UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

GREGORY BUNCE, Individually and as Personal Representative of the Estate of Peter Bunce, and EVELYN BUNCE, Individually, Plaintiffs	)	Case No. 2:23-cv-133-cr
v.	)	
GLOCK, INC., and GLOCK GES.m.b.H., Defendants	)	

REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL DISCOVERY

INTRODUCTION

Defendants' consolidated opposition and reply brief repeats their conclusory and unsupported claims, ignores many of Plaintiffs' arguments, fails to address Rule 26(b)'s standard for relevance and proportionality, and disregards the facts. Glock's continued attempt to depict Plaintiffs as unwilling to negotiate is belied by the parties' communications over the past several months. To this day, Glock has ignored Plaintiffs' repeated attempts to obtain information that could guide negotiations, such as which departments or custodians have relevant documents, and which types of documents Glock has retained for which years. *See, e.g.*, Pl. Br. 8, 12-13, 23. Glock's disregard of indisputable facts laid out in written communications while trying to cast Plaintiffs as the obstructionist party bespeaks the weakness of its position.

But Glock's stonewalling goes even further than that. Defendants have stated that they have information that they *agree* is discoverable. *See, e.g.*, Def. Opp. 7, 10. Plaintiffs therefore have asked Glock more than once to make an initial production of the materials that all parties agree are discoverable, including from the time frame of 2016-2021 that they purport to have offered for certain requests. *See* Exs. O, U. Defense counsel refused, claiming inexplicably that "[a]t no time did [they] agree that 'documents from the time period of 2016-2021 are relevant and discoverable,'" and declining to make any production while the discovery disputes are pending. Ex. U. Accordingly, their offer to search for and produce certain documents—made both in communications among counsel and to this Court—is plainly illusory.[1]

At bottom, after a combined 38 pages of briefing, Glock has not once analyzed the Rule 26(b)(1) factors that govern whether discovery is proportional to the needs of the case. *See Jenkins*

[1] Glock's April 4 brief is the first time that it has mentioned a possible 10-year window for discovery. Def. Opp. 10; *see* Exs. O, U (discussing only a 5-year period). Contrary to Glock's brief, Plaintiffs could not have rejected such an offer since it was never made.

v. Miller, No. 2:12-CV-184, 2020 WL 5105183, at *2 (D. Vt. Aug. 31, 2020). Nor has it articulated a single concrete burden that would result from complying with Plaintiffs' requests, let alone offered a shred of competent evidence that would permit the Court to make such a finding. Defendants are pursuing their unsupported arguments in an apparent effort to run out the clock on the Court's discovery order, depriving Plaintiffs of the opportunity to conduct a meaningful investigation and productively depose (or even identify) witnesses. Plaintiffs' motion to compel should be granted, and Glock's motion for a protective order should be denied.

ARGUMENT

I. Defendants agree that other incidents of young children firing Glock pistols are discoverable.

The parties agree that information regarding other similar incidents is relevant and discoverable, Def. Opp. 10, and Glock has conceded that producing such complaints or reports from 1991-2021 would not be unduly burdensome, Pl. Br. 8. Glock's insistence on withholding this information and demanding a narrower time period is therefore hard to explain. Their argument appears to boil down to a vague and unfounded claim that 30 years' worth of such complaints is "unreasonable," but they fail to describe why or even mention the proportionality factors in Rule 26(b)(1). This does not come close to meeting their burden of showing, with specificity, why the requests are disproportionate or overbroad. *See Boyages v. Univ. of Vermont & State Agric. Coll.*, No. 24-CV-538, 2025 WL 304095, at *2 (D. Vt. Jan. 27, 2025).

The authority that Glock cites for the proposition that the Court should limit discovery to a five-year time period is readily distinguishable. First, in three of the cases, the court granted in full the plaintiffs' requested time period, and the appropriateness of a longer period was not at issue. *Robins v. Wal-Mart Real Est. Bus. Tr.*, No. 22-CV-273, 2023 WL 3558213, at *1, *4 (W.D.N.Y. May 19, 2023); *Laudero v. Otis Elevator Co.*, No. 10-CV-00053, 2011 WL 2731240,

at *1 (W.D.N.Y. July 12, 2011); *D'Agostin v. Fitness Int'l, LLC*, No. 3:20-CV-01657, 2021 WL 1923786, at *2 (D. Conn. May 12, 2021). Next, *Foster v. Logan's Roadhouse, Inc*., No. CV-12-S-2417, 2013 WL 1498958 (N.D. Ala. Apr. 4, 2013), is not persuasive because it incorrectly relied on the standard for the admissibility of evidence, not discoverability, and therefore did not properly apply Rule 26. *Id.* at *2.[2]

Further, *Coker v. Duke & Co., Inc.*, 177 F.R.D. 682 (M.D. Ala. 1998), was a securities fraud case where the court did not explain its reasons for selecting a five-year period other than to note that the plaintiff had not justified a longer time period. *Id.* at 686. Here, Plaintiffs have explained the reasons for requesting 1991-2021 based on the date of the Subject Pistol's manufacture and the date on which it killed Peter Bunce. *See* Pl. Br. 21-25. Finally, *Williams v. City of Birmingham*, 323 F. Supp. 3d 1324 (N.D. Ala. 2018), concerned the scope of third-party subpoenas, not discovery requests on a party. Unlike Plaintiffs' requests, the subpoenas called for incidents that were not "even arguably similar" to the one at issue. *Id.* at 1331. Further, as a Section 1983 excessive force case, *Williams* involved special considerations of municipal liability that impacted relevance, which have no bearing here. *Id.* at 1333-34. Finally, the court's ruling on the time period was not persuasive because it did not explain why it chose a five-year period, noting that a time limit on prior incidents was "arbitrary on some level." *Id.* at 1337.

Plaintiffs amply support their contention that 30 years is a reasonable time period for these requests[3] and cite caselaw making it clear that incidents from both before and after the product's

[2] Similarly, despite raising *Schmelzer v. Hilton Hotels Corp.*, No. 1:05-CV-10307, 2007 WL 2826628 (S.D.N.Y. Sept. 24, 2007), in its brief, Glock acknowledges that it is inapposite because the "scope of discovery of prior similar incidents was not at issue," since the case addressed the standard for admissibility. Def. Opp. 10.

[3] Defendants' brand-new suggestion of a 10-year period includes the early part of the 1991-2021 time period, making it hard to square with its claim that at "some point in time, prior claims become so remote that they cannot be relevant[.]" Def. Opp. 10.

manufacture are relevant for different purposes. Pl. Br. 8-10. Glock has not presented any reasoned argument in response. Glock simply ignores *Johnson v. Werner Co.,* No. CV 23-03573, 2024 WL 4818257 (D.S.C. Oct. 10, 2024), and fails to distinguish the other cases meaningfully. In particular, the court's ruling in in *Trask v. Olin Corp*., 298 F.R.D. 244 (W.D. Pa. 2014), was not issued as a sanction, as Glock suggests, but rather was based on Rule 26's relevance standard. *Id.* at 263-64. The court correctly noted that prior incidents are "central to the questions of foreseeability. . . and breach of duty" and are relevant to causation. *Id.* at 264. Further, because the complaint alleged negligence, "broader discovery [was] appropriate to allow Plaintiffs to prove different theories of liability." *Id.* at 264-65. Indeed, although *Trask* involved more egregious conduct, Glock's obstructionism likewise reflects a lack of respect for the discovery process and has "prejudiced Plaintiffs' ability to discover basic information about their case." *Id.* at 271.

II. Defendants must produce discovery regarding their organizational structure and the identity of employees with relevant information.

Plaintiffs are entitled to discovery identifying employees and departments with relevant responsibilities, as well as documents reflecting the relationship between the Defendant entities and their corporate structure. Plaintiffs require this information for numerous reasons, including to make targeted requests for ESI, to identify witnesses, and to inform negotiations about search parameters. Such discovery is "so deeply entrenched in practice that it is no longer necessary" to list it in Rule 26. Fed. R. Civ. P. 26 advisory committee's note to 2015 amendment; Pl. Br. 11-14. Glock's response on this issue is baffling: it claims that Plaintiffs do not cite any support for obtaining this discovery while simultaneously ignoring all but one of the authorities that Plaintiffs *do* cite, hollowing out Plaintiffs' argument into an unrecognizable straw man.

Defendants boldly claim that, because Gaston Glock is deceased, they have satisfied their discovery obligations by providing the names of two people: the General Counsel of Glock, Inc.

and the former Chief of Technology for Glock Ges.m.b.H. Def. Opp. 13. Although one or both of those individuals may be witnesses, disclosing those names does not even begin to assist Plaintiffs in requesting ESI or engaging in informed negotiations concerning reasonable searches. Nor does it permit Plaintiffs to investigate the case and determine whom to depose. Glock cannot credibly claim that only Gaston Glock himself had sufficient knowledge of the engineering, design, research, and marketing of Glock pistols to testify competently on these topics.

On the issue of the relationship between the Glock entities, the cases that Defendants cite, *Jugle v. Volkswagen of America, Inc*., 975 F. Supp. 576 (D. Vt. 1997), and *Smith v. Goodyear Tire & Rubber Co*., 600 F. Supp. 1561 (D. Vt. 1985), are not remotely relevant to this discovery dispute because they are summary judgment decisions from car accident cases that analyze the *plaintiff's* comparative negligence. Defendants next claim without citation that they are "equally responsible for any design defects" because this is a product liability case. Def. Opp. 12-13. Even assuming that Defendants are correct as to the strict liability claim, they ignore the fact that Plaintiffs also plead negligence. *See* Vt. Stat. Ann. tit. 12, § 1036 ("Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages" according to their own negligence).

Seemingly recognizing this issue, Defendants then baldly claim that the relationship between the Glock entities is irrelevant to the negligence and failure to warn claims. But Defendants have stated that the two entities worked together on the product's warnings and place responsibility for the Subject Pistol's design on Glock Ges.m.b.H. Pl. Br. 12. Not only do they ignore their own discovery responses, but Defendants also misapprehend the significance of *Vinci v. V.F. Corp*., No. 17-CV-00091, 2018 WL 1027429 (D. Vt. Feb. 21, 2018). In *Vinci*, this Court granted without prejudice a motion to dismiss for lack of personal jurisdiction. Although it denied

the plaintiffs' request to take jurisdictional discovery, it noted that "the relationship between [the entities] is an appropriate subject matter for discovery . . . in the ordinary course." *Id.* at *6. *Vinci* therefore stands for the proposition that the relationship between two entities is a proper topic for merits discovery where, as here, it is relevant. Finally, the fact that this subject is also proper for a Rule 30(b)(6) deposition is beside the point. Def. Opp. 13. That Plaintiffs may also address this topic at a deposition does not relieve Defendants of their obligation to produce relevant documents.

Finally, as before, Defendants generically complain that 30 years is too long of a window for discovery, ignoring Plaintiffs' offers of compromise. For example, Plaintiffs agreed initially to accept only organizational charts that Glock, Inc. could obtain electronically, but Glock refused to provide them (despite apparently collecting them, a fact that Glock has not disputed). Pl. Br. 12-13. Further, Plaintiffs agreed to limit their request to employees and departments with responsibilities identified in their interrogatories as particularly relevant to their complaint, but that offer has not produced any meaningful response from Defendants. *Id.* at 12. More fundamentally, Glock's objections do not contain the level of detail required to meet its burden of resisting discovery. *See Robins*, 2023 WL 3558213, at *3 (noting that the "burden is on the party resisting discovery to demonstrate that the requested discovery lacks proportionality" and that an "objection based on undue burdensomeness [must] be supported by affidavit of someone with personal knowledge"). For these reasons, the Court should grant Plaintiffs' motion.

III. Design and testing documents are relevant to prove both technical feasibility and performance and reliability of alternative designs.

Defendants' repeated argument that design and testing documents are irrelevant because they do not contest the technical feasibility of adding safety features to the Subject Pistol, *see* Def. Opp. 3, 5, 14, 18, ignores the fact that the safety and reliability of an alternative design is very much in dispute, Pl. Br. 14-15. Glock's own brief underscores this disagreement, asserting that the

proposed safety features "make a self-defense firearm less reliable and potentially less safe." Def. Opp. 14. Thus, design and testing documents, as well as Glock's submission to the U.S. military, are relevant not only to demonstrate technical feasibility of design changes, but also to prove that these changes would not materially alter the gun's performance and reliability for self-defense.

Regarding Plaintiffs' requests for post-sale design and testing documents, Glock's relevance objection rests solely on its unsupported assertion that there is no "post-sale duty to recall, retrofit or warn." Def. Opp. 15. As Plaintiffs have explained, Vermont caselaw does not bar a post-sale duty to warn, and thus "information regarding a party's post-sale knowledge is discoverable." Pl. Br. 9 n.9 (quoting *Currier v. Ford Motor Co.*, No. 19-CV-676, 2020 WL 13566187, at *2 (D.N.H. Nov. 4, 2020)). More importantly, Glock fails to address Plaintiffs' other grounds for seeking post-sale documents, such as proving that "the Subject Pistol was defective when it was sold, that Glock knew of this defect before Peter's death, and that the flawed design caused Peter's death." Pl. Br. 16; *see Cohalan v. Genie Indus., Inc.*, 276 F.R.D. 161, 166 (S.D.N.Y. 2011) (permitting discovery of "subsequent design changes" made to later models of the product).[4]

Furthermore, Glock's suggestion that it has no responsive post-sale documents to produce because "there has been no effort to or consideration of changing its functionality or design features to the degree complained of by Plaintiffs," Def. Opp. 17, reads RFP Nos. 5 and 6 too narrowly. Plaintiffs not only seek documents showing that Glock contemplated adding the specific

[4] Glock misinterprets *Cohalan*. First, while the defendant did waive its objections, the court analyzed the relevant issues, explaining that even if the defendant had been "permitted to object, its objections would fail as a matter of law." *Id.* at 164. Second, Glock cites the defendant's losing argument, rather than the findings of the court. Def. Opp. 15. The court in fact concluded that discovery of similar, subsequent models is permitted in product defect cases if they share the "characteristics pertinent to the legal issues raised in the litigation." *Cohalan*, 276 F.R.D. at 164-66. Because Glock "agrees that the Glock Model 26 pistol has had the same basic design since its original production in 1996," Def. Opp. 15-16, discovery of subsequent models of the Glock 26 is warranted.

proposed safety features, but also material reflecting design changes to other aspects of the firearm and communications about design decisions or issues. These documents are relevant for proving *how* Glock makes design decisions and whether it ever contemplated design changes in response to consumer safety concerns. For example, documents indicating that Glock modified its firearm in response to other concerns, but not to address the known issue of unintentional shootings by children, would be relevant to Plaintiffs' negligence and punitive damages claims.

Finally, Glock refuses to produce its 2016 submission to the U.S. military and related testing documentation solely because it concedes the technical feasibility of incorporating a manual safety. Def. Opp. 17-18. As discussed, this argument ignores that Glock plainly disputes factual issues relating to the performance and reliability of a Glock firearm with a manual safety.[5] *See supra* at 6 (citing Def. Opp. 14). Thus, Glock's submission and testing are particularly probative because they contain Glock's *own* statements and findings regarding the performance and functionality of a Glock pistol with a manual safety. *See* Pl. Br. 16-17. Glock's claim that Plaintiffs already "have the information they are seeking" based on the public decision denying Glock's appeal of the denial of the award,[6] or the Army's Request for Proposal,[7] Def. Opp. 18, disregards the fact that (a) neither of those documents reflects Glock's own claims about the performance of the firearm, (b) the decision denying the appeal only provides a broad overview of the Army's assessment of the firearm, since it focuses on the arguments in Glock's appeal, and (c) the Request for Proposal simply lays out the parameters for submissions without saying anything

[5] Additionally, courts have allowed discovery of subsequent design changes "even [where] the defendant does not contest that it was feasible at the time the [product] was designed" to include the safety feature. *Cohalan*, 276 F.R.D. at 166.

[6] U.S. Gov't Accountability Office, Decision, File No. B-414401 (June 5, 2017), https://www.gao.gov/assets/b-414401.pdf.

[7] U.S. Army Contracting Command, Solicitation No. W15QKN-15-R-0002 (Aug. 28, 2015), https://graylinegroup.com/wp-content/uploads/2017/06/W15QKN15R0002-RFP_Final.pdf.

about Glock's proposal, which did not yet exist. For these reasons, the Court should grant Plaintiffs' motion as to design and testing documents, including the military submission.

IV. Marketing and studies are relevant to consumer expectations, foreseeable misuse, negligence, and punitive damages.

Plaintiffs are also entitled to the requested marketing materials and studies. Glock's relevance objection to the marketing requests rests solely on the fact that Ms. Post and Mr. O'Brien did not recall viewing Glock advertising before choosing the Subject Pistol. Def. Opp. 18-19.[8] But that misses the point: marketing materials are relevant to demonstrate the expectations of the *objective* ordinary consumer (not just Ms. Post) as well as the foreseeability of Ms. Post's storage practices, Glock's negligence, and punitive damages. *See* Pl. Br. 18. Glock grossly misinterprets two of the cases Plaintiffs cite. First, *Ford Motor Co. v. Trejo*, 402 P.3d 649 (Nev. 2017), explicitly *rejected* the risk-utility test from the Third Restatement and applied the consumer expectations test from the Second Restatement, concluding that "product advertising and marketing[] remains relevant to prove a reasonable consumer's expectations" under that test. *Id.* at 656. Second, in *Fraser v. Wyeth, Inc.*, 992 F. Supp. 2d 68 (D. Conn. 2014), the plaintiffs' reliance on defendant's marketing materials was immaterial, since the court twice clarified that the marketing evidence was "relevant to Plaintiffs' strict liability design defect claim *without a showing of [] reliance* because it bore on consumers' expectations." *Id.* at 87 (emphasis added); *id.* at 88 (same, and noting relevance to punitive damages claim). Glock cannot seriously argue that a company's marketing does not impact consumer understandings of its products.

Glock's relevance objection to Plaintiffs' requests for studies is similarly unfounded. Glock asserts that studies that it "reviewed" have no bearing on consumer expectations, Def. Opp. 21-22,

[8] Plaintiffs do not concede that Ms. Post never saw Glock marketing, only that she does not recall seeing Glock marketing. *See* Def. Ex. C at 44:7-44:10; 47:24-48:1.

ignoring the fact that these studies could be relevant to several other elements, including Glock's knowledge of a defect, failure to warn, negligence, and efficacy of alternative designs, Pl. Br. 20. Glock does not address these other grounds for relevance. Additionally, it is possible that studies can reflect consumer expectations, for example if they discuss consumer understandings of the functioning of the Safe Action System or of secure storage practices. *Id.*[9]

Finally, the time period for these requests is not overbroad and is justified under the unique facts of this case. *See* Pl. Br. 21-22. Marketing and studies from the period when the Glock 26 was being developed up until the date of the Incident can demonstrate when and to what extent Glock was aware of the risks that the Glock 26 posed to young children, consumer expectations about the safe use of the product during that timeframe, and the foreseeability of some consumers' failure to store the product securely. Thus, marketing materials and studies on the requested topics for the full time period are relevant and proportional to Plaintiffs' claims and must be produced.[10]

CONCLUSION

For the foregoing reasons, and those stated in Plaintiffs' prior brief (ECF No. 73), Plaintiffs respectfully request that the Court grant their motion to compel discovery and deny Defendants' motion for a protective order. Plaintiffs further request that the Court direct Defendants to comply with the ESI protocol and to refrain from redacting any material from their productions other than for valid claims of privilege.

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[9] Glock's reliance on *Jenkins*, 2020 WL 5105183, is misplaced. In *Jenkins*, the court narrowed requests for "all documents and communications concerning Nicaragua" or "the Beachy Amish Mennonite Church" in a case involving an alleged kidnapping by a defendant who lived in Nicaragua and worked at that church. The court noted that the request would yield a "large catalog" of "irrelevant" material. *Id.* at *3. By contrast, Plaintiffs' requests seek documents on specific subjects that are relevant to the defect, warning, and negligence claims in this case.

[10] Glock has not asserted let alone made any showing that producing the requested materials would be unduly burdensome. *See Boyages*, 2025 WL 304095, at *2 (party resisting discovery must show "specifically how" a request is burdensome).

Dated: April 17, 2025

Respectfully submitted,

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