

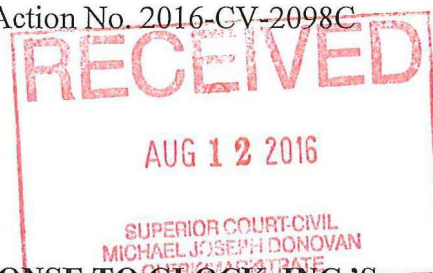
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT

Civil Action No. 2016-CV-2098C

IN RE CIVIL INVESTIGATIVE DEMAND
NO. 2016-CPD-50 ISSUED BY THE OFFICE
OF THE ATTORNEY GENERAL



**THE ATTORNEY GENERAL'S'S RESPONSE TO GLOCK, INC.'S
PETITION TO SET ASIDE OR MODIFY THE CIVIL INVESTIGATIVE
DEMAND OR ISSUE A PROTECTIVE ORDER**

I. INTRODUCTION

Stripped of political invective about the Attorney General's presumed motives and other irrelevancies, Glock, Inc.'s Petition and Emergency Motion ("Petition")¹ presents only one question that is even arguably ripe for review by this Court: Whether the Attorney General has authority to investigate the safety record and safety features of Glock pistols that are widely available for purchase in Massachusetts,² even if Glock purports not to permit sales of its products to consumers in the Commonwealth.³

The answer to this question is clear. Well established law under G. L. c. 93A permits the investigation, by Civil Investigative Demand ("CID"), of the safety of consumer products, including guns, available in Massachusetts. Glock manufactures guns, furnishes warranties, and

¹ By order of July 8, 2016, the Court denied Glock's "Emergency Motion" on procedural grounds. Glock has not chosen to cure the defects in that motion. Therefore the only pleading of record in this matter is Glock's petition, to which this memorandum responds.

² As discussed below, based on investigation of gun sales transaction records maintained by the Commonwealth's Department of Criminal Justice Information Services (CJIS), more than 10,000 Glock guns were sold in Massachusetts between January 1, 2014 and August 13, 2015.

³ The Attorney General does not concede that Glock has no role in sales of its guns in Massachusetts, but to the extent there is such a factual dispute, it is irrelevant to the Attorney General's authority to obtain evidence from Glock relevant to its investigation of the safety of Glock pistols available in the Commonwealth.

publishes marketing materials for pistols regularly sold in the Commonwealth, even if such sales are made by third parties without Glock's permission. The investigation is appropriate because Glock may have Chapter 93A liability based on these activities including, without limitation, for product defects, misleading marketing, and for failure to honor warranties. Even assuming for the sake of argument that Glock has no potential liability itself, Chapter 93A allows the Attorney General to obtain information, relevant to an investigation, in the possession of a party that is not the direct target of that investigation.

It is undisputed that Glock manufactured the guns at issue. It profits either directly or indirectly from sales of its products in Massachusetts. Glock is the only comprehensive repository of the information the Attorney General needs to investigate important safety concerns about potentially dangerous products. The CID at issue is narrowly tailored to obtain information about manufacturing standards at Glock, about its marketing practices, and about the nature and frequency of consumers' safety-related complaints.

For the reasons more fully discussed below, all relief on Glock's petition should be denied with instructions to Glock to make the required production. In the alternative, Glock should be ordered to make proffers with respect to the CID that are sufficient for the parties to engage in a meaningful meet and confer to address Glock's asserted overbreadth and burdensomeness concerns. It is premature, at this early stage of a properly grounded investigation by the Attorney General, to involve the Court in the kind of back and forth on document production issues that should be conducted, in the first instance, in good faith between counsel.

II. RESPONSE TO FACTUAL MATTER IN THE PETITION

The Attorney General disputes and therefore denies the factual allegations in the Petition to the extent they are relevant including, without limitation, allegations that purport to contain

quotations of telephone conversations between counsel concerning the CID.⁴ Although Glock's Petition should be dismissed on its face as legally deficient for the reasons discussed below, Glock's extended attempt to present the Attorney General's CID as politically motivated are both incorrect and irrelevant. Public reports about accidental discharge of Glock pistols are frequent and longstanding. Glock does not dispute that it receives complaints from consumers that may bear on the safety of its guns. Nor does it dispute that it provides warranties, product information and marketing materials to consumers, including consumers in Massachusetts. The CID is focused on these consumer-based concerns. The CID is not motivated, as Glock complains, by animus toward Glock or more broadly, by animus toward guns.

To the extent that Glock asserts that the CID is vague or overbroad, those issues are not ripe for evaluation by this Court, because a meaningful meet and confer about the specific requests has not occurred. *See* Ex. 3. Indeed, on June 29, the Attorney General expressed a willingness "to consider Glock's position that one or more of the requests are burdensome or otherwise inappropriate under the law" provided Glock provides information that would allow the Attorney General to assess those claims. *Id.* at 2. Glock has not responded.

III. RELEVANT BACKGROUND

A. The Basis for the Attorney General's Investigation.

1. More than 10,000 Glock pistols were sold in Massachusetts between January 1, 2014 and August 13, 2015.

⁴ The CID is Exhibit 2 to this filing. Exhibit 3 is a true and correct copy of a letter that was delivered by the Attorney General to Glock's counsel on June 29, 2016 (three days before Glock's Petition was filed). That letter describes the Attorney General's positions concerning the CID and disputes or is inconsistent with many of the representations that Glock subsequently made to the Court in its Petition. Glock's counsel plainly received the letter prior to filing the Petition on July 1, 2016 because it was attached as Exhibit 8 to the Declaration of Carlos A. Guevara in support of its now disallowed emergency motion. Glock did not respond to the letter or accept the Attorney General's offer to engage in further discussion to address the CID, but rather chose to proceed with a baseless petition containing many mischaracterizations of the Attorney General's position.

Glock's petition is indisputably incorrect in its key factual premise: that its guns are not sold commercially in the Commonwealth. Based on statewide records of gun transactions in the Commonwealth, more than 10,000 handguns manufactured by Glock were sold in Massachusetts in between January 1, 2014 and August 13, 2015. Decl. of David Bolcome ("Bolcome Decl.") at ¶ 7 (Attached as Exhibit 1). Approximately 8,000 of the sales were made to persons who do not appear to be law enforcement officers. *Id.* Irrespective of whether the sales were made legally or not,⁵ there are a large number of Glock guns in the hands of Massachusetts consumers. Even if Glock did not participate directly in sales to consumers in the Commonwealth (as its papers assert), it profits directly or indirectly by virtue of its manufacture and wholesale distribution of Glocks that are ultimately resold in Massachusetts. Moreover, Glock is the only potential repository of the information the CID seeks about whether 1) consumers complain that the guns are unsafe; and 2) whether marketing materials for the guns are accurate; and 3) whether the warranties offered with the guns are properly honored.⁶

2. There is a reasonable basis for concern about the safety of Glock guns.

While it is not the Attorney General's burden to establish that guns are unsafe in order to justify a CID to obtain safety and warranty information from a manufacturer, it should be noted that there is a history of publicly available news reports that suggest that Glock pistols are prone

⁵ See generally *Draper v. Healey*, No. 15-429 (1st Cir. June 17, 2016) (upholding the legality of AGO guidance on the merchantability of Glock pistols in Massachusetts).

⁶ The CID also requests information from Glock about distributors that may be facilitating unlawful sales in Massachusetts. Civil Investigative Demand ("CID"), Request No. 9(e) (Attached as Exhibit 2). Certainly the Attorney General reserves the right to evaluate whether Glock also has a role in facilitating sales in Massachusetts.

to accidental discharge.⁷ Bolcome Decl. at ¶¶ 4, 5. For example, in April of this year, a sheriff's deputy accidentally discharged a Glock pistol in San Francisco's Hall of Justice:⁸

One deputy brought the handgun in to the Hall of Justice and handed it to another deputy, who, asking how it worked, pointed it at the first deputy. Unaware it was loaded, he pulled the trigger. It barely missed the first deputy.

In May of this year, Glock settled a civil case with a former LAPD officer who was left paralyzed from the waist down after his Glock was accidentally discharged by his three year old son. According to news reports, the Complaint alleged:⁹

The boy was able to get hold of his father's weapon while sitting in the back seat (of the vehicle) and shot the officer in the back. . . . The former officer alleged the gun and hip holster were negligently designed without a grip safety and that it required only minimal pressure to discharge. "In fact, the trigger energy on the Glock is so low that it was easier to pull the trigger on the Glock than on cheap, plastic toy guns ordered off the Internet."

In July of this year, Masslive reported that a man at a Fourth of July party had his Glock accidentally discharge: "[t]he gun, a Glock 26 handgun, was in his hip pocket when it discharged as he danced with friends."¹⁰

In addition, as Glock acknowledges, Massachusetts regulations require that handguns sold in Massachusetts have either a "load indicator" or a "magazine safety disconnect." 940 C.M.R. § 16.05 (3). These features help a gun owner avoid unknowing or accidental discharge

⁷ Unlike other consumer products, guns are not subject to regulation, including safety reporting requirements, by the Consumer Product Safety Commission. *See* Consumer Product Safety Commission Improvement Act of 1976, Pub. L. No. 94-284, § 3(e) 90 Stat. 503. Thus the only potential comprehensive source of the requested safety and warranty information is Glock itself.

⁸ Caleb Pershan, *Sheriff's Deputy Accidentally Fires 'Baby Glock' Inside Hall Of Justice*, SFIST, Apr. 14, 2016, http://sfist.com/2016/04/14/sf_sheriffs_deputy_accidentally_fir.php.

⁹ Hillary Jackson, *Accidentally Paralyzed Ex-LAPD Cop Settles With Glock Gun Maker*, MYNEWSLA, May 11, 2016, <http://mynewsla.com/crime/2016/05/11/accidentally-paralyzed-ex-lapd-cop-settles-with-glock-gun-maker/>.

¹⁰ Patrick Johnson, *Funky Dance Moves at Connecticut Party Trigger Self-inflicted Gunshot Wound*, MASSLIVE, July 6, 2016, http://www.masslive.com/news/index.ssf/2016/07/funky_dance_moves_at_connectic.html.

of a round in the chamber of the gun, in the case of a load indicator by alerting the user to the existence of a bullet in the chamber and in the case of a magazine safety disconnect by preventing the gun from firing while changing the magazine. The Attorney General has requested information about whether these and other safety features are present on newly manufactured Glock handguns. Ex. 2, (“CID”), Request No. 6. Glock makes no argument about why it should not have to respond to a request about whether its products are consistent with existing or potential safety requirements for sale in Massachusetts.

3. There is no basis for Glock’s assertion that the CID it received is motivated by animus toward Glock.

Plainly, the Attorney General need not establish its motivations as a prerequisite to pursuing investigations of the safety of consumer products available for sale in Massachusetts. However, to counter specific and unfounded charges of political animus toward Glock, it is worth noting that the CID issued to Glock is part of a larger series of similar gun safety investigations that are based on information about gun safety problems reported with respect to certain products and certain gun manufacturers. To further these investigations the Attorney General has issued similar CIDs to other gun manufacturers. Bolcome Decl. at ¶ 8. Indeed, each of the counsel representing Glock on this petition knows that Glock is not a unique target because it is representing another gun manufacturer that has received the same or a similar request for information. There is thus no basis for the view that Glock is being singled out for political reasons.

B. Glock Has Not Engaged In A Proper Meet And Confer To Seek to Resolve or Narrow the Issues that Concern it.

Perhaps the most perplexing part of the Glock’s Petition is its attempt to involve the Court prematurely in a set of issues that the Attorney General has offered to discuss and resolve directly with Glock’s counsel. *See* Ex. 3 and note 4, *supra*. While the CID requests are

unexceptional, clear, and reasonably narrow, the Attorney General is willing to hear Glock's specific positions on vagueness, overbreadth and burdensomeness. *Id.* For example, the Attorney General explained to Glock that it was not requesting consumer complaints about Glock pistols that relate to cosmetic issues rather than to safety.¹¹

Glock has failed to support its assertion that production of safety-related complaints would be burdensome with specific information about, for example, the number of complaints or pages that would need to be prepared for production, the nature of any anticipated need to redact privileged information, and the amount of resources necessary to do so. Given that information, the Attorney General had suggested, even before the petition was filed, a willingness to evaluate reasonable compromises. See Ex. 3. There is no need for the Court to involve itself in such discussions at this time.

IV. ARGUMENT

A. The Attorney General Has the Legal Authority to Issue This CID.

Chapter 93A "should be construed liberally in favor of the government," *Matter of Yankee Milk, Inc.*, 372 Mass. 353, 364 (1977). "The party moving to set aside a C.I.D. bears a heavy burden to show good cause why it should not be compelled to respond." *CUNA Mut. Ins. Soc. v. Attorney Gen.*, 380 Mass. 539, 544 (1980). Glock has not come close to meeting that burden, as it is plainly apparent that the Attorney General acted well within its authority in issuing the CID.

As a general matter, the Attorney General has both a common-law duty and a specific statutory mandate to protect the public interest and enforce public rights. See *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 88 (1984). In a case involving gun safety, the Supreme Judicial

¹¹ Glock's counsel took the position that it would be burdensome to separate consumer complaints based on safety from those based on cosmetic problems.

Court has made clear that the Attorney General has the authority to “regulate deceptive or unfair acts or practices in the sale of products which fail fundamental requirements of safety and performance.” *American Shooting Sports Council, Inc. v. Attorney Gen.*, 429 Mass. 871, 877 (1999). Glock’s effort, throughout its Petition, to substitute its judgment for that of the Attorney General on what constitutes the “public interest” is entirely inappropriate.

At the outset, it is significant to note what Glock does *not* challenge: specifically, the validity of either the AGO’s handgun regulations promulgated in 1997 under Attorney General Harshbarger or the AGO’s *Consumer Advisory on Glock Handguns* issued in 2004 by Attorney General Reilly.¹² Rather, Glock sets forth two reasons why this Court should set aside the CID. (Pet. at ¶¶ 18-21.) Each is unavailing.

First, Glock argues that “[b]ecause Glock, Inc. does not engage in consumer sales in Massachusetts, the Attorney General has no basis to claim that the documents sought in the CID are relevant to ‘unfair or deceptive acts or practices’ affecting Massachusetts consumers.”¹³ (Pet. at ¶ 19). Glock’s position is that the Attorney General may *only* investigate “improper sales of Glock pistols to consumers by retailers.” *Id.* This position is wrong.

It is self-evident that a manufacturer can have Chapter 93A and warranty liability for sale of its products, even when its products are sold by third parties over whom the manufacturer has little or no control. *See generally Ciardi v. Hoffman-LaRoche*, No. 993244, 2000 WL 33162197 at *5 (Sup. Ct. 2000), *aff’d* 436 Mass 53, 60 (2002) (discussing absence of a privity requirement under Chapter 93A). If the product is unsafe for the purposes intended, the manufacturer which

¹² That this Office now seeks to investigate firearm safety matters that were first regulated by one Attorney General, and subsequently interpreted by a second Attorney General, belies Glock’s ill-conceived argument, (*see* Pet. at ¶¶ 5, 13, and 21) that it is somehow the target of any especial opprobrium by the incumbent Attorney General.

¹³ Glock’s third argument, that the CID “constitutes an abuse of power,” (*see* Pet. at ¶ 21), is a variation on this same argument: *viz.*, the authority of the Attorney General to issue the CID.

introduced it into the stream of commerce has liability, irrespective of whether the retailer also acted improperly. *See generally Aspinall v. Phillip Morris Co.*, 442 Mass. 381, 396–97 (2004) (discussing product liability claims against cigarette manufacturers whose products were sold in Massachusetts).

Moreover, nothing prevents the Attorney General from seeking information relevant to an investigation from those who have it, including from those who are not targets of the investigation. Thus, even if Glock has no potential liabilities in the Commonwealth for violations of Chapter 93A, a point that the Attorney General does not concede, it still must provide materials that could be used to investigate claims under Chapter 93A against retailers of Glock pistols. This is demonstrated by an analysis of the language of G. L. c. 93A, § 6. *See CUNA Mut. Ins. Soc.*, 380 Mass. at 542. That section states: “The attorney general, whenever he believes a person has engaged in or is engaging in any method, act or practice declared to be unlawful by this chapter, may conduct an investigation to ascertain whether in fact such person has engaged in or is engaging in such method, act or practice.” G. L. c. 93A, § 6(1). This language “indicates no intention ... to restrict the investigation of documentary material to documents in the possession” of “the person or persons being investigated.” *CUNA Mut. Ins. Soc.*, 380 Mass. at 543. Crucially, therefore, “even if it were true that [Glock] *could in no circumstances* violate G.L. c. [93A], the Attorney General is not barred from seeking information from [Glock] concerning possible violations of that statute by others” *Id.* (emphasis added); *see also Attorney Gen. v. Bodimetric Profiles*, 404 Mass. 152, 156 (1989) (“[a]ssuming for the sake of argument that [CID recipient] is not governed by [statute cited in CID]” and nonetheless holding that “the Attorney General is not barred from seeking information concerning possible violations of that statute by others.”) (citation omitted); *Harmon Law Offices, P.C. v. Attorney Gen.*, 83 Mass. App. Ct. 830, 836 (2013) (holding that “the

question of Harmon's liability under either c. 93A or c. 186A has no bearing on the validity of the CIDs.").

Indeed, contrary to Glock's suggestion, "the limit [to the Attorney General's authority to issue a CID] to be applied is simply one of relevance," *Matter of Yankee Milk, Inc.*, 372 Mass. 353, 356 (1977)—that is, "whether the documents sought are relevant to a *possible* violation of c. 93A."¹⁴ *Harmon Law Offices, P.C.*, 83 Mass. App. Ct. at 837 (affirming dismissal of complaint to set aside CIDs and holding "the test of relevance is easily met") (emphasis added). Here, the documents requested in the CID are plainly relevant to guns that are offered for sale in Massachusetts.

Second, Glock argues that this Court should set aside the CID because it fails to "state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation." (Pet. at ¶ 20 (quoting G.L. c. 93A, § 6(4)(b)).) Not so. The CID describes the nature of the investigation with more than the requisite specificity: it was issued "pursuant to Massachusetts G.L. c. 93A, § 6, as part of a pending investigation by the Office of the Attorney General into compliance with G.L. c. 93A, as well as with related Massachusetts laws, regulations and common law requirements that impact gun safety and product warranties." CID, Ex. 2. The Attorney General is not aware of any case in which such a description has been held to be statutorily inadequate, nor does Glock cite to any such case. To the contrary, the Supreme Judicial Court has upheld the validity of a CID issued by this Office

¹⁴ To the extent that Glock takes the position that the Attorney General may not request materials relating to non-Massachusetts customers (*see* Pet. at ¶ 17), that is a flatly incorrect reading of the scope of this Office's authority to investigate possible violations of G.L. c. 93A. *See, e.g., Matter of Yankee Milk, Inc.*, 372 Mass. at 358 (rejecting similar argument by recipient of CID because "[a]nticompetitive actions in Massachusetts may, for example, derive from a general, regional anticompetitive policy. Section 6 authorizes broad investigatory power and s 3 expressly includes in c. 93A coverage Massachusetts misconduct by interstate corporations."). If a make and model of Glock pistol has safety problems in California or Nebraska, those problems are plainly relevant to the safety of the same make and model of pistol here.

which stated that the Attorney General was investigating “unfair or deceptive practices in the conduct of trade or business related to charges for premiums for credit life or credit accident and health insurance in violation of Massachusetts General Laws, c. 255, s 12G.” *CUNA Mut. Ins. Soc.*, 380 Mass. at 540, 544 (holding that the CID “sufficiently identifie[d] the statute whose alleged violation is involved and the general subject matter of the investigation.”) (citation and quotation omitted).

B. The Individual Requests are Properly Issued.

Glock’s individual objections to each of the twelve categories of documents requested in the CID also fail as a matter of law. As described above, absent a more complete “meet and confer” among counsel, they are also premature.

Request Nos. 1 and 2

The Attorney General requested:

1. Records of all complaints you have received in the Relevant Time Period [the preceding four years] that touch on or concern the safety of a Gun or Ammunition that you manufacture or which touch on or concern accidental or unintended discharge.
2. Your response to any complaint identified in responding to Request No. 1.

First, Glock argues that these requests do not meet the requirement of G.L. c. 93A, § 6(4)(c) that a CID must “describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded.” That argument borders on frivolous.¹⁵ Glock takes issue with the purported “ambiguity” of the word “safety” as used in Request No. 1, as well as with the Attorney General’s purported

¹⁵ The capitalized terms—“Relevant Time Period,” “Gun,” and “Ammunition”—along with “concern[ing]” are all defined in the CID. (See CID, Ex. 2, at Definitions D, N, O, and P.)

unwillingness to further define or narrow that term.¹⁶ “Safety” has a plain meaning in the context of Request No. 1: “The condition of being safe; freedom from danger, risk, or injury.” *American Heritage Dictionary of the English Language* (5th Ed. 2016). And use of a word with such a plain meaning more than satisfies the statutory requirement of “reasonable specificity.” See, e.g., *Matter of Yankee Milk, Inc.*, 372 Mass. at 355 (holding that CID demanding “[a]ll documents relating in whole or in part to *balancing functions, balancing facilities or balancing the market*” was sufficiently specific) (emphasis added). Moreover, because “an investigator cannot know precisely what documents the investigated party has in its possession,” he “may properly obtain material he describes to the best of his ability as long as the investigated party can know the nature of documents requested and select them.” *Id.* at 361 n. 8 (citing *Finance Comm’n of Boston v. McGrath*, 343 Mass. 754, 765 (1962)).

Glock next appears to argue that these Requests are unduly burdensome. (Pet. at ¶ 23.) The only assertion made by Glock regarding the purported burdensomeness of these Requests are that “[t]here are approximately twelve million of [*sic*] Glock pistols currently in circulation in the United States.” (Pet. at ¶ 23.) Glock neither states how many safety-related complaints it received, nor the number of pages of such complaints.

¹⁶ Moreover, on June 27, 2016, the Attorney General wrote Glock in an attempt to resolve this dispute out of court. The Attorney General stated:

As a general matter, we are not willing to narrow our requests, absent more, based on an inquisition by counsel about the intended meaning of commonly understood words. To the extent you can point to specific requests that aren't comprehensible to your client, please point out the basis on which you believe that the request is unclear more specifically and we will consider whether there is a way to explain them without changing their meaning.

The Petition plainly does not suffice to meet Glock's burden to establish that compliance with the CID would be burdensome. The Supreme Judicial Court has held that "broad discovery demands may be permitted even when such a demand imposes considerable expense and burden on the investigated party." *Bodimetric Profiles*, 404 Mass. at 159 (quotation and citation omitted). However, as described above and in Exhibit 3, if Glock does make more specific proffers that go to burdensomeness, the Attorney General is willing to consider them.¹⁷

Request Nos. 3 and 4

The Attorney General requested:

3. Documents sufficient to establish the basis for and the nature of the safety concern associated with any Product recall you have issued at any time including, without limitation, recall of the Glock Gen4 Pistol.
4. For any recall identified in response to Request No. 3, please provide documents sufficient to establish:
 - a. The number of Guns you manufactured that were subject to the recall, if applicable;
 - b. The number of cases of Ammunition that were subject to the recall, if applicable;
 - c. The number of complaints you received about the problem that formed the basis for the recall;
 - d. How the recall was publicized or made available to any person who does or who may own the Gun or Ammunition identified in the recall;
 - e. The repair or replacement program associated with the recall;
 - f. The number of Guns or the amount of Ammunition that was returned under the program established for the recall;

¹⁷ As noted above, the Attorney General also expressly offered in its June 27th letter to work with Glock to address its burdensomeness claim:

We are willing to consider Glock's position that one or more of our requests are burdensome or otherwise inappropriate under the law. To do that, we need more information about the specifics of Glock's objections. If the objection is based on burdensomeness, we need specific information about the ways in which the request is burdensome....

Exhibit 3, p. 2. This offer, too, was met with silence prior to the instant Petition (and Emergency Motion).

- g. The end date, if any, for any repair or replacement program associated with the recall;
- h. The number of Complaints you have received about the problem associated with the recall following the date on which the repair or replacement program for that recall ended.

Glock's relevance-based argument regarding these two Requests—apparently for being outside the timeframe from which the Attorney General may request information—fundamentally misconstrues the nature of the Attorney General's authority to request documents by CID. Glock would have this Court believe that the Attorney General is flatly precluded from obtaining documents prior to the “four-year statute of limitations for consumer protection claims,” while noting *in the very next paragraph* that “the design of Glock pistols have not changed since” 2004. (Pet. at ¶¶ 24-25.) Thus, by Glock's logic, documents in Glock's possession from four-years-and-one-day prior to the CID that relate to the safety of a firearm *still manufactured by Glock today and still sold within the Commonwealth today* would be beyond the scope of materials possibly relevant to the Attorney General's investigation. That is plainly wrong in that absent a change in design, to the extent a particular gun was recalled to address a safety problem but not presented for recall related repairs, it is potentially unsafe today, regardless of when the recall was issued.

“[T]he question is whether the documents sought are relevant to a *possible* violation of c. 93A.” *Harmon Law Offices, P.C.*, 83 Mass. App. Ct. at 837 (emphasis added). Here, the Attorney General has requested safety-related documents for guns that are still being manufactured and sold in the Commonwealth today. It is important for the Attorney General to know the nature of any safety recall and whether proper notice of the recall was issued.

Request Nos. 5 Through 10

The Attorney General requested:

5. Documents identifying each make and model of Gun that you have produced or which is in production as of July 1, 2016 for sale to members of the general public in the United States.
6. For each make and model of Gun that you identify in response to Request No. 5, documents sufficient to establish whether such make and model of Gun includes the following features:
 - a. A Load Indicator;
 - b. A built-in External Manual Safety;
 - c. If the Gun can or could be used with a detachable magazine, a Magazine Safety Disconnect.
7. For any make and model of Gun that you identify as having a Load Indicator pursuant to Request No. 6.a., documents that show the Load Indicator in its loaded and unloaded position.
8. For each make and model of gun identified in response to Request No. 5, provide documents sufficient:
 - a. To establish whether you tested its standard or typical Trigger Pull, and if so, documents sufficient to show the results of any such test; and
 - b. To show any statements you make or have made to the general public that state or describe its Trigger Pull.
9. For each make and model of gun identified in response to Request No. 5, provide
 - a. Documents showing all specifications you use or have used in connection with marketing, advertising or selling the gun;
 - b. Documents showing all warranty information for any warranty provided to purchasers of the gun;
 - c. Documents showing whether you have a warranty registration program or other system for identifying direct or indirect purchasers of the make and model of gun identified;
 - d. Documents showing the number of guns of that make and model sold in the United States in each of the last four calendar years;
 - e. Documents sufficient to show the names and addresses of any authorized dealer in Massachusetts;
 - f. Documents sufficient to identify the date of manufacture of your products based on their serial number.
10. If you ship any make and model of gun identified in response to Request No.5 with a locking mechanism, documents sufficient to show the manufacturer, model and type of locking mechanism.

Request No. 5 asks for a list of the makes and models of guns currently manufactured by Glock for sale to the public. For those guns, Requests Nos. 6 through 10 seek documents relating to, *inter alia*: (i) whether those guns include various specific safety-related features, (ii) any trigger pull testing conducted, (iii) marketing; (iv) warranties, (v) sales data, (vi) dealer information, and (vii) determination of manufacture date.

Glock suggests that each of these Requests is “futile” because “the Attorney General has previously determined in 2004 that Glock pistols do not contain a ‘Load Indicator,’ ‘External Manual Safety,’ and ‘Magazine Safety Disconnect’ under the Attorney General’s own definitions, and the design of Glock pistols have not changed since that time.” (Pet. at ¶ 25.) While it is hard to know what Glock means by “futile”, it is clear that the Attorney General should be allowed to determine if guns being sold in the Commonwealth meet regulatory requirements. That the Attorney General has a position, expressed through an enforcement notice issued by Attorney General Rcilly, about whether sale of Glock guns violate 93A, does not even begin to address the need for information about the Attorney General’s options to the extent that sales have already occurred. Certainly, it is relevant, for example, if Glock’s marketing materials assert that guns have safety features that they do not. It is hard to see how Glock would not then have direct liability under 93A for misrepresentation, rather than the retailer as Glock appears to assert. Similarly, requested warranty information goes to whether Glock has potential liability for gun defects for those guns that were sold in Massachusetts even if Glock itself did not make the sale.

Request Nos. 11 and 12

The Attorney General requested:

11. All legal complaints filed against you in any forum that relate to gun safety, warranty rights, product defects, accidental discharge, fraud, or unfair or deceptive practices.

12. If you have resolved any claim brought against you by a purchaser of one or more of your products, whether or not such claim is covered by a complaint identified in response to Request No. 11, provide all documents that describe, explain or relate to resolution of such claim.

Glock's objections to Request Nos. 11 and 12, couched in relevance terms but rooted in an erroneous assumption that the CID was not issued pursuant to a "valid investigation" (Pet. at ¶ 26), must fail for the reasons set forth above: the Attorney General has the authority to investigate and issue this CID. *See supra* at Section IV.A.

Glock's confidentiality argument relating to Request No. 12 similarly warrants no relief. Whether or not Glock "may have agreed with others to keep certain information confidential" is of no consequence, as "that agreement does not bind the Attorney General." *Bodimetric Profiles*, 404 Mass. at 158 & n. 6 (ordering production of individuals' personal physical data, including documents relating to individuals' blood tests, and noting "that the statutory structure of the C.I.D. mechanism helps protect the rights of ... the individuals at issue.")¹⁸

CONCLUSION

For the reasons set forth above, all relief on Glock's petition should be denied, the petition should be dismissed, and Glock should be instructed to respond to the Attorney General's properly issued CID.

¹⁸ Moreover, and as with Glock's other objections, the Attorney General expressed in its June 27th letter a willingness to work cooperatively with Glock to resolve this objection as well:

As we stated on July 14, 2016, we are willing to consider objections to CID Request No. 12 based on the confidentiality of settlement agreements on a case-by-case basis after understanding the nature of and basis for the claim. We are also willing to consider allowing you to redact information in the settlement agreements that are subject to a court-ordered protective order.

MAURA HEALEY, ATTORNEY GENERAL

By: 

Gary Klein (BBO #560769)

Dan Krockmalnic (BBO #668054)

Samantha Shusterman (BBO #689849)

Assistant Attorneys General

Consumer Protection Division

Office of the Attorney General

One Ashburton Place

Boston, Massachusetts 02108

617.963.2567 (Klein)

617.963.2432 (Krockmalnic)

617.963.2844 (Shusterman)

gary.klein@state.ma.us

dan.krockmalnic@state.ma.us

samantha.a.shusterman@state.ma.us

Dated: August 12, 2016