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 Ges.m.b.H.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT

Defendant Glock Ges.m.b.H. moves to dismiss the City of Chicago's Complaint pursuant to Section 5/2-615 of the Illinois Code of Civil Procedure ("Code") on the basis that it fails to state a claim upon which relief can be granted based on Illinois law. In addition, the City's claims fail because they are based on alleged violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2BBBB(b)(1) & (4) ("ICFA"), and the ICFA is unconstitutional because it interferes with interstate commerce, is unconstitutionally vague, and violates the Second Amendment.

SUMMARY OF THE ARGUMENT

Glock pistols are the most popular pistols in America, used by both law enforcement and private citizens. The popularity of Glock pistols is due in part to the simplicity of the design of their operating system, which has remained consistent since they were invented in the 1980s and results in the utmost reliability. Like all semi-automatic pistols, Glock pistols can be illegally converted to fire fully automatic through the installation of a machinegun conversion device (MCD), referred to by the City in its Complaint as an auto sear. MCDs are considered to be machineguns for purposes of federal and Illinois law and are illegal for private individuals to manufacture, import, and possess. Although MCDs for Glock pistols have been around almost as long as the pistols themselves, in recent years, the Complaint alleges that an increasing number of criminals in Chicago have been illegally modifying some Glock pistols by installing MCDs to make them fully automatic ("Modified Glock Pistols") and using them to commit crimes.

Just as Chicago looks to blame certain carmakers for the City's inability to stop auto thefts in the City, Chicago seeks to place the blame on Glock Ges.m.b.H. for crime involving the use of Modified Glock Pistols. Chicago does not claim that Glock pistols fail to function

properly in the condition in which they are manufactured and sold and, in light of their popularity and reliability, does not seek to restrict their sale to, or use by, law enforcement. Through this lawsuit, however, the City of Chicago seeks to have this Court issue an injunction barring the sale of Glock pistols to consumers through Illinois gun stores that serve the Chicago market. The City claims that because certain Glock pistols are illegally modified through the installation of an MCD, Glock Ges.m.b.H. has a duty to change the design of the most popular pistol in America to make it more difficult for criminals to illegally modify them. Chicago contends that by simply continuing to manufacture and sell its pistols with their original, proven design, Glock Ges.m.b.H. has acted unlawfully and created and contributed to a nuisance in the City.

The Complaint alleges that Glock Ges.m.b.H. has violated the Municipal Code of Chicago ("MCC"), by violating two provisions of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2BBBB(b)(1) & (4) ("ICFA"). The City's causes of action fail to state a claim under Illinois state law. More than twenty years ago, the City sued firearm manufacturers arguing that their sale of legal handguns created a public nuisance in the City based on third parties who illegally possessed them and used them to commit crimes. The Illinois Supreme Court unanimously held that the City's complaint failed to state claims under Illinois law based on lack of duty and proximate cause. *See City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099 (Ill. 2004). Proximate cause is an element of the alleged violations of the ICFA, which form the basis for the alleged violations of the MCC. Consequently, the City's claims for violation of the MCC fail as a matter of law based on lack of proximate case.

Based on the Illinois Supreme Court's ruling the last time the City of Chicago attempted to hold firearm manufacturers liable for the actions of third-party criminals, the Complaint must

be dismissed. In addition, the provisions recently added to the ICFA, upon which the City relies for its claims under the MCC, are unconstitutional because they violate the commerce clause, are unconstitutionally vague, and improperly infringe on the rights guaranteed by the Second Amendment.

BACKGROUND

Based on the allegations in the Complaint, which are taken as true for purposes of this motion only, Glock Ges.m.b.H. is an "Austrian limited liability company that designs and manufactures Glock semi-automatic pistols and the component parts used to make those pistols and imports[1] them into the United States," *id.* ¶ 25, and owns half of the stock in Glock, Inc., *id.* ¶ 24. In contrast, Glock, Inc., is alleged to be a "firearm manufacturer, dealer, and importer located in Smyrna, Georgia." *Id.* ¶ 24. The City improperly attempts to combine Glock, Inc. and Glock Ges.m.b.H. into a single entity for purposes of the majority of the allegations in its Complaint, collectively referring to both companies as "Glock."

"Glock pistols are the most popular firearm in America," and "thousands of Glock pistols [are sold] to Chicago residents." Compl. ¶¶ 3, 122. Glock pistols are semi-automatic, but can be illegally modified by installing an MCD into them to make them fire fully automatic ("Modified Glock Pistols"). *Id.* ¶¶ 1, 34-35, 44, 55. Other brands of semi-automatic pistols can also be modified to fire fully automatic through the installation of an MCD, but "do not accept auto sears as easily." *Id.* ¶ 41.

Glock Ges.m.b.H. does not manufacture MCDs. Compl. ¶ 5. Most MCDs are illegally imported from China, or illegally printed using 3D printers. *Id.* ¶ 37. Glock pistols have been

[1] Because the Complaint alleges that Glock Ges.m.b.H. is in Austria, its claim that it "imports" Glock pistols into the United States is necessarily false. Based on the allegations in the City's Complaint, Glock pistols are imported into the United States by Glock, Inc., not by Glock Ges.m.b.H.

sold in the United States for decades and their basic operating mechanism has remained the same. *Id.* ¶¶ 42-43. An MCD for Glock pistols was invented as early as 1987, but Modified Glock Pistols only became an issue in Chicago in recent years. *Id.* ¶¶ 46-49, 110 (noting that Modified Glock Pistols were not an issue for law enforcement four years ago).

The installation of an MCD to convert a semi-automatic Glock pistol to a machinegun is illegal. Compl. ¶ 52. Fully automatic machineguns "have been heavily regulated at the federal level since the 1930s," and are also restricted in Illinois. *Id.* ¶¶ 31-33. MCDs themselves are considered to be machineguns and are illegal. *Id.* ¶ 36. Modified Glock Pistols have been used to commit crimes in Chicago, and the Chicago Police Department recovered more than 1,300 Modified Glock Pistols from the beginning of 2021 through May 2024. *Id.* at 2, 104-10.

The Complaint asserts that Glock Ges.m.b.H. should be held liable because its semi-automatic pistols, which are sold to "Chicago non-law enforcement consumers," can be illegally modified by third parties to fire fully automatic, and because it has not made changes to the design of Glock pistols to make it more difficult for criminals to illegally modify them to fire fully automatic. Compl. ¶¶ 14, 57, 111, 154. Based on the above allegations, the Complaint raises three claims against Glock Ges.m.b.H., each premised on the alleged violation of Section 2-25-090 of the MCC: (1) unreasonable sale, manufacturing and/or marketing of firearms; (2) unfair practices; and (3) deceptive practices. *Id.* ¶¶ 113-81. Although not pled as a separate claim, the City also contends that Glock Ges.m.b.H. violated two provisions of the ICFA, 815 ILCS 505/2BBBB(b)(1) & (4), which provide that it is unlawful for a firearm industry member:

> through the sale, manufacturing, importing, or marketing of a firearm-related product, to . . . [k]nowingly create, maintain, or contribute 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,

or "[o]therwise engage in unfair methods of competition or unfair or deceptive acts or practices declared unlawful under Section 2 of this Act." *Id.* ¶¶ 14, 116-26, 140, 148-54, 168-75.

The City seeks various forms of relief against Glock Ges.m.b.H., including compensatory damages, punitive damages, injunctive relief enjoining the marketing and sale of Glock pistols to "Illinois gun stores that serve the Chicago market," injunctive relief requiring it to "implement reasonable controls, safeguards, and procedures to prevent" Glock pistols from "being possessed, used, marketed, and/or sold unlawfully to non-law-enforcement Chicago residents," abatement, fines, disgorgement of profits, attorneys' fees, costs, and interest. Compl. at 66 ¶¶ i-x.

ARGUMENT

I. THE CITY'S CLAIMS MUST BE DISMISSED PURSUANT TO SECTION 5/2-615 BECAUSE THEY FAIL TO STATE A CLAIM UNDER ILLINOIS LAW

The City's claims against Glock Ges.m.b.H. must be dismissed pursuant to Section 2-615 of the Code. "A section 2–615 motion to dismiss attacks the legal sufficiency of the complaint based upon defects appearing on the face of the complaint." *Compton v. Country Mut. Ins. Co.*, 382 Ill. App. 3d 323, 325–26 (2008). "When reviewing the sufficiency of a complaint, the court must accept as true all well-pleaded facts and all reasonable inferences that can be drawn from those facts." *Id.* (internal quotation marks omitted). But "[l]egal and factual conclusions, unsupported by allegations of fact, may be disregarded." *Id.* "The critical inquiry is whether the allegations of the complaint are sufficient to establish a cause of action under which relief may be granted." *Nw. Illinois Area Agency on Aging v. Basta*, 2022 IL App (2d) 210234, ¶ 31.

As far back as 1998, the City of Chicago attempted to impose liability on members of the firearms industry for the alleged creation of a public nuisance resulting from their alleged lack of control over the sale and distribution of their products, which allegedly permitted those firearms to be readily obtained and used by criminals in Chicago, and for design features that are

allegedly attractive to criminals. *See City of Chicago*, 821 N.E.2d at 1108 (describing the nature of the allegations against the manufacturer defendants). Specifically, the City alleged that the manufacturers "fail to supervise, regulate or set standards for dealers' conduct . . . ." *Id*. (quoting Chicago's Second Amended Complaint).[2] In addition, the City alleged that the manufacturers "design and market their products to appeal to those who intend to use them for criminal purposes," including features that "make certain firearms particularly attractive to criminals." *Id*.

In response to the City's claims that those manufacturers had not instituted reasonable controls or design choices, the Illinois Supreme Court unanimously held that there is no "public right to be free from the threat that members of the public may commit crimes against individuals," separate and apart from the "individual right to be free from the threat of illegal conduct by others." *City of Chicago*, 821 N.E.2d at 1114-16. The court recognized that "[w]hether a duty of care exists is a question of law to be determined by the court," and held that firearm manufacturers "owe no duty to the city of Chicago or its residents to prevent their firearms from ending up in the hands of persons who use and possess them illegally." *Id.* at 1125-26 (internal quotations and citations omitted); *see also Linton v. Smith & Wesson*, 469 N.E.2d 339, 340 (Ill. App. 1984) (holding that a firearm manufacturer did not owe a duty to use "reasonable means to prevent the sale its handguns to persons who are likely to cause harm to the public."). The harm of which the City complains is predicated upon the illegal possession of Modified Glock pistols by third parties who use them to commit crimes, but precedent from the Illinois Supreme Court establishes that Glock Ges.m.b.H. has no duty to protect the City or its residents from the risk of injury from third party criminal conduct because of the lack of a

[2] The City makes such claims again in this case, seeking to hold Glock Ges.m.b.H. liable for actions by the dealer defendants, despite the fact that it, as opposed to Glock, Inc., is not alleged to have any relationship with them. Compl. ¶¶ 60-84.

special relationship. *Iseberg v. Gross*, 227 Ill. 2d 78, 87-88 (2007); *Young*, 213 Ill. 2d at 452. *See also Vesely v. Armslist LLC*, 762 F.3d 661, 665-66 (7th Cir. 2014). The amendments to the ICFA through the FIRA state that they are declarative of existing law, 815 ILCS 505/2DDDD(c), as such, the above decisions regarding proximate cause requirements remain applicable. The Illinois Supreme Court's conclusion that firearms manufacturers do not have a duty to prevent criminals from acquiring and using their products necessarily extends to the City's current claim that Glock Ges.m.b.H. must prevent criminals from acquiring and modifying its pistols to add MCDs to them and then using them in crimes in Chicago.

In addition to the Supreme Court's finding of no duty, it also concluded in the prior case that the legal sale of firearms could not, as a matter of law, be the proximate cause of the City's alleged harms. *City of Chicago*, 821 N.E.2d at 1136. Proximate cause may be decided as a matter of law, as it was in *City of Chicago*, where the facts alleged do not sufficiently demonstrate both cause in fact and legal cause. *Harrison v. Hardin County Comm. Unit School Dist. No. 1*, 758 N.E.2d 848, 854-55 (Ill. 2001) (Harrison, C.J. specially concurring); *City of Chicago*, 821 N.E.2d at 1127-28. Legal cause is established only if the defendant's conduct is "so closely tied to plaintiff's injury that he should be held legally responsible for it." *Simmons v. Garces*, 763 N.E.2d 720, 732 (Ill. 2012) (citation omitted). "The question is one of policy—how far should a defendant's legal responsibility extend for conduct that did, in fact, cause the harm?" *City of Chicago*, 821 N.E.2d at 1127.

In *Young v. Bryco Arms*, 821 N.E.2d 1078, 1082 (Ill. 2004), plaintiffs alleged that firearms manufacturers and dealers created a public nuisance by designing, marketing, and selling firearms that appeal to criminals. The Illinois Supreme Court explained that in "cases in which injury is caused by the intervening acts of third parties," a "condition-versus-cause

analysis applies." 821 N.E.2d at 1087. Pursuant to this analysis, if the "defendant's conduct merely furnishes a condition by which injury is made possible, and a third person, acting independently, subsequently causes injury, the defendant's creation of the condition is not a proximate cause of the injury." *Id*. (citing *First Springfield Bank & Trust v. Galman*, 720 N.E.2d 1068, 1071 (1999)). Based on the above, the court held 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. Therefore, defendants' business practices merely create a condition that makes the eventual harm possible. As such, defendants' conduct cannot constitute a legal cause of the alleged nuisance.

Young, 821 N.E.2d at 1091.

The Illinois Supreme Court reached the same decision in the *City of Chicago* case, holding that the "alleged public nuisance is not so foreseeable to the dealer defendants that their conduct can be deemed a legal cause of a nuisance that is the result of the aggregate of the criminal acts of many individuals over whom they have no control." 821 N.E.2d at 1138. *See also id.* at 1136 (holding that firearm industry members' "'lawful commercial activity, having been followed by harm to person and property caused directly and principally by the criminal activity of intervening third parties, may not be considered a proximate cause of such harm'") (quoting *People ex rel. Spitzer v. Sturm, Ruger & Co.*, 761 N.Y.S.2d 192, 201 (N.Y. App. Div. 1st Dep't 2003)); *Martin v. Harrington & Richardson, Inc.,* 743 F.2d 1200, 1205 (7th Cir.1984) (correctly predicting that Illinois would hold that the criminal misuse of firearms is "not a foreseeable consequence of gun manufacturing").

The lack of proximate cause as a matter of law requires the dismissal of the City's claims for violations of the MCC because they are predicated on the ICFA, which itself requires a showing of proximate cause. *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); *Connick v. Suzuki Motor Co.*, 675 N.E.2d 584, 593 (Ill. 1996) (to state a valid ICFA claim, a plaintiff must show that the alleged violation "proximately caused plaintiff's injury"); *Mighty v. Safeguard Properties Mgmt., LLC*, No. 16 C 10815, 2018 WL 5619451, at *9 (N.D. Ill. Oct. 30, 2018) (claim under the ICFA requires showing that "the deception proximately caused the plaintiff's injury"). Because the allegations underlying each claim in the City's Complaint are premised entirely on harm unquestionably resulting from the criminal activity of third parties, proximate cause is precluded as a matter of law under the prior decisions of the Illinois Supreme Court, and the Complaint must be dismissed on that basis.

II. THE ICFA IS UNCONSTITUTIONAL

The City's claims should also be dismissed because they rely on the ICFA, which is unconstitutional for three reasons.[3] First, it regulates legal out-of-state conduct in violation of the commerce clause. Second, it violates the due process clause because the references to conduct "unreasonable under all circumstances" and "reasonable controls" are vague. Third, it violates the Second Amendment because the City seeks to use it as the basis to prohibit the sale of the most popular firearm in America to residents of Chicago and surrounding communities, and there is no historical precedent for the type of regulation of firearms manufacturers that it seeks to impose.

1. The ICFA Violates the Commerce Clause

The Constitution restricts the power of the states to directly regulate out-of-state conduct.

[3] A facial challenge to the constitutionality of the ICFA is pending before the U.S. District Court for the Southern District of Illinois in the case of *NSSF v. Raoul*, Case No. 3:23-cv-02791-SMY. Briefing on the constitutionality of the ICFA in connection with plaintiff's motion for a preliminary injunction and defendant's motion to dismiss was completed on December 11, 2023 and is awaiting a decision from the court.

Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 376 n.1 (2023). The ICFA violates the commerce clause because it seeks to impose liability on Glock Ges.m.b.H. for conduct that took place entirely outside of the United States and was legal pursuant to the law of the country in which the conduct occurred. The ICFA seeks to regulate Glock Ges.m.b.H.'s "sale, manufacturing, importing, or marketing" of Glock pistols in Austria, simply because such pistols may eventually be sold or possessed in Illinois. 815 ILCS 505/2BBBB(a) & (b); Compl. ¶ 18. Based on the City's arguments, an Illinois court could hold Glock Ges.m.b.H. liable for failing to change the design of its pistols manufactured and sold in Austria, simply because they could ultimately be sold or possessed in Illinois, even though Glock Ges.m.b.H. does not sell its pistols in Illinois and the design of its pistols complied with all relevant laws. By doing so, the City seeks to use the ICFA to directly regulate out-of-state conduct that it deems non-compliant.

The commerce clause does not allow Illinois to engage in such extraterritorial regulation of the design and manufacture of products simply because such products may eventually be sold or possessed in Illinois. *Healy v. Beer Inst.,* 491 U.S. 324, 336 (1989) (holding that a "statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority"). *See also Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1102-03 (9th Cir. 2013) (explaining difference between commerce clause violations based on extraterritorial regulation and discrimination based on origin). The ICFA seeks to regulate out-of-state commerce in a manner similar to an Indiana law that the Seventh Circuit Court of Appeals held to be unconstitutional in *Legato Vapors, LLC v. Cook*, 847 F.3d 825 (7th Cir. 2017). Indiana Code §§ 7.1–7–1–1 *et seq.* sought to directly regulate manufacturing operations for e-cigarettes in other states, including imposing requirements on how they "must build and secure their facilities, operate assembly lines, clean their equipment,

and contract with security providers, if any of their products are sold in Indiana." *Id.* at 827, 830. Based on the statute's attempt to directly regulate manufacturing in another state, the Seventh Circuit held that it was unconstitutional as a violation of the commerce clause. *Id.* at 830; *see also, e.g.*, *Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608, 612-16 (9th Cir. 2018) (enjoining a California law that sought to "dictate the method by which" companies treated medical waste in other states).

Based on the City's reading of the ICFA, it gives Illinois courts the power to order Glock Ges.m.b.H. to change the design of the pistols that it manufactures in Austria, simply because those pistols could eventually be sold or possessed in Illinois and criminally modified to fire fully automatic through the installation of an MCD. The commerce clause also prohibits the states from "discriminating against or imposing excessive burdens on interstate commerce." *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 549 (2015). The only way for Glock Ges.m.b.H. to avoid potential liability pursuant to the ICFA would be to cease the manufacture and sale of any and all "firearm-related products." Indeed, if the ICFA was not prohibited by the commerce clause, other states could pass similar laws requiring Glock Ges.m.b.H. to change the design of its pistols in still other ways to satisfy the conflicting desires of those states. Or other states could mandate that Glock Ges.m.b.H. maintain the original design of its pistols, making compliance with all such laws impossible. The commerce clause operates to preclude individual states from imposing those burdens on international commerce.

2. The ICFA is Void for Vagueness

The ICFA prohibits all firearm industry members, including Glock Ges.m.b.H., from creating, maintaining, or contributing to a public nuisance "by conduct either unlawful in itself, or unreasonable under all circumstances, including failing to establish reasonable controls.

Reasonable controls include reasonable procedures, safeguards, and business practices . . . ." 815 ILCS 505/2BBBB(b)(1) (emphasis added). A statute that prohibits or requires certain conduct "in terms so vague that men of common intelligence must necessarily guess at its meaning . . . violates the first essential of due process." *Connally v. Gen. Constr. Co*., 269 U.S. 385, 391 (1926). So do statutes with terms that are so vague that they authorize "arbitrary [or] discriminatory enforcement." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). A more "stringent" vagueness test applies for statutes that "threaten[] to inhibit the exercise of constitutionally protected rights," or that provide for "quasi-criminal" penalties. *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc*., 455 U.S. 489, 499 (1982).

The ICFA is subject to a more stringent vagueness requirement because it implicates the Second Amendment right to keep and bear arms, and provides for fines, which are quasi-criminal penalties. Yet the ICFA provides no guidance on which Glock Ges.m.b.H. could rely to ensure that its conduct would be deemed reasonable under all circumstances and that its procedures, safeguards, and business practices incorporate "reasonable controls." The Complaint notes that "Glock pistols are particularly easy to modify," but acknowledges that other pistols can also have MCDs added onto them. Compl. ¶ 41. Thus, according to the City, whether a pistol manufacturer violates the ICFA is a matter of degree of difficulty for the criminal in making the illegal modification. 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? The vagueness of the "standard" the City seeks to apply is readily apparent.

Indeed, based on the language of the ICFA, Glock Ges.m.b.H.'s conduct could comply with all applicable laws and regulations, *i.e.*, not be "unlawful in itself," but still be subject to liability based on an after-the-fact "reasonableness" determination, including a finding that its

procedures, safeguards, and business practices – all of which are conducted in Austria – do not meet some amorphous level of "reasonable controls." In this regard, the ICFA is so "standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015). There is nothing, short of entirely withdrawing from the firearm industry, that Glock Ges.m.b.H. could do to ensure that it could not be held liable pursuant to the ICFA because meeting an undefined and moving standard of "reasonableness" gives it no real guidance. For that reason, these provisions of the ICFA are unconstitutional because they are impermissibly vague.

3. The ICFA Violates the Second Amendment

The ICFA provisions related to firearms also violate the Second Amendment. As the City concedes, "Glock pistols are the most popular firearm in America," and "thousands of Glock pistols [are sold] to Chicago residents." Compl. ¶¶ 3, 122. Yet the City seeks an injunction barring the sale of Glock pistols not only to "non-law enforcement Chicago residents," but also to all "Illinois gun stores that serve the Chicago market." Compl. at 66 ¶ i. The Supreme Court has held that the Second Amendment protects an individual right to keep and bear firearms that are in common use for lawful purposes, a category which unquestionably includes Glock pistols. *District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008). The "core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms." *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc). Therefore rights protected by the Second Amendment are "implicated by local laws directly or functionally banning firearm sales." *Kole v. Vill. of Norridge*, 2017 WL 5128989, at *9 (N.D. Ill. Nov. 6, 2017). *See also Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F.Supp.2d 928, 930 (N.D. Ill. 2014) (holding that a Chicago ordinance banning the sale of

firearms was unconstitutional because the Second Amendment includes the "right to *acquire* a firearm") (emphasis in original); *Radich v. Guerrero*, No. 1:14-CV-00020, 2016 WL 1212437, at *7 (D. N. Mar. I. Mar. 28, 2016) ("If the Second Amendment individual right to keep and bear a handgun for self-defense is to have any meaning, it must protect an eligible individual's right to purchase a handgun, as well as the complimentary right to sell handguns."); *Andrews v. State*, 50 Tenn. 165, 178 (1871) (explaining that the right to keep arms "necessarily involves the right to purchase" them).

To survive a Second Amendment challenge, the City would have to demonstrate that there is a historical tradition of banning legal firearms simply because they could later be illegally modified by third parties into prohibited firearms. *Atkinson v. Garland*, 70 F.4th 1018, 1020 (7th Cir. 2023) (quoting *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126 (2022)); *see id.* (that is the "only one way" "the government" can "defend [a] regulation" "when the Second Amendment's 'plain text' covers the regulated conduct"). There is no historical tradition for such a ban and, as the City concedes, other semi-automatic pistols can also be illegally modified into fully automatic machineguns by the installation of an MCD. Compl. ¶ 31. Similarly, legal rifles and shotguns could be illegally modified into prohibited short-barreled rifles and shotguns, simply by sawing off a section of their barrel so that it is less than the required length.

The ICFA also imposes restrictions that would undermine the Second Amendment by essentially imposing potential unlimited liability on members of the firearms industry. As explained above, the ICFA uses vague terms related to "unreasonable conduct" and "reasonable controls," that prevent Glock Ges.m.b.H. and other firearm manufacturers from being able to structure their conduct to ensure that it complies with the law to avoid liability. There is no

historical tradition of firearm regulations that could potentially support such a law. The City cannot rely on general public nuisance laws, because they were never used to impose such regulations at the time of the adoption of the Second Amendment. Rather, the attempt to use public nuisance laws to impose liability on the firearms industry is "based on theories without foundation in hundreds of years of the … jurisprudence of the United States." 15 U.S.C. § 7901(a)(7). *See also Camden County Board of Chosen Freeholders v. Beretta, U.S.A. Corp.*, 273 F.3d 536, 540-41 (3rd Cir. 2001) (noting that expanding "public nuisance law to embrace the manufacture of handguns would be unprecedented").

For the above reasons, the ICFA is unconstitutional and, to the extent that the City relies upon it as the basis for its claims against Glock Ges.m.b.H., they fail to state a claim upon which relief can be granted and must be dismissed.

CONCLUSION

For the above reasons, Glock Ges.m.b.H. 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 on the basis that it violates the commerce clause, is void for vagueness in violation of the due process clause, and violates the Second Amendment, and grant such other relief as it deems just and proper.

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Respectfully submitted,

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