IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT – CHANCERY DIVISION

CITY OF CHICAGO, an Illinois municipal corporation, **Plaintiff,** **v.** **GLOCK, INC., a Georgia corporation; GLOCK Ges.m.b.H., an Austrian company; EAGLE GUN CLUB LLC f/d/b/a EAGLE SPORTS RANGE, an Illinois company; RANGE PLUS LLC f/d/b/a EAGLE SPORTS RANGE, an Illinois company; 5900 LLC d/b/a EAGLE SPORTS RANGE, an Illinois company, and MIDWEST SPORTING GOODS CO., an Illinois corporation,** **Defendants.**		**Civil Action No. 2024CH06875**

GLOCK, INC.'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT

Defendant Glock, Inc. respectfully submits this reply memorandum of law in further support of its motion to dismiss the City of Chicago's Complaint.

SUMMARY OF THE ARGUMENT

The City seeks relief from Glock, Inc. because machinegun conversion devices (MCD) are being installed in its pistols to illegally convert them into machineguns ("Modified Glock Pistols"), which are then used by third parties "in connection with homicides, assaults, batteries, home invasions, carjackings, and attempted robberies," thereby "exacerbating the gun violence crisis in Chicago." Opp'n at 1. This is the classic definition of a qualified civil liability action prohibited by the PLCAA. This lawsuit has nothing to do with alleged unlawful conduct by Glock, Inc. because the harms of which the City complains would not exist simply based on its sale of legal semi-automatic pistols, without them being illegally converted to machineguns and used to commit crimes by third parties. The City's claims are therefore prohibited by the PLCAA unless an exception applies. The City seeks to rely on an alleged violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2DDDD(b)(1) & (4) ("ICFA") incorporated into Section 2-25-90 of the Municipal Code of Chicago ("MCC"). The ICFA is a statute of general applicability, that is not capable of satisfying the predicate exception to the PLCAA, and the MCC is not a state or federal statute and therefore cannot satisfy the predicate exception. The City's claims should therefore be immediately dismissed because they are barred by the immunity provided by the PLCAA.

The City's claims should also be independently dismissed pursuant to Illinois law based on lack of duty and proximate cause. The Illinois Supreme Court's decisions in *City of Chicago v. Beretta U.S.A. Corp.* and *Young v. Bryco Arms* are binding on this Court and are in no way rendered invalid by the amendment to the ICFA.

ARGUMENT

I. THE PLCAA BARS THE CITY'S CLAIMS AGAINST GLOCK, INC.

The City argues that its claims are not prohibited by the PLCAA because they are based on Glock, Inc.'s alleged "unlawful conduct," and therefore this is not a case seeking relief for the harm solely caused by the criminal or unlawful misuse of firearms by others. Opp'n at 7, 10, 16 (citing 15 U.S.C. § 7901(b)(1)). Unless an exception applies, the PLCAA provides immunity in all cases in which a plaintiff seeks relief resulting from the criminal or unlawful misuse of firearms by third parties from a manufacturer of firearms, including when the defendant is alleged to have engaged in unlawful or otherwise wrongful conduct. Claims that the PLCAA only applies when plaintiffs allege that their harm was solely caused by the criminal misuse of firearms by third parties and not also by alleged wrongdoing by a manufacturer or seller have been resoundingly rejected by the courts.[1]

The City claims that it is bringing this lawsuit as a civil enforcement action based on Glock, Inc.'s violation of the law separate and apart from the criminal misuse of its pistols by third parties. Opp'n at 7-10. The City relies on an unpublished decision by a trial court in *People v. Blackhawk Mfg. Grp., Inc.*, No. CGC-21-594577 (Cal. Super. Ct., S.F. Cnty. May 2, 2023), but in that case defendant was alleged to be selling firearms without serial numbers directly to consumers in violation of the federal Gun Control Act, 18 U.S.C. §§ 921 *et seq.* ("GCA"). *Id.* at

[1] *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 322 (Mo. 2016) (the "statement of purpose does not overcome the fact that the specific substantive provisions of the PLCAA expressly preempt all qualified civil liability actions against firearms sellers, including claims of negligence"); *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 387 (Alaska 2013) (unanimously rejecting plaintiffs' argument on the basis that it would "elevate the preamble over the substantive portion of the statute, giving effect to one word in the preamble at the expense of making the enumerated exceptions meaningless"); *Travieso v. Glock, Inc.*, 526 F. Supp .3d 533, 541-43 (D. Ariz. 2021) (noting that accepting the solely caused argument would make the PLCAA's exceptions unnecessary); *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1223-24 (D. Colo. 2015) (rejecting plaintiffs' argument that the PLCAA only protects defendants against claims for harm "solely caused" by the criminal or unlawful misuse of firearms); *Gilland v. Sportsmen's Outpost, Inc.*, 2011 WL 2479693, at *15-16 (Conn. Super. Ct. May 26, 2011) (the PLCAA "includes cases where it is alleged that gun sellers negligently cause harm" despite the reference to "solely caused" in § 7901(b)(1)).

11. Stated differently, defendant itself was alleged to be violating the GCA and the firearms it sold were alleged to be illegal in the condition in which defendant sold them. In contrast, Chicago expressly alleges that Glock pistols are legal, semi-automatic pistols in the condition in which they are sold by Glock, Inc. and only become illegal machineguns when third parties convert them through the installation of an MCD. Compl. ¶¶ 1, 34-35, 44, 55. The equivalent claim to the *Blackhawk* case would be a lawsuit against those illegally manufacturing and selling MCDs, but the City did not bring such claims.

As explained in the decisions by the only two federal appellate courts to have considered the issue, the predicate exception to the PLCAA can only be satisfied by the knowing violation of a state or federal statute that specifically applies to the sale and marketing of firearms, not statutes of general applicability that apply to the sale and marketing of all products. *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1132-38 (9th Cir. 2009) (holding that California's negligence and public nuisance statutes could not satisfy the predicate exception); *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008) (holding that New York's public nuisance statute could not satisfy the predicate exception). The examples of statutes capable of satisfying the predicate exception are all provisions of the GCA "regulating record-keeping" and "prohibiting participation in direct illegal sales." *City of New York*, 524 F.3d at 402. Based on the maxim *noscitur a sociis*, statutes capable of satisfying the predicate exception are limited to similar statutes that directly "regulate the firearms industry." *Id.* at 401-02.

The City brings its claims pursuant to MCC Section 2-25-090(a), which does not directly regulate the firearms industry, and therefore cannot satisfy the predicate exception. In addition, Section 2-25-090(a) is a municipal ordinance, not a state or federal statute, and therefore is not capable of satisfying the predicate exception. 15 U.S.C. § 7903(5)(A). The PLCAA has been in

effect for almost two decades and the City does not cite a single decision in which a court allowed the predicate exception to be satisfied by the violation of an ordinance enacted by a municipality, or a regulation enacted by an administrative agency.[2]

The City next contends that the alleged violations of the ICFA can satisfy the predicate exception. The City relies almost exclusively on a deeply divided decision by the Connecticut Supreme Court in *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262 (Conn. 2019). In *Soto*, four justices held that an alleged violation of the Connecticut Unfair Trade Practice Act ("CUTPA") arising from the manner in which a rifle was advertised could satisfy the predicate exception to the PLCAA. *Id.* at 301-25. The majority noted that the predicate exception could be satisfied by the violation of a statute applicable to the marketing, as opposed to the sale, of firearms, but that "no federal statutes directly or specifically regulated the marketing or advertising of firearms." *Id.* at 304. It further observed that it "would have made little sense for the [PLCAA] to carve out an exception for violations of laws applicable to the marketing of firearms if no such laws existed," and therefore leapt to the conclusion that Congress must have intended "unfair trade practice laws such as the FTC Act and its state analogues" to be statutes applicable to the marketing of firearms for purposes of the predicate exception. *Id.* This reasoning is flawed because at the time the PLCAA was enacted, there were state statutes that "directly or specifically regulated the marketing or advertising of firearms" and such statutes

[2] The City nevertheless claims that Section 2-25-090(a) can satisfy the predicate exception because it was enacted by a political subdivision of Illinois, and the PLCAA defines a "State" as including political subdivisions. Opp'n at 11-12 (citing 15 U.S.C. § 7903(5)(A)(7)). The City purports to rely on *Landis v. Marc Realty, L.L.C.,* 235 Ill.2d 1, 12 (2009), but is advancing the very interpretation that the First District Appellate Court rejected. Opp'n at 12. As the First District explained, "the word 'statutory," as used in *Landis* and found to include ordinances, is very "distinct" from "the phrase 'State law.'" *City of Chicago v. Janssen Pharms., Inc.*, 2017 IL App (1st) 150870, ¶ 23. "'Statutory' is an adjective and as such describes the particular quality of the word it modifies (in *Landis* it was the word 'penalty')," whereas "the phrase 'State law' involves a proper noun," which "refer[s] to the State of Illinois." *Id.* "Accordingly, 'State' and 'statutory' are not equivalent," and just as in *Janssen*, the City's "attempt at negating the importance 'State' as a proper noun," should not be well taken." *Id.*

were what Congress referenced as statutes applicable to the marketing of firearms for purposes of the predicate exception. *Id.* at 304 n.43 (referring to state statutes applicable to the marketing of firearms).

The three dissenting justices agreed that statutes that can satisfy the predicate exception are "limited to those specific to the sale and manufacture of firearms," and because CUTPA "reaches a range of commercial conduct that far exceeds the manufacture, marketing and sale of firearms, it is not by itself a predicate statute." *Soto*, 202 A.3d at 343, 348 (Robinson, J., dissenting). The City claims that "*Soto* and others following its lead have consistently held that consumer protection laws qualify as predicate statutes." Opp'n at 14. The two unpublished trial court decisions that the City refers to as having followed *Soto's* lead, however, did not hold that a violation of a state consumer protection law by itself could satisfy the predicate exception. In *Blackhawk*, the court concluded that the claims did not constitute a qualified civil liability action for purposes of the PLCAA, and therefore never considered whether California's Unfair Competition Law ("UCL") could satisfy the predicate exception. Slip Op. at 8. The court specifically noted that plaintiff stated a claim under the "unlawful prong of the UCL" based on numerous violations of the GCA. *Id.* at 11.[3] The decision in *Goldstein v. Earnest*, No. 37-2020-00016638 (Cal. Super. Ct., San Diego Cnty. July 2, 2021) also noted that defendant was alleged to have violated the GCA, and therefore its conclusion that the UCL could satisfy the predicate exception was both dicta and based on an underlying violation of the GCA. Slip op. at 3-5.

The City seeks to rely on two provisions of the ICFA to satisfy the predicate exception. The first, 815 ILCS 505/2DDDD(b)(1) is a simple prohibition on the creation of, or contribution

[3] "The People further allege Blackhawk violates the GCA by failing to comply with federal serialization and point-of-sale requirements such as failing to: ensure firearms bear unique serial numbers; run background checks on prospective customers; require purchasers complete Form 4473; meet purchasers to transfer the firearm in person; maintain records of sales; and include safety devices or locks." *Blackhawk*, Slip. Op. at 11.

to, a public nuisance. Such general public nuisance statutes are not applicable to the sale or marketing of firearms for purposes of the PLCAA. *Ileto*, 565 F.3d at 1132-38; *City of New York*, 524 F.3d at 399-404. Simply amending such statutes to make them applicable to the firearms industry does nothing to convert them into the types of statutes directly regulating the sale and marketing of firearms that can satisfy the predicate exception. The other provision of the ICFA upon which the City relies, 815 ILCS 505/2DDDD(b)(4), is simply a prohibition against engaging in "unfair methods of competition or unfair or deceptive acts or practices." Such provision is not specifically applicable to the sale or marketing of firearms. In two of the three cases on which the City relies, the defendant was alleged to have violated the UCL by violating the GCA. See *Goldstein*, Slip op. at 3-5; *Blackhawk*, Slip Op. at 11. The City does not allege that Glock, Inc. violated the GCA. This Court should not follow the deeply flawed decision in the *Soto* case, but should hold that statutes like the ICFA cannot satisfy the predicate exception.

II. THE ICFA IS UNCONSTITUTIONAL

To the extent the ICFA is found to satisfy the PLCAA's predicate exception, it is unconstitutional. An as-applied challenge to the constitutionality of a statute can be raised on a motion to dismiss, even though a court is required to hold an evidentiary hearing and make findings of fact before issuing an order declaring the statute unconstitutional. *Kopf v. Kelly*, 2024 IL 127464, ¶ 22.

The Supreme Court upheld the law at issue in *Nat'l Pork Producers Council v. Ross*, because it did not impose any requirements on pork producers outside of California, unless they wanted to sell their pork in the state. 598 U.S. 356, 376 n.1 (2023) ("Proposition 12 regulates only products that companies chose to sell 'within' California"). Nothing in *Ross* limits the dormant commerce clause to only "laws designed to benefit in-state economic interests by

discriminating against out-of-state competitors," Opp'n at 21, and that is not the basis on which Glock, Inc. challenged the constitutionality of the ICFA. The ICFA allows Glock, Inc. to be held liable for the "sale, manufacturing, importing, or marketing" of Glock pistols in Georgia, in full compliance with federal and Georgia law, simply because a third party brings them to Illinois. 815 ILCS 505/2DDDD(a) & (b). Because of the ICFA's potential to impose liability on Glock, Inc. in such circumstances, it violates the dormant commerce clause. *Legato Vapors, LLC v. Cook*, 847 F.3d 825, 830 (7th Cir. 2017).

The ICFA is also void for vagueness because its references to "conduct . . . unreasonable under all circumstances" and "reasonable procedures, safeguards, and business practices," 815 ILCS 505/2DDDD(b)(1), do not provide sufficient clarity regarding what is required to avoid liability. *Connally v. Gen. Constr. Co*., 269 U.S. 385, 391 (1926). The ICFA imposes quasi-criminal penalties and thereby inhibits the exercise of constitutionally protected rights because there is no way that Glock, Inc. could ensure that it would not be held liable without entirely ceasing the sale of Glock pistols. *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc*., 455 U.S. 489, 499 (1982). The ICFA provisions related to firearms also violate the Second Amendment. The Supreme Court has held that handguns are protected by the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008). Through this lawsuit, the City seeks to prohibit the sale of the most "popular firearm in America" to all "Chicago residents" and "Illinois gun stores that serve the Chicago market." Compl. ¶ 3 and at 66 ¶ i. Doing so would prevent consumers from purchasing arms that are unquestionably protected by the Second Amendment and necessarily violate the right of individual citizens to keep and bear arms by preventing them from acquiring legal, semi-automatic pistols. In the condition in which they are sold, Glock pistols are semi-automatic. There is no support in Supreme Court jurisprudence for

treating them as "exceedingly dangerous weapons" outside of the Second Amendment's protections because they can be converted to machineguns through the installation of an MCD. Opp'n at 27.[4]

III. ILLINOIS SUPREME COURT DECISIONS BAR THE CITY'S CLAIMS

The Illinois Supreme Court has already made clear that Glock, Inc. and other firearms manufacturers "owe no duty . . . to prevent their firearms from ending up in the hands of persons who use and possess them illegally" and that the legal sale of firearms cannot not, as a matter of law, be the proximate cause of alleged harm from third-party criminals. *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1125-26, 1136 (Ill. 2004); *see also Young v. Bryco Arms*, 821 N.E.2d 1078, 1091 (Ill. 2004) (holding 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," and therefore their "business practices merely create a condition that makes the eventual harm possible," as a result of which, their "conduct cannot constitute a legal cause" of plaintiff's harm). Those decisions have never been overturned and squarely resolve the question at hand—this Court should dismiss the City's claims against Glock, Inc. for lack of duty and causation.

The City claims that these two binding decisions "have little applicability to this case." Opp'n at 29. But the City's reasoning for that position is contradictory. The City argues that *Beretta* and *Young* "are of limited value" because the Illinois Supreme Court issued those decisions before the August 14, 2023 enactment of 815 ILCS 505/2DDDD as part of the ICFA.[5] Opp'n at 28. The City also argues that 815 ILCS 505/2DDDD merely "ma[d]e clear that ICFA's

[4] Taken to its logical conclusion, the City's argument would allow all semi-auto firearms to be banned because they can, with varying degrees of difficulty, be converted to machineguns. Compl. ¶ 31.

[5] The City's three claims are brought under MCC § 2-25-090(a) and expressly hinge on whether Glock, Inc.'s "conduct constitute[es] an unlawful act or practice under the [ICFA]." Compl. ¶ 12, *see also* Opp. at 29 (arguing that "[w]hen interpreting MCC § 2-25-090, courts 'shall' consider interpretations of ICFA").

Section 2 always applied to gun companies." Opp'n at 29. *See also* 815 ILCS 505/2DDDD(c) (stating that it is merely "declarative of existing law and shall not be construed as new enactments"). The City cannot have it both ways. If Section 2 of the ICFA, which was enacted in 1961, "always applied to gun companies," Opp'n at 29, the Illinois Supreme Court's 2004 holdings in *Beretta* and *Young*, would not be impacted by the enactment of 815 ILCS 505/2DDDD, which merely confirmed the state of the law that already existed at the time of those decisions. Thus, the City's claims under MCC § 2-25-090(a), which are founded on the ICFA, necessarily fail for lack of duty and causation.[6]

The City's final argument is that it has no obligation to establish duty or causation for its claims against Glock, Inc. Opp'n at 29-30. The City does not cite any legal authority for this perplexing proposition, and there is no support for its position that it can pursue its claims against Glock, Inc. without establishing duty. Indeed, the City's MCC claims, premised on the ICFA, are based on allegations that Glock, Inc. "knew" of third parties criminally misusing its products, but failed to act. *E.g.*, Compl. ¶ 52. Such claims under the ICFA are considered based in negligence and require proof of a duty. *See Carl Sandburg Vill. Condo. Ass'n No. 1 v. First Condo. Dev. Co.*, 197 Ill. App. 3d 948, 953 (1st Dist. 1990) (noting that a violation of the ICFA can "be based on an innocent or negligent misrepresentation as well as one that is intentional"). The Illinois Supreme Court has made clear that Glock, Inc. owed no such duty here to prevent third parties from criminally misusing its legal pistols.

The City is also obligated to establish proximate cause for its MCC claims based on the

[6] The flip side of the City's argument would also substantially undercut its claims in this case. If 815 ILCS 505/2DDDD imposed a new duty as of its effective date of August 14, 2023, the City's claims would be expressly limited to Glock, Inc.'s actions after that date, as retroactive imposition of a duty is improper. *Lazenby v. Mark's Const.*, Inc., 236 Ill.2d 83, 98 (2010) ("A retroactive change in the law that imposes a new duty is prohibited as a violation of the due process clause of the Illinois Constitution . . . .").

ICFA for two reasons. First, Illinois law is clear that the City must prove causation.[7] The City attempts to distinguish those cases as "involv[ing] private party actions for damages, not a civil enforcement action." Opp'n at 30. This lawsuit is not an enforcement action because that arm of the ICFA applies only to a lawsuit brought by "the Attorney General or a State's Attorney," not, as here, the City. 815 ILCS 505/7.[8] This lawsuit was not brought by the Illinois Attorney General or a State's Attorney, but, by the City as a private litigant, and is therefore an "action for actual damages," which requires proof of proximate cause. 815 ILCS 505/10a. The Complaint affirmatively declares that the City seeks an award against Glock, Inc. "for a reasonable sum of money that will fairly compensate the City for *its damages*." Compl. at 40. Second, the City's claims can only proceed if it establishes proximate cause because the PLCAA's predicate exception applies only if "the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). The City cannot argue that its claims fall within the predicate exception without satisfying the predicate exception's proximate cause requirement. Thus, the Court should dismiss the City's claims against Glock, Inc. for failure to state a claim.

CONCLUSION

For the above reasons, Glock, Inc. respectfully requests that this Court grant its motion, dismiss the City's Complaint and all claims against it with prejudice, declare the ICFA to be unconstitutional, and grant such other relief as it deems just and proper.

Dated: March 6, 2025

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[7] *See Cocroft v. HSBC Bank USA, N.A.*, 796 F.3d 680, 687 (7th Cir. 2015) (holding that to prevail on an ICFA claim, plaintiff must prove that the deception proximately caused its injury); *Mighty v. Safeguard Properties Mgmt., LLC*, No. 16 C 10815, 2018 WL 5619451, at *9 (N.D. Ill. Oct. 30, 2018) (ICFA claim requires showing that "deception proximately caused the plaintiff's injury").

[8] *See also In re Facebook, Inc., Consumer Priv. User Profile Litig.*, 354 F. Supp. 3d 1122, 1130-31 (N.D. Cal. 2019) (explaining that ICFA legislative history meant to "authoriz[e] the state's attorneys *of any county* to bring an action to enforce the Act on the same basis as the Attorney General") (emphasis added) (citing Transcript of Floor Debate, Senate, June 26, 1985, at 156); *see also* Ill. Admin. Code tit. 26, § 218.10 ("State's Attorney" is a "Countywide Office" "in those counties that elect those officers countywide").

Respectfully submitted,

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