

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota by its Attorney General,
Keith Ellison,

Court File No.: 27-CV-24-18827
Case Type: Other Civil

Plaintiff,

v.

**DEFENDANT GLOCK, INC.'S
MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO STAY
ALL DISCOVERY**

Glock, Inc. and Glock Ges.m.b.H.,

Defendants.

INTRODUCTION

Plaintiff filed a Complaint against Glock, Inc. and an Austrian company, Glock Ges.m.b.H., seeking sweeping declaratory and injunctive relief, and compensatory and exemplary damages – including “maximum civil penalties,” “restitution and disgorgement” and statutory “costs of investigation and attorney fees” – arising from the design, manufacture, marketing and sale of one of the most popular and widely owned semi-automatic pistols in the world. The Complaint asserts seven causes of action that allege public nuisance, “aiding and abetting negligence *per se*,” negligence, product liability, and violations of the state’s consumer fraud, deceptive trade practices and false statement in advertisement statutes, Minn. Stat. §§ 325F.69, 325D.44 & 325F.67. In response to Plaintiff’s Complaint, Glock, Inc. has brought a Motion to Dismiss in lieu of an answer for which briefing is pending in this Court.

Plaintiff has proposed a Minn. R. Civ. P. 26.06 Discovery Plan that contemplates extensive and onerous discovery, and has insisted on immediately commencing discovery notwithstanding the pendency of Glock, Inc.’s dispositive motion. Glock, Inc. now brings this Motion seeking a

stay of all discovery pending the Court's decision on its Motion to Dismiss, based on good cause shown. Specifically, Glock, Inc. shows good cause for staying discovery because the efforts that it would need to take, and the costs it would need to incur, to prepare its initial disclosures, respond to the Plaintiff's anticipated demands, and identify, collect, review and produce responsive documents will be excessively burdensome and result in a waste of time and money in light of the pending dispositive Motion.

A short stay pending resolution of Glock, Inc.'s Motion to Dismiss is especially warranted based on the immunity Glock, Inc. is afforded by the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901-03 ("PLCAA"), and the Complaint's failure to state cognizable claims under Minnesota law. No parties will be prejudiced by a temporary stay of all discovery and service of the Complaint on the Austrian co-defendant remains pending at this time. Therefore, this Court should issue such a stay pending its decision on the Glock, Inc. Motion to Dismiss.

SUMMARY OF THE ARGUMENT

First, this Court's ruling on Glock, Inc.'s Motion to Dismiss may end this litigation outright. The PLCAA provides Glock, Inc. with federal immunity from even having to present a defense against the Plaintiff's claims against it by prohibiting any complaint from being filed in state or federal court. Such immunity is effectively lost if Glock, Inc. is required to defend itself on the merits, including responding to discovery, before the Court decides its immunity-based Motion to Dismiss. Despite Glock, Inc.'s pending Motion to Dismiss pursuant to the immunity provided by the PLCAA, the Plaintiff seeks to open massively extensive discovery by forcing Glock, Inc. to develop substantively substantial initial disclosures that will then be followed by even massively broader merits-based discovery. Such discovery is unnecessary and a waste of

judicial and litigant resources should the Court agree the Plaintiff's claims are barred by the immunity provided to Glock, Inc. by the PLCAA.

In addition to the immunity provided by the PLCAA, Glock, Inc. is moving to dismiss the Plaintiff's claims for failure to state a claim upon which relief can be granted pursuant to Minnesota law. Although there is no Minnesota case law addressing motions to stay discovery in the context of the PLCAA specifically, Minnesota courts routinely stay discovery pending dispositions of motions to dismiss when defendants assert cognizable immunity defenses and/or when the discovery sought is not needed to respond to the motion. Glock, Inc.'s Motion to Dismiss assumes the well-pleaded factual allegations in the Complaint to be true, and the Court's decision on the Motion rests entirely on issues of law. Accordingly, all discovery against Glock, Inc. should be stayed pending this Court's disposition of Glock, Inc.'s pending Motion to Dismiss.

Furthermore, even if the Court grants only partial relief on Glock, Inc.'s Motion to Dismiss, the Court's ruling will sharply limit the issues and time periods for which discovery will be permissible given the nature of the Motion to Dismiss in this case. Conducting discovery prior to a decision on this dispositive motion, will, at a minimum, necessarily generate unnecessary disputes regarding the breadth and burden of the discovery which may require judicial intervention prior to resolution of the Motion to Dismiss. Such disputes would be wholly disproportional to the needs of the case if they were rendered moot by the Court's future decision on the pending Motion to Dismiss. As a result, a stay of discovery would conserve both the parties' and the Court's resources.

For these reasons and those set out below, a short stay of all discovery will "secure the just, speedy, and inexpensive determination of [this] action" (*see* Minn. R. Civ. P. 1) while

comporting with the factors of proportionality required by Minn. R. Civ. P. 26.02(b), and Glock, Inc. thus requests that this Court grant its Motion to Stay All Discovery.

BACKGROUND

Plaintiff initially sued Glock, Inc. on December 12, 2024. The Complaint seeks to place the blame on and penalize Glock, Inc. for crime involving the use of GLOCK pistols that have been unlawfully modified by third-party criminals with machinegun conversion devices (“MCDs”). Glock, Inc. filed a Notice of Motion and Motion to Dismiss on February 3, 2025, and a May 19, 2025 Hearing is set on Glock, Inc.’s Motion. In addition to arguing that the State’s Complaint fails to state a claim upon which relief can be granted pursuant to Minnesota law, Glock, Inc. moves to dismiss the Complaint on the basis that the PLCAA, a federal immunity statute, prohibits the Plaintiff from even filing its Complaint. Glock, Inc. also is raising a challenge to the constitutionality of the Complaint.

On January 27, 2025, this Court administratively determined that this case should be designated a complex case under Minn. R. Gen. Pract. 146. In its Order designating this case as complex, the Court concluded that this case will involve, among other things: “[n]umerous hearings, pretrial or dispositive motions raising difficult or novel legal issues that will be time-consuming to resolve”; “[c]oordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court”; and “[l]egal or technical issues of complexity.”

On February 13, 2025, Plaintiff provided counsel for Glock, Inc. its proposed Joint Discovery Plan Pursuant to Rule 26.06, wherein it set forth exceptionally broad and virtually boundless subjects upon which it contends discovery is be needed, specifically:

“The State plans to seek discovery related to all allegations, claims, denials, and defenses in this lawsuit, including but not limited to Glock’s design and development of Glock pistols, financial information relating to Glock’s design, manufacturing, advertising, distribution, and sale of handguns, all

public-facing marketing or advertising related to Glock pistols, and Glock’s knowledge of the conversion of Glock semiautomatic handguns into automatic weapons.”

See February 17, 2025 Declaration of Shamus P. O’Meara (“O’Meara Decl.”), at Exhibit 1. Counsel for Glock, Inc. requested Plaintiff’s consent to stay all discovery pending resolution of its pending Motion to Dismiss. On February 14, 2025, Plaintiff rejected Glock, Inc.’s request to stay discovery notwithstanding the purely legal issues that are implicated by the Motion. See *id.* at Exhibit 2.

ARGUMENT

All discovery should be stayed until after the Court decides Glock, Inc.’s Motion to Dismiss, as a short delay in the start of discovery protects the parties and the Court from litigating legally precluded and deficient claims and engaging in discovery that would equally be legally precluded by the immunity afforded in the PLCAA. A delay in discovery also fosters efficiency where service on the Austrian co-defendant in this case remains pending at this time. As a result, a stay of all discovery would conserve both the parties’ and the Court’s resources while posing no prejudice to any party.

Minn. R. Civ. P. 26.03 governs protective orders and provides that a Court may stay discovery upon a showing of good cause:

Upon motion by a party *or* by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) that the discovery not be had

See also Minn. R. Gen. Pract. 111.04 (permitting a court to amend a scheduling order upon motion for good cause shown). In considering such a motion, the Court has broad discretion over the scope, limits, and timing of discovery. Minn. R. Civ. P. 26.02, 26.03; see *Kielley v. Kielley*, 674

N.W.2d 770, 780 (Minn. Ct. App. 2004) (“The district court has ‘wide discretion’ regarding discovery and, absent an abuse of that discretion, its discovery decision will not be altered on appeal”), quoting *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990); see also *Nelson v. Comm’r of Revenue*, 822 N.W.2d 654, 660 (Minn. 2012) (“A trial court has considerable discretion in ruling on discovery related motions.”) (quotation omitted). It is well within a district court’s authority to limit discovery until dispositive issues have been “sufficiently litigated.” *Baskerville v. Baskerville*, 246 Minn. 496, 507, 75 N.W.2d 762, 770 (Minn. 1956).

Minnesota courts routinely recognize that “[a] well-grounded, pending motion to dismiss is a particularly appropriate situation for a stay of discovery because it protects all of the parties and the Court from having to spend time and money litigating claims that may be legally deficient.” *Krech v. Vermillion State Bank*, Nos. 19HA-CV-09-3011, 19HA-CV-3270, 2009 WL 7230842 (Minn. Dist. Ct. July 10, 2009) (Trial Order) (O’Meara Decl. Exhibit 3); see also *Smith v. Britton*, No. A13-1039, 2014 WL 349742, at *6 (Minn. Ct. App. Feb. 3, 2014) (“Once respondents moved to dismiss Smith’s complaint, the district court did not err by putting discovery on hold because if the motions were granted, discovery would be unnecessary.”) (O’Meara Decl. Exhibit 4); *Zhang v. Equity Office Props. Tr.*, No. A05-1094, 2006 WL 922883, at *4 (Minn. Ct. App. Apr. 11, 2006) (affirming trial court’s decision to stay “all discovery pending its ruling on respondents’ motions to dismiss and for judgment on the pleadings, both of which raised only questions of law”) (O’Meara Decl. Exhibit 5).

The primary basis for Glock, Inc.’s Motion to Dismiss is the federal immunity it is afforded under the PLCAA. As will be explained in detail in the Memorandum of Law to be filed in support of Glock, Inc.’s pending Motion to Dismiss, the PLCAA prohibits a qualified civil liability action

from even being filed in a state or federal court. 15 U.S.C. § 7902(a). Whether a defendant is immune from suit is a threshold question to be resolved at the earliest possible stages of litigation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Immunity is immunity from being sued, not merely from being held liable and must be decided before discovery is allowed, because immunity is effectively lost if a defendant entitled to immunity is required to present a defense on the merits. *Pearson v. Callahan*, 556 U.S. 223, 231-32 (2009); *see also Saucier*, 533 U.S. at 200 (Immunity is, after all, “an entitlement to not stand trial or face the other burdens of litigation.”). The question of whether a defendant has immunity from suit should be made “as early in the case as possible” because “to defer the question is to frustrate [the] significance and benefit” of the immunity provided to the defendant. *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36, 39 (D.C. Cir. 2000).

Among the stated purposes of the PLCAA is “[t]o prevent the use of ... lawsuits to impose unreasonable burdens” on firearms manufacturers. 15 U.S.C. § 7901(b)(4); *see also City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 394-95 (2d Cir. 2008) (“Congress explicitly found that the third-party suits that the Act bars are a direct threat to the firearms industry,” and “rationally perceived a substantial effect on the industry of the litigation that the Act seeks to curtail.”). The PLCAA states that a “qualified civil liability action may not be brought in any Federal or State court.” 15 U.S.C. § 7902(a). The PLCAA accordingly provides substantive immunity from being sued for a qualified civil liability action, not just a defense from liability, and, therefore, whether its immunity applies must be decided at the earliest available opportunity. *In re Academy, Ltd.*, 625 S.W.3d 19, 35-36 (Tex. 2021) (unanimously granting petition for mandamus and holding that requiring defendant to present a defense on the merits to a case barred by the PLCAA would defeat the substantive immunity provided by the statute); *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d

1216, 1222-26 (D. Colo. 2015) (referring to the PLCAA as an immunity statute); *Jeffries v. District of Columbia*, 916 F. Supp. 2d 42, 44-47 (D.D.C. 2013) (*sua sponte* dismissing complaint pursuant to the immunity provided by the PLCAA). *Est. of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 388 (Alaska 2013) (“In light of the PLCAA’s text and legislative history, Congress’s purpose and intent was to bar any qualified civil liability action not falling within a statutory exception”).

Congress plainly intended the PLCAA to provide substantive immunity from being sued, and not merely a defense to be addressed following discovery. In fact, lawsuits against firearm manufacturers that were pending when the PLCAA became law were to “be immediately dismissed.” 15 U.S.C. § 7902(b). In accordance with that directive, courts dismissed qualified civil liability actions that were pending on the date of the PLCAA’s enactment on the pleadings, without any further discovery being conducted. *See, e.g., Iletto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009); *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d. 163 (D.C. 2008); *Estate of Charlot v. Bushmaster Firearms, Inc.*, 628 F. Supp. 2d 174 (D.D.C. 2009).

The immunity from being sued and having to present a defense against a qualified civil liability action that the PLCAA provides to Glock, Inc. will be effectively lost if it is required to engage in extensive discovery while its Motion to Dismiss is pending. This Court should therefore stay all discovery pending the Court’s ruling on Glock, Inc.’s Motion to Dismiss.

A stay of discovery is also warranted and appropriate under *Kielley*, *Baskerville*, *Krech*, *Smith*, *Zhang*, and many other district and appellate court decisions for several reasons. First, each of the Complaint’s causes of action are severely deficient under Minnesota law. Glock, Inc.’s success on its Motion to Dismiss will dispose of the entire case and necessarily render discovery unnecessary. Furthermore, should this Court ultimately grant partial dismissal on some of the Complaint’s seven causes of action, the remaining claims will be sharply limited in scope and

therefore narrow the issues for which the parties would conduct discovery, including the question of the permissible scope of relevant discovery and time period for which discovery may be sought. A short stay of all discovery thus protects all parties and the Court “from having to spend time and money litigating claims that may be legally deficient.” *Krech*, 2009 WL 7230842, at *7.

Second, Glock, Inc.’s Motion to Dismiss is well grounded and based on the legal deficiencies in the Plaintiff’s claims that are apparent from the face of the Complaint. For example – and among many other pleading deficiencies – the Complaint’s factual allegations fail to establish that Glock, Inc. allegedly created a public nuisance through *intentional* conduct. *See* Minn. Stat. § 609.74. Accepting the scant factual allegations in the Complaint, as opposed to the Plaintiff’s conclusory assertions, Glock, Inc. did not violate the Consumer Fraud Act, Minn. Stat. § 325F.69 (“CFA”), the Deceptive Trade Practices Act, Minn. Stat. § 325F.69 (“DTPA”), or the False Statement in Advertisement Statute, Minn. Stat. § 325.67 (“FSAS”). This is because subjective statements of opinion that are not capable of being proven false, and opinion statements proffered by third parties, are not alleged to be false or misleading and are not otherwise actionable under these statutes. Moreover, product manufacturers are under no obligation to affirmatively notify consumers not to violate criminal statutes under both federal and Minnesota law. The Complaint’s negligence-based claims also fail because no allegations support duty, breach of duty, and/or causation.

In addition to failing to meet the requirements to state valid claims sounding in negligence, the Complaint’s products liability claims fail to allege that GLOCK pistols are defectively designed or that Glock, Inc. had a duty to warn consumers not to illegal modify its lawful pistols into unlawful machineguns. Moreover, the Complaint fails to allege – and indeed Plaintiff cannot

allege – that Glock, Inc. had a duty to warn criminals who unlawfully modify GLOCK pistols into machineguns to not use the now illegally converted firearms to commit crimes.

The arguments presented in Glock, Inc.’s Motion to Dismiss require this Court to address purely legal issues for which no amount of discovery is needed. Because the Motion to Dismiss raises only questions of law, a stay of discovery is particularly appropriate. *Zhang*, 2006 WL 922883, at *4. A stay further prevents the Plaintiff from using the sheer breadth of the claims asserted in its Complaint to seek discovery that may well go beyond the claims and defenses that may ultimately be at issue, if any, which invariably avoids otherwise unnecessary discovery disputes. A stay of all discovery at this venture ultimately serves to conserve both the parties’ and the Court’s resources. *See also In re Medtronic, Inc. Sprint Fidelis Leads Prods. Liab. Litig.*, Multidistrict Litigation No. 08-1905 (RHK/JSM), 2009 WL 294353, at *2 (D. Minn. Feb. 5, 2009) (Kyle, Judge) (“A plaintiff must adequately plead a claim before obtaining discovery, not the other way around.”) (O’Meara Decl. Exhibit 6), *aff’d*, 623 F.3d 1200 (8th Cir. 2010).

Judicial efficiency and conservation of the parties’ resources lend further support to a stay of all discovery in this case. If discovery were to proceed before this Court decides the pending Motion to Dismiss, then Glock, Inc. could be obliged to incur substantial costs to identify, collect, review, and potentially produce a myriad of documents and information which the Court may eventually decide are not at issue in this case. And a stay of all discovery is warranted to “protect a person or party from annoyance, embarrassment, oppression, or undue burden or expense.” Minn. R. Civ. P. 26.03; *Vik v. Wild Rice Watershed Dist.*, No. A09-1841, 2010 WL 3119424, at *7 (Minn. Ct. App. Aug. 10, 2010) (affirming the district court’s order staying discovery pending resolution of a dispositive motion) (O’Meara Decl. Exhibit 7); *Davis v. Hennepin County*, No. A11-1083, 2012 WL 896409, at *3 (Minn. Ct. App. Mar. 19, 2012) (holding that “[t]he district

court's decision to stay discovery pending resolution of the motion to dismiss eliminated undue burden or expense and was not an abuse of discretion.") (O'Meara Decl. Exhibit 8). *See also James River Flood Control Ass'n v. Watt*, 680 F.2d 543, 544-45 (8th Cir. 1982) (holding that "granting the stay serves the public interest by avoiding delay that would inevitably add to the cost of the project, requiring greater expenditures from the public treasury.") Staying discovery until after the Court rules on Glock, Inc.'s Motion to Dismiss will also enable the parties to comply with Rule 26.02(b)'s proportionality requirements, which limit discovery according to "the burden or expense of the proposed discovery weighed against its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues."

Finally, no party would be prejudiced if the Court stays discovery pending resolution of Glock, Inc.'s Motion to Dismiss. This complex case is less than three months old and is moving forward to dispositive motion briefing without delay. *See Smith*, 2014 WL 349742, at *6 ("There was no prejudice to Smith by delaying discovery until after the district court ruled on the dismissal motions."). Under the circumstances of this case, a short delay in the start of discovery until after the Court rules on Glock, Inc.'s Motion to Dismiss will not affect the Plaintiff's ability to pursue any claims that may remain once the Motion is decided. A stay of discovery will also benefit the Plaintiff by saving it the time and expense of engaging in unnecessary discovery and being able to focus only on those claims (if any) that survive the pending Motion. *Krech*, 2009 WL 7230842, at *7 ("[I]f any cause of action remains after the motion to dismiss has been decided, the [plaintiff] will have ample opportunity to conduct discovery in accordance with the Rules of Civil Procedure."). Conversely, proceeding to discovery at this time would be prejudicial to Glock, Inc. because its costs, both in time and money, to conduct discovery when it has a pending Motion to

Dismiss all claims against it – a Motion for which discovery is not necessary or relevant – is burdensome and wasteful and contrary to Congress’ mandate when it enacted the PLCAA. Any potential detriment that might result from a brief delay is far outweighed by the benefits of the conservation of resources.

CONCLUSION

For the reasons set out above, Glock, Inc. respectfully requests that the Court enter an Order pursuant to Minn. R. Civ. P. 26 staying all discovery until after the Court decides Glock, Inc.’s pending Motion to Dismiss.

Respectfully Submitted,

O’MEARA WAGNER, P.A.

Dated: February 17, 2025.

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