶ 50, 55. Thus, it knowingly engaged in conduct that "create[s], maintain[s] or contribute[s] to a condition in Illinois that endangers the safety or health of the public[.]" ICFA § 505/2DDDD(b)(1).

Second, Defendants wrongly argue that the conduct alleged cannot be a proximate cause of harm to the City. Glock Mot. at 16; Midwest Mot. at 11. As an initial matter, the predicate exception's requirement that "the violation was a proximate cause of the harm for which relief is sought," 15 U.S.C. § 7903(5)(A)(iii), reinforces that this government enforcement action is not the kind of case that PLCAA targets, *i.e*, it is not a case seeking relief "for the harm solely caused by the criminal or unlawful misuse of firearm products . . . by others," 15 U.S.C. § 7901(b)(1). The City seeks injunctive relief and fines against Defendants for violating the law. In other words, the "harm for which relief is sought" are Defendants' own violations of the law, and, thus, by necessity, based on the nature of this action, the proximate cause requirement is satisfied.

Even if the City needed to allege that Defendants' violations of law proximately caused further downstream conduct by third parties—which is plainly not what PLCAA's predicate

exception requires—the City has done so. *See supra* at 5 (discussing recoveries of Modified Glocks in Chicago). Proximate cause requires both cause in fact and legal cause. *McKenna v. AlliedBarton Sec. Servs., LLC*, 2015 IL App (1st) 133414, ¶ 37. Defendants argue the City has not established legal cause by relying on cherry-picked language from *Young v. Bryco Arms*, 213 Ill. 2d 433 (2004) and *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351 (2004). Glock Mot. at 23–25; Midwest Mot. at 10–11. But these two cases do not help them.[4]

"The proper inquiry regarding legal cause involves an assessment of foreseeability." *Young*, 213 Ill. 2d at 446. "The question is one of public policy—how far should a defendant's legal responsibility extend for conduct that did, in fact, cause the harm?" *Id.* Defendants' causation argument fails because, by amending ICFA to make clear that it applies to the gun industry, the General Assembly determined that public policy favors holding gun companies accountable for their unreasonably dangerous and unlawful sales and marketing practices and that it is foreseeable that such conduct will endanger public safety. 815 ILCS 505/2DDDD(b)(1), (4). The Illinois Supreme Court's overriding concern in *Young* and *Beretta* was that the General Assembly *had not acted* to regulate the firearms industry in the way envisioned by the plaintiffs in those cases, noting that "ultimately" its conclusion on the issue of proximate cause was a "public policy determination." *Young*, 213 Ill. 2d at 455 ("there are strong public policy reasons to defer to the legislature in the matter of regulating the manufacture, distribution, and sale of firearms"); *see Beretta*, 213 Ill. 2d at 384, 413–14. The opposite is true here: the General Assembly has acted, and thus public policy weighs in favor of finding legal cause.

[4] Midwest's brief includes a single conclusory sentence stating that third-party criminal conduct was the sole cause in fact of the harms alleged in the complaint. Midwest Mot. at 11. But it provides no reasoning or case law to support this premise; nor could it. "[T]he existence of a cause in fact is a question of fact for the jury[.]" *Young*, 213 Ill. 2d at 447.

For similar reasons, Defendants' reliance on *Young*'s distinction between a "condition" and "cause" is incorrect. *See* Glock Mot. at 24; Midwest Mot. at 11. The court's decision that the gun companies' conduct "merely furnishes a condition by which injury is made possible" was based on the notion that it is "unreasonable to expect defendants to foresee that the aggregate effect of the *lawful* manufacture and sale of firearms will be the creation of a public nuisance in a distant city." Glock Mot. at 24 (quoting *Young*, 213 Ill. 2d at 449, 455) (emphasis added). The City has alleged that Defendants acted *unlawfully*, and the General Assembly has determined that the harm they caused is reasonably foreseeable.

But even if the General Assembly had not amended ICFA, the City alleges legal cause under *Young* and *Beretta*. It is foreseeable that by designing, manufacturing, and selling a semiautomatic pistol that, with a simple modification can be turned into a machine gun—while simultaneously promoting the fully automatic capabilities of virtually identical pistols—criminals would modify the semiautomatic version, use it as a machine gun, and cause death and destruction. Glock not only designed its semiautomatic pistol so that with a simple modification it becomes a machine gun, but Glock has known for forty years that the pistol could be easily converted into a machine gun with an auto sear. Further, given the countless shootings and law enforcement investigations involving Modified Glocks, and even references to Modified Glocks and Glock switches in popular culture, Glock has long been aware of the problems its pistols created. *See* Compl. ¶¶ 1, 48–55, 98. In stark contrast, other manufacturers' semiautomatic pistols cannot be modified into machine guns absent engineering well beyond the capability of most civilians. *Id*. ¶¶ 6, 58–59. Thus, unlike in *Beretta*, it is more "clear that the condition would cease to exist" if

Defendants were enjoined from continuing to sell and market the easily modified Glock pistols. 213 Ill. 2d at 413.[5]

Contrary to Defendants' arguments, the City does not merely allege that Defendants flooded the market with lawful firearms that intervening third parties then independently proceeded to misuse. Glock Mot. at 24–25; Midwest Mot. at 1–2, 11. From the unique design of its semiautomatic pistols to sales through top crime gun dealers and active marketing of its virtually identical fully automatic model, Glock made its gun a favorite of criminals seeking to modify their firearms to fire fully automatically. Compl. ¶¶ 55, 58, 60–67, 98. Glock knows it could take reasonable steps to make its pistol difficult to modify but continues to sell its easily modified models without altering the design, even in the face of the proliferation of Modified Glocks and requests by law enforcement to change its design. *Id.* ¶¶ 1, 49, 57.

Meanwhile, Midwest and Eagle knowingly sold and marketed easily modified Glock pistols to Chicago consumers knowing that criminals favored their stores and knowing the proliferation of and havoc wreaked by Modified Glocks. *Id.* ¶ 8. However, they have not established or utilized reasonable controls and procedures to ensure they do not promote the unlawful possession and use of illegal machine guns, as required by Illinois law. *Id.* ¶¶ 135, 139. In addition, Eagle even markets the "full auto" modified Glock 17 for customers to "demo" at its range. *Id.* ¶ 84. For a business like Eagle, the purpose of making firearms available to "demo" is so the customer purchases the firearm, yet Eagle fails to provide any warnings or disclosures to Chicago consumers pertaining to the prohibitions on the possession of machine guns or disclose that Modified Glocks are highly dangerous and illegal machine guns. *Id.* ¶ 133.

[5] Midwest mischaracterizes the City's allegations as claiming that Midwest sells "unregistered machineguns." Midwest Mot. at 8. Nowhere does the City allege that unmodified Glocks are machine guns or base its claims against Midwest on the sale of machine guns.

Whether proximate cause is established simply by a violation of law in a civil enforcement action (which is all that PLCAA requires), or by demonstrating that downstream harm foreseeably occurs based on Defendants' unlawful acts—the City has met its burden at this threshold stage of the litigation.

C. ICFA Is Constitutional.

Defendants move under 2-619 to have portions of ICFA declared unconstitutional as applied to them. Glock Mot. at 16; Midwest Mot. at 11. An as-applied constitutional challenge requires the party raising the challenge to establish that "the statute is unconstitutional as it applies to the specific facts and circumstances of the challenging party." *Kopf v. Kelly*, 2024 IL 127464, ¶ 22. This burden rests squarely with the challenging party. *People ex rel. Hartrich v. 2010 Harley-Davidson*, 2018 IL 121636, ¶ 30. The Illinois Supreme Court has made clear that "[a] court is not capable of making an 'as applied determination of unconstitutionality when there has been no evidentiary hearing and no finding of fact. Without an evidentiary record, any finding that a statute is unconstitutional 'as applied' is premature." *Kopf*, 2024 IL 127464, ¶¶ 23–27 (reversing circuit court's ruling that statute was unconstitutional "as applied").

Here, Defendants have not submitted any evidence in the form of affidavits or otherwise to demonstrate how ICFA is unconstitutional as applied to their facts and circumstances. *See* 735 ILCS 5/2-619(c) (permitting affidavits on a 2-619 motion). Instead, they challenge ICFA based on "unverified allegations," *Kopf*, 2024 IL 127464, ¶ 24, and rhetorical musings, *see, e.g.*, Glock Mot. at 19. Therefore, at this stage of the litigation, Defendants have failed to meet their burden and their as-applied challenge must be denied in its entirety. But even if this Court were to consider the merits of Defendants' as-applied challenge at this stage, it fails on the merits.

i. ICFA Does Not Violate the Dormant Commerce Clause.

Glock contends that ICFA violates the dormant Commerce Clause by imposing liability for out-of-state conduct and imposing excessive burdens on interstate commerce. Glock Mot. at 17–18. Glock falters out the gate by ignoring the scope of Chicago's lawsuit and misconstruing *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023), a case which forecloses Glock's argument.

In *Ross*, the Supreme Court rejected a dormant Commerce Clause challenge to a state law based on the premise that state laws cannot have "extraterritorial" effect. 598 U.S. at 371–74. In upholding a California law that prohibited the in-state sale of pork products raised under cruel conditions, even though most pigs sold in California were bred outside of the state, the Court explained that "[i]n our interconnected national marketplace, many (maybe most) state laws have the 'practical effect of controlling' extraterritorial behavior." *Id.* at 374. The Court held that "antidiscrimination … lies at the 'very core' of … dormant Commerce Clause jurisprudence," and that such a claim must generally allege "purposeful discrimination against out-of-state economic interests." *Id.* at 369, 371. Thus, to succeed on a dormant Commerce Clause argument, Glock must show that ICFA is designed to benefit in-state economic interests by discriminating against out-of-state competitors. *See id.* at 373, 369–70; *see also N.J. Staffing All. v. Fais*, 110 F.4th 201, 205 (3d Cir. 2024) ("Although several prior dormant Commerce Clause opinions focused on the extraterritorial effect of challenged laws, the [Supreme] Court explained that those cases were still animated by the antidiscrimination principle.") (emphasis omitted). This, of course, Glock cannot do.[6]

[6] Glock's reliance on two pre-*Ross* decisions, *Legato Vapors* and *Daniels Sharpsmart*, Glock Mot. at 17, is therefore misguided, as both opinions' reasoning rested on the "extraterritorial effects" analysis the Supreme Court invalidated in *Ross*. *See Legato Vapors, LLC v. Cook*, 847 F.3d 825 (7th Cir. 2017); *Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608, 616 (9th Cir. 2018); *see also Ross*, 598 U.S. at 373–74 (rejecting

Glock argues that a footnote in *Ross* stands for the proposition that states cannot "directly regulate out-of-state conduct." Glock Mot. at 17 (citing *Ross*, 598 U.S. at 376, n.1). But that is not what the footnote says. The footnote distinguishes a case that held a state statute may not "*directly* regulate[ ] out-of-state transactions by those with *no connection* to the State." *Ross*, 598 U.S. at 376, n.1 (emphasis in original). But here, ICFA only regulates gun industry conduct that has a *direct connection* to Illinois and applies only to gun companies whose businesses have a connection to the state.[7] Further, the City is bringing a civil enforcement action under MCC § 2-25-090(a), which applies only to business conduct directed at Chicago. *See* Compl. at 66, ¶¶ i–iv (seeking injunctive relief directed only at Chicago). Since Glock has not denied that it conducts trade or business in Chicago or Illinois, the *Ross* footnote provides no support for its argument.

Glock also claims that ICFA "authorizes lawsuits that impose [an excessive] burden on interstate commerce." Glock Mot. at 18 (citation omitted). Glock bases its claims of undue burden primarily on PLCAA's purpose, *id.*, but PLCAA does not apply here. *See supra* Parts I.A. and I.B. Glock also provides no evidence as to how the City's narrow injunctive relief demand imposes an excessive burden and merely states—again, without evidentiary support—that its only option is to "cease the manufacture and sale of any and all 'firearm-related products.'" Glock Mot. at 18. That makes no sense; in addition to stopping sales of its easily convertible pistols to Chicago residents, Glock also has the option of redesigning its pistol so that it could not be converted so easily, which it could then sell to Chicago residents. Compl. ¶ 57. Glock fails to demonstrate how compliance

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interpretation of previous decisions that would have adopted "an 'almost *per se*' rule against state laws with 'extraterritorial effects'").

[7] *See* 815 ILCS 505/2DDDD(a)(1)–(3) (defining "firearm-related products" as those that were "(1) "sold, made, or distributed in Illinois," (2) "intended to be sold or distributed in Illinois," or (3) "possessed in Illinois, and it was reasonably foreseeable that the item would be possessed in Illinois"). In addition, ICFA's Unreasonably Dangerous provision only prohibits knowingly "creat[ing], maintain[ing], or contribut[ing] to a condition in *Illinois* that endangers the safety or health of the public." 815 ILCS 505/2DDDD(b)(1) (emphasis added).

with ICFA imposes a greater burden than any number of consumer protection regulations that companies are subject to when they choose to do business in a state, just as Glock does in Illinois.

ii. ICFA Does Not Violate the Due Process Clause.

Defendants next argue that ICFA's Unreasonably Dangerous provision is void for vagueness. Not so. This provision uses well-known standards of reasonableness with clarifying terms, providing Defendants with sufficient guidance to determine what practices violate ICFA—similar to numerous other economic regulations found to be constitutional.

A "statute is only unconstitutionally vague when its terms are so indefinite that persons of common intelligence must necessarily guess at its meaning and differ as to its application." *Scott v. Ass'n for Childbirth at Home, Int'l*, 88 Ill. 2d 279, 285, 289–90 (1981) (upholding Section 2 of ICFA from vagueness challenge, and noting that phrases like "unfair," "deceptive," and "unprofessional conduct" are not unduly vague).[8] "[E]conomic regulation is subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action." *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 498 (1982); *see also Scott*, 88 Ill. 2d at 285–288 (rejecting argument that ICFA is subject to "stricter standard of definiteness because it is capable of reaching constitutionally protected speech").[9]

The Unreasonably Dangerous provision easily meets this test. This provision prohibits a gun company from "knowingly creat[ing], maintain[ing], or contribut[ing] to a condition … that

[8] Given the holding in *Scott*, Glock does not argue that Section (b)(4), which simply applies the prohibitions of ICFA's section 2 to the gun industry, is vague. Midwest's one sentence vagueness challenge does not state which ICFA provision it is challenging. Midwest Mot. at 11.

[9] Glock's argument that ICFA is subject to a higher standard because it "implicates" the Second Amendment, Glock Mot. at 19, is thus directly foreclosed by *Scott*, which rejected a similar argument by a plaintiff arguing that ICFA implicated the constitutionally protected rights of privacy. *Scott*, 88 Ill. 2d at 286. Nor does ICFA impose "quasi-criminal" penalties. *Id.* at 288.

endangers the safety or health of the public by conduct … unreasonable under all circumstances." ICFA § 505/2DDDD(b)(1). It defines conduct that is "unreasonable under all circumstances" to include "failing to establish or utilize reasonable controls." *Id.* "Reasonable controls" is defined further, and as alleged specifically against Glock, "include[s] reasonable procedures, safeguards, and business practices that are designed to . . . not . . . promote the unlawful manufacture, sale, possession, marketing, or use of a firearm-related product." *Id.* 505/2DDDD(b)(1)(c).

Glock's "vagueness" argument amounts to a criticism that it cannot determine what constitutes "unreasonable" conduct or "reasonable controls." Glock Mot. at 19. However, statutes using the term "reasonable" are consistently found to be constitutional, even in the criminal context. *See, e.g.*, *United States v. Soderna*, 82 F.3d 1370, 1376–77 (7th Cir. 1996) (upholding against vagueness attack language in FACE Act prohibiting "physical obstruction" that is "unreasonably difficult or hazardous" and stating that the word "unreasonably" is "widely used and well understood")*; Sharkeys, Inc. v. City of Waukesha*, 265 F. Supp. 2d 984, 993 (E.D. Wis. 2003) ("The Seventh Circuit has upheld . . . 'reasonableness' standards against challenges based on vagueness."); *United States v. Hsu*, 40 F. Supp. 2d 623, 628 (E.D. Pa. 1999) ("[A] statute is not void for vagueness merely because it uses the word 'reasonable' or 'unreasonable.'"). ICFA's Unreasonably Dangerous provision features the exact statutory flexibility that has long been allowed by the courts. *See, e.g.*, *People v. Khan*, 136 Ill. App. 3d 754, 756–58 (1985) (rejecting vagueness challenge to law prohibiting landlords from allowing properties to "become . . . so deteriorated that the health or safety of any inhabitant is endangered" and noting it is "impractical" for legislature to list every type of deterioration that could endanger health and safety of residents).

Unable to avoid overwhelming case law, Glock attempts to distract by asking hypothetical questions. Glock Mot. at 19 ("If the design of Glock pistols was changed, how much change would

be enough? Would the City have to be in the design room to validate whether design changes had gone far enough?"). These are questions that every business must rationally evaluate when determining whether its business conduct is unreasonable or unfair, knowing that ultimately, a jury will determine what is reasonable within the context of a particular case. Requiring a business to act reasonably to avoid endangering the public is not unconstitutionally vague. Glock provides no support for the level of specificity it suggests is required. That is because the Constitution has no such requirement. *Brown v. Chi. Bd. of Educ.*, 824 F.3d 713, 717 (7th Cir. 2016) ("[a] statute need not define every term to survive a vagueness challenge").

iii. ICFA Does Not Violate the Second Amendment.

Finally, Defendants argue that ICFA and the relief the City seeks are unconstitutional under the Second Amendment. Glock argues that the City's request to enjoin the sale of its easily convertible pistols to Chicago residents would violate the Second Amendment because "there is no historical tradition" of such regulation and because ICFA "essentially impos[es] potential unlimited liability on members of the firearm industry." Glock Mot. at 20–21. Glock's argument fails because the City's lawsuit and ICFA regulate business practices—not any individuals' ability to keep and bear firearms—and therefore do not implicate the Second Amendment.[10]

Under *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), there is a two-part test for determining whether the Second Amendment has been violated. First, the court "must decide whether 'the Second Amendment's plain text covers an individual's conduct.'" *Bevis v. City of Naperville*, 85 F.4th 1175, 1191 (7th Cir. 2023) (citing *Bruen*, 597 U.S. at 17). The burden to satisfy this initial textual inquiry is on the party challenging the law. *Id.* at 1194; *Hanson v. District of Columbia*, 120 F.4th 223, 231–32 (D.C. Cir. 2024) ("The [challenging party] bears the burden

[10] Midwest's single-sentence argument does not include any reasoning. Midwest Mot. at 11.

of proof at the first step . . . ."). If the conduct at issue is protected, then the government must "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24.

Defendants' challenge fails at step one, which they entirely ignore. There is no independent right under the Second Amendment to manufacture, market, or sell firearms, divorced from an individual's ability to acquire a firearm. *See, e.g.*, *United States v. Barrera-Esteves*, 2024 U.S. Dist. LEXIS 128607, at *2 (N.D. Ill. July 22, 2024) ("carrying on a business in the buying and selling of firearms" is not protected by Second Amendment); *B & L Prods., Inc. v. Newsom*, 104 F. 4th 108, 117–20 (9th Cir. 2024), *petition for cert. filed*, No. 24-598 (Nov. 27, 2024) ("[o]n its face, [the Second Amendment] says nothing about commerce," and "only prohibits meaningful constraints on the right to acquire firearms"); *Teixeira v. County of Alameda*, 873 F.3d 670, 690 (9th Cir. 2017) ("the Second Amendment does not independently protect a proprietor's right to sell firearms").

Glock has made no attempt to raise a derivative claim on behalf of its individual Chicago customers. In support of its 2-619 motion, Glock did not assert the right of any individual customer nor submit an affidavit on behalf of any Chicago resident claiming to be unable to acquire a firearm for self-defense. *See Teixeira*, 873 F.3d at 680–81 (rejecting Second Amendment challenge by would-be gun store because "[c]onspicuously missing from this lawsuit is any honest-to-God resident of Alameda County complaining that he or she cannot lawfully buy a gun nearby").

And even if Glock were able to stand in the shoes of its Chicago customers who could claim a violation of their *individual* right, the Second Amendment's plain text does not confer a right to purchase a specific *brand* of semiautomatic pistol. *See District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (right to keep and bear arms is "not a right to keep and carry any weapon

whatsoever in any manner whatsoever and for whatever purpose"); *Bruen*, 597 U.S. at 21 (quoting *Heller*). As the Complaint alleges, modifying "most other striker-fired pistols" into machine guns is well beyond most citizen's capability. Compl. ¶¶ 6, 58. Defendants have made no argument that Chicago residents seeking to buy handguns for self-defense are unable to select an option from a plethora of other brands. When numerous other options remain available, purchasing a Glock pistol is not necessary to the realization of an individual's right to self-defense under the Second Amendment. *See Pena v. Lindley*, 898 F.3d 969, 973 (9th Cir. 2018) (no "constitutional right to purchase a particular handgun"). For these reasons, Glock's reliance on *Radich v. Guerrero*, 2016 U.S. Dist. LEXIS 41877 (D. N. Mar. I. Mar. 28, 2016), is misplaced. There, the court struck down a restriction that categorically banned most private individuals on the Northern Mariana Islands from importing and possessing *any* handguns. *Id.* at *7–8. That is a far cry from the City's lawsuit.

Glock's argument that the Unreasonably Dangerous provision violates the Second Amendment because its supposed "vague terms" "essentially impos[e] potential unlimited liability on members of the firearms industry" is also meritless. Glock Mot. at 21. As explained, ICFA is not impermissibly vague. *Supra* Part I.C.ii. That gun companies may face liability under ICFA for their unlawful marketing and sales practices does not implicate the Second Amendment because "laws imposing conditions and qualifications on the commercial sale of arms" are "presumptively lawful regulatory measures." *Heller*, 554 U.S. at 626–27 & n.26; *McRorey v. Garland*, 99 F.4th 831, 836 (5th Cir. 2024) (affirming denial of preliminary injunction in part because "conditions and qualifications on the commercial sale of arms" are "presumptively lawful").

Because ICFA is not covered by the plain text of the Second Amendment, the Court does not need to reach the step-two historical inquiry. However, even if it did, prohibitions on exceedingly dangerous weapons—such as handguns that are uniquely capable of being converted

into illegal fully automatic machine guns in minutes—are well within the historical tradition of this nation's laws. The U.S. Supreme Court and other courts have long recognized that machine guns may be banned under the Second Amendment. *See Heller*, 554 U.S. at 624 (observing that it would be "startling" to conclude that "restrictions on machineguns . . . might be unconstitutional"); *Friedman v. City of Highland Park*, 784 F.3d 406, 408 (7th Cir. 2015) ("*Heller* deemed a ban on private possession of machine guns to be obviously valid"); *Hamblen v. United States*, 591 F.3d 471, 473–74 (6th Cir. 2009) (Second Amendment "does not authorize an unlicensed individual to possess unregistered machine guns for personal use"); *see also Bevis*, 85 F.4th at 1197–1202 (in upholding restrictions on assault weapons, pointing to tradition of prohibiting weapons reserved for military use, including machine guns).

The City seeks to address the same dangers once posed by machine guns—but which now appear in the form of Glock handguns that can be easily converted into illegal machine guns. When evaluating a challenged regulation under the Second Amendment, courts consider whether it is "consistent with the *principles* that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (emphasis added). The regulation of handguns that are easily modified into illegal machine guns is "consistent with the principles that underpin," and is "relevantly similar" to, the machine-gun laws "that our tradition is understood to permit." *Id.* at 692.[11]

II. DEFENDANTS' 2-615 MOTIONS FAIL BECAUSE THE CITY HAS STATED CLAIMS AGAINST DEFENDANTS.

Defendants point to *Beretta* and *Young* to argue that the City has failed to state a claim. Glock Mot. at 22–25; Midwest Mot. at 10–11. But these decisions are of limited value to

[11] Glock argues that to establish a historical tradition of regulation, the City needs to establish a *specific* tradition of "banning legal firearms simply because they could later be illegally modified by third parties into prohibited firearms." Glock Mot. at 20–21. But *Bruen* and *Rahimi* made clear that, in demonstrating a law's consistency with tradition, courts need not look for a "dead ringer" or "historical twin." *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 30).

Defendants since they involved common law claims, which the City has not brought, seeking damages, which the City does not seek, and were decided prior to the General Assembly's decision to amend ICFA to apply to gun companies (and make clear that ICFA's Section 2 always applied to gun companies). Thus, *Beretta*'s and *Young*'s ultimate holdings on duty and causation have little applicability to this case.

MCC § 2-25-090 prohibits all businesses from engaging in "unfair or deceptive act or practice while conducting any trade or business in the city." The same provision states that "[a]ny conduct constituting an unlawful practice under [ICFA] . . . shall be a violation of this section." When interpreting MCC § 2-25-090, courts "shall" consider interpretations of ICFA, *see id.,* and courts interpret ICFA broadly. *See, e.g., Perona v. Volkswagen of Am., Inc.*, 292 Ill. App. 3d 59, 65 (1st Dist. 1997) ("The Policy of the Consumer Fraud Act is to give broader protection than common law fraud or negligent misrepresentation. The legislature mandated the courts to use the Act to the greatest extent possible to eliminate all forms of deceptive or unfair business practices and provide appropriate relief to consumers.").

Defendants do not argue that the City fails to allege that they engaged in unreasonably dangerous, unfair, and/or deceptive sales and marketing practices; they merely assert that the City's claims must be dismissed for failure to prove duty and proximate cause. Glock Mot. at 22–25; Midwest Mot. at 9–11. But neither are requirements for the City's claims. First, duty is a requirement of "a claim based on negligence," which the City does not assert here. *Beretta,* 213 Ill. 2d at 390. In any event, the legislative bodies declared in MCC § 2-25-090 and ICFA that Defendants have a (statutory) duty not to engage in unfair, deceptive, and unreasonably dangerous

conduct in the sale and marketing of firearms. Thus, *Beretta*'s holding on duty (or lack thereof) in the context of a common law nuisance claim simply has no application here.[12]

Second, as explained above, the City need not allege causation, injury, or damages in a public enforcement action under the MCC and ICFA. *Supra* Part I.A. Even if it did need to allege proximate cause, the City has done so under the test set forth by *Young* and *Beretta*. *Supra* Part I.B.ii. Glock's cited cases all involve private party actions for damages, not a civil enforcement action, as here. Glock Mot. at 25 (citing *Cocroft v. HSBC Bank USA, N.A.*, 796 F.3d 680, 687 (7th Cir. 2015); *Connick v. Suzuki Motor Co.*, 675 N.E.2d 584, 593 (Ill. 1996); *Mighty v. Safeguard Props. Mgmt., LLC*, 2018 U.S. Dist. LEXIS 185146, at *23 (N.D. Ill. Oct. 30, 2018)).

CONCLUSION

For all the aforementioned reasons, the City respectfully requests that the Court deny Defendants' motions to dismiss.

Dated: February 7, 2025

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[12] *Young*, a common law public nuisance case brought by victims of gun violence, dealt exclusively with the issue of proximate cause and did not analyze duty. 213 Ill. 2d at 445–46.

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