

Crime - City Suits

PHOTOCOPY
PRESERVATION

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DENNIS W. ARCHER,
Mayor of the City of Detroit and
CITY OF DETROIT, a
municipal corporation,

Plaintiffs,

Case No. 99 912 658 NZ
Hon. Dalton A. Roberson

vs.

ARMS TECHNOLOGY, INC., BERETTA
USA CORP., B.L. JENNINGS, INC.,
BROWNING ARMS CO., BRYCO ARMS,
INC., COBRAY FIREARMS, COLT'S
MANUFACTURING COMPANY, INC.,
DAVIS INDUSTRIES, FMJ (a/k/a
"FULL METAL JACKET"), GLOCK, INC.,
H & R 1871, INC., MKS SUPPLY,
INC., d/b/a HI-POINT FIREARMS,
INTERNATIONAL ARMAMENT CORP., d/b/a
INTERARMS INDUSTRIES, INC.,
KEL-TEC CNC INDUSTRIES, INC.,
LORCIN ENGINEERING COMPANY, INC.,
MOSSBERG & SONS, INC., NAVEGAR, INC.,
d/b/a INTRATEC USA, INC., PHOENIX
ARMS, RAVEN ARMS, INC., SMITH &
WESSON CORP., STURM RUGER & COMPANY,
INC., SUNDANCE INDUSTRIES, INC.,
S.W. DANIEL, INC., TAURUS INTERNATIONAL
MANUFACTURING, INC., ALEXANDER'S SPORT
SHOP, INC., a Michigan Corporation,
d/b/a ALEXANDER'S GUN SHOP AND GUN
RANGE, DEAN'S GUN SHOP, a Michigan
Corporation, DICK'S SPORTING GOODS,
a Michigan Corporation, GANDER MOUNTAIN,
a Michigan Corporation, GIBRALTAR TRADE
CENTER, INC., a Michigan Corporation,
J.S. SPORTING GOODS, a Michigan
Corporation, LORTZ, LTD., a Michigan
Corporation, d/b/a MIDWEST ORDNANCE,

COMPLAINT AND
DEMAND FOR TRIAL BY JURY

MOTOR CITY SPORTS, a Michigan Corporation, PAGO'S GUN SHOP, a Michigan Corporation, THE SPORTS AUTHORITY, MICHIGAN, a Michigan Corporation, and THE SPORTS AUTHORITY, INC., a Delaware Corporation,

Defendants.

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There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the Complaint.

COMPLAINT AND
DEMAND FOR TRIAL BY JURY

NOW COME the above-named Plaintiffs, by and through their attorneys, SAMUEL L. SIMPSON and DAVID W. CHRISTENSEN, of CHARFOOS & CHRISTENSEN, P.C., and PHYLLIS A. JAMES and JAMES D. NOSEDA, CITY OF DETROIT CORPORATION COUNSEL, complaining against the above-named

Defendants, and each of them, their agents, servants and/or employees, either real or ostensible, and say as follows

:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and compensatory and punitive damages brought by Plaintiffs alleging, inter alia, public nuisance and negligence against the Defendant manufacturers, distributors, and sellers of handguns and other firearms who have knowingly and deliberately, and for their own financial benefit, marketed and distributed guns in a manner that foreseeably injures the City of Detroit, its employees, and its residents.

SUMMARY OF THE CLAIM

2. Defendants manufacture, distribute and sell thousands of handguns and other firearms in a manner which ensures that those firearms will ultimately be purchased by criminals, youths or otherwise irresponsible people, for use in the commission of crimes. Defendants employ a careful strategy which couples manufacturing decisions, marketing schemes, and distribution patterns with a carefully constructed veil of deniability regarding particular point-of-sale transactions. Through this calculated strategy of willful blindness, Defendants exploit, rely upon, and help to maintain an active illegitimate secondary market in firearms. Defendants' conduct has imposed, and continues to impose, foreseeable, unreasonable, substantial, ongoing and permanent harm to the City of Detroit, its employees, and its citizens in the form of loss of, including

but not limited to, life, serious injury, law enforcement costs, emergency response costs and other damages.

3. Defendants' conduct constitutes a public nuisance in that it significantly interferes with the public's health, safety, welfare, peace, comfort and convenience, and because it is conduct which Defendants knew or should have known to be of a continuous and long-lasting nature that produces permanent and significant adverse effects on the City of Detroit, its employees, and its citizens. Defendants' conduct constitutes actionable negligence in that it violates Defendants' duty to the City of Detroit, its employees, and its citizens not to impose an unreasonable risk of foreseeable harm, and has thereby proximately caused harm.

4. A substantial number of handguns and firearms used to commit crimes in the City of Detroit, as throughout the country, are purchased or otherwise diverted from licensed dealers in a wide and ever changing array of schemes including sham or "straw" purchases, multiple sales, and diversion of corrupt dealers – designed to supply a steady stream of guns to an illegitimate secondary market of felons, juveniles, and other dangerous individuals who could not legally qualify to purchase guns on their own. Defendants not only know that this diversion takes place; they depend upon it. Defendants could dramatically reduce the flow of handguns and firearms to this illegitimate secondary market. They have chosen not to do so. Instead, these Defendants rely upon and exploit this secondary market as a steady and lucrative source of profit.

5. Defendants affirmatively rely upon the laxness of dealers and the ingenuity of criminals and other illegal purchasers to ensure that thousands of handguns and other

firearms find their way to their expected place in the illegitimate secondary market. In order to facilitate this strategy, Defendant manufacturers have erected a veil of deniability between themselves and the dealers. Defendants scrupulously avoid monitoring dealers. They are careful not to provide training or guidance to dealers. They do not curtail shipments to dealers who supply firearms to the illegitimate secondary market. Indeed, Defendants make little or no effort to ascertain which of their dealers are supplying guns to these illegal purchasers, including criminals and youths. What Defendants do know – what they depend upon and budget for – is that so long as they continue their strategy of willful blindness, thousands of profitable firearms will get to their expected illegitimate buyers and users.

6. Defendant dealers have negligently or intentionally acted to create and maintain the illegitimate secondary market. Many Defendant dealers make openly illegal sales without filling out required federal paperwork or conducting background checks on purchasers. Other defendant dealers conveniently look the other way while sales are made to straw purchasers or under circumstances where the dealer knows or should know the gun will thereafter be diverted into the illegal secondary market to unauthorized buyers who will use the guns in crime.

7. From the perspective of the Defendants, this strategy has been a resounding success. Producing and selling thousands of firearms for indirect but predictable sale on the illegitimate secondary market has been enormously lucrative. From the perspective of the City of Detroit and its citizens, the consequences of this strategy have been disastrous. Hundreds of lives are lost each year, and thousands more are injured or victimized, in crimes committed with the firearms supplied by the

Defendants in this fashion. Millions of dollars must be spent to investigate and prosecute these crimes, and millions more dollars must be spent on, including, but not limited to, emergency response and other costs responding to this crisis. Put simply, Defendants have adopted a strategy which allows them to sell thousands of firearms to unlawful and/or irresponsible purchasers at enormous economic and social costs to the City of Detroit and its citizens. Defendants have knowingly and unreasonably subsidized their lucrative business at Plaintiffs' social and economic expense.

8. As a result of the foregoing conduct, City of Detroit has suffered irreparable harm and has incurred financial harm, including significant expenses for additional police protection, overtime, emergency services, prevention work and other necessary facilities and services. The City of Detroit continues to suffer this harm.

PARTIES

9. The City of Detroit is a municipal corporation organized and existing under the laws of the State of Michigan. The City operates and funds City departments and instrumentalities which must address the impact of gun violence, such as the City of Detroit Police Department, the Emergency Medical Service, the City of Detroit Fire Department, City of Detroit Law Department, the 36th District Court and others.

10. Dennis W. Archer, as the Mayor of, and resident of, the City of Detroit, brings this action in his individual capacity as a taxpayer and in his official capacity as Mayor on behalf of the City of Detroit.

11. The following Defendants manufacture, distribute, and/or sell firearms that are found in the City of Detroit:

12. Defendant Arms Technology, Inc. ("Arms Technology") is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah. Arms Technology is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Arms Technology is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

13. Defendant Beretta U.S.A. Corp. ("Beretta") is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Maryland. Beretta imports firearms manufactured by Pietro Beretta Sp. A., a corporation organized and existing under the laws of Italy with its principal place of business in Italy. Beretta is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Beretta is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

14. B. L. Jennings, Inc. ("Jennings") is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in the State of Nevada. Jennings is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Jennings is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

15. Defendant Browning Arms Co. ("Browning") is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah. Browning is engaged in the business of manufacturing and selling firearms through

distributors to entities in Michigan, and in particular, the City of Detroit. As such, Browning is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

16. Defendant Bryco Arms, Inc. ("Bryco") is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada. Bryco is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Bryco is conclusively presumed to be doing business in the state and is hereby subject to the jurisdiction of Michigan's courts.

17. Defendant Cobray Firearms ("Cobray") is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in McCaysville, Georgia. Cobray is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Cobray is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

18. Defendant Colt's Manufacturing Company, Inc. ("Colt's") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut. Colt's is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Colt's is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

19. Defendant Davis Industries, Inc. ("Davis") is a corporation organized and existing under the laws of the State of California with its principal place of business in

California. Davis is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Davis is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

20. Defendant FMJ (a/k/a "Full Metal Jacket") is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business in Tennessee. FMJ is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, FMJ is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

21. Defendant Glock, Inc. ("Glock") is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in Georgia. Glock imports firearms manufactured by Defendant Glock GmbH, an Austrian corporation with its principal place of business in Austria. Glock is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Glock is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

22. Defendant H&R 1871, Inc. ("H&R") is a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business in Massachusetts. H&R is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, H&R is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

23. Defendant MKS Supply, Inc., d/b/a Bi-Point Firearms, Inc. ("Hi-Point") is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Ohio. Hi-Point is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Hi-Point is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

24. Defendant International Armament Corp. d/b/a Interarms Industries, Inc. ("Interarms") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Virginia. Interarms imports firearms manufactured by Defendant Carl Walther GmbH, a German corporation with its principal place of business in Germany. Interarms is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Interarms is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

25. Defendant Kel-Tec CNC Industries ("Kel-Tec") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. Kel-Tec is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Kel-Tec is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

26. Defendant Lorcin Engineering Co., Inc. ("Lorcin") is a corporation organized and existing under the laws of the State of California with its principal place of business in California. Lorcin is engaged in the business of manufacturing and selling firearms

through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Lorcin is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

27. Defendant Mossberg & Sons, Inc. ("Mossberg") is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in Connecticut. Mossberg is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Mossberg is conclusively presumed to be doing business in the state and thereby subject to the jurisdiction of Michigan's courts.

28. Defendant Navegar, Inc. d/b/a Intratec U.S.A., Inc. ("Intratec") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. Intratec is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Intratec is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

29. Defendant Phoenix Arms ("Phoenix") is a corporation organized and existing under the laws of the State of California with its principal place of business in California. Phoenix is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Phoenix is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

30. Defendant Raven Arms, Inc. ("Raven") is a corporation organized and existing under the laws of the State of California with its principal place of business in

California. Raven is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Raven is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

31. Defendant Smith & Wesson Corp. ("Smith & Wesson") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Massachusetts. Smith & Wesson is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Smith & Wesson is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

32. Defendant Sturm, Ruger & Company, Inc. ("Sturm Ruger") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Massachusetts. Sturm Ruger is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Sturm Ruger is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

33. Defendant Sundance Industries, Inc. ("Sundance") is a corporation organized and existing under the laws of the State of California with its principal place of business in California. Sundance is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Sundance is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

34. Defendant S.W. Daniel, Inc. ("S.W. Daniel") is a corporation organized under the laws of the State of Georgia, with its principal place of business in Atlanta, Georgia. S.W. Daniel is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan and in particular, the City of Detroit. As such, S.W. Daniel is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan courts.

35. Defendant Taurus International Manufacturing, Inc. ("Taurus") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. Taurus imports firearms manufactured by Forjas Taurus, S.A., a corporation organized and existing under the laws of Brazil with its principal place of business in Brazil. Taurus is engaged in the business of manufacturing and selling firearms through distributors to entities in Michigan, and in particular, the City of Detroit. As such, Taurus is conclusively presumed to be doing business in the state and is thereby subject to the jurisdiction of Michigan's courts.

36. Defendant Alexander's Sport Shop, Inc. (d/b/a Alexander's Gun Shop and Gun Range ("Alexander's")) is a corporation, organized and existing under the laws of Michigan, with its principal place of business in Detroit, Michigan, and at all relevant times, was conducting business in Detroit, Michigan.

37. Defendant Dean's Gun Shop is a corporation, organized and existing under the laws of Michigan, with its principal place of business in Taylor, Michigan, and at all relevant times, was conducting business in Taylor, Michigan. Upon information and belief, the sales of certain guns from this shop result in illegal distribution within the City of Detroit.

38. Defendant Dick's Sporting Goods is a corporation, organized and existing under the laws of Michigan, with its principal place of business in Taylor, Michigan, and at all relevant times, was conducting business in Taylor, Michigan. Upon information and belief, the sales of certain guns from this shop result in illegal distribution within the City of Detroit.

39. Defendant Gander Mountain is a corporation, organized and existing under the laws of Michigan, with its principal place of business in Taylor, Michigan, and at all relevant times, was conducting business in Taylor, Michigan. Upon information and belief, the sales of certain guns from this shop result in illegal distribution within the City of Detroit.

40. Defendant Gibraltar Trade Center, Inc. is a corporation, organized and existing under the laws of Michigan, with its principal place of business in Taylor, Michigan, and at all relevant times, was conducting business in Taylor, Michigan. Upon information and belief, the sales of certain guns from this shop result in illegal distribution within the City of Detroit.

41. Defendant J.S. Sporting Goods is a corporation, organized and existing under the laws of Michigan, with its principal place of business in Taylor, Michigan, and at all relevant times, was conducting business in Taylor, Michigan. Upon information and belief, the sales of certain guns from this shop result in illegal distribution within the City of Detroit.

42. Defendant Lortz, Ltd. d/b/a Midwest Ordnance ("Midwest") is a corporation, organized and existing under the laws of Michigan, with its principal place of business in Royal Oak, Michigan, and at all relevant times, was conducting business in Taylor,

Michigan, and Royal Oak, Michigan. Upon information and belief, the sales of certain guns from this shop result in illegal distribution within the City of Detroit.

43. Defendant Motor City Sports is a corporation, organized and existing under the laws of Michigan, with its principal place of business in Detroit, Michigan, and at all relevant times, was conducting business in Detroit, Michigan.

44. Defendant Pago's Gun Shop is a corporation, organized and existing under the laws of Michigan, with its principal place of business in Taylor, Michigan, and at all relevant times, was conducting business in Taylor, Michigan. Upon information and belief, the sales of certain guns from this shop result in illegal distribution within the City of Detroit.

45. Defendant The Sports Authority, Michigan, is a corporation organized and existing under the laws of Michigan with its principal place of business in Michigan, and at all relevant times, was conducting business in Dearborn, Michigan. Upon information and belief, the sales of certain guns from this shop result in illegal distribution within the City of Detroit.

46. Defendant The Sports Authority, Inc., is a corporation, organized and existing under the laws of Delaware, and at all relevant times, was conducting business in Michigan.

VENUE

47. Venue is proper in this court in that, at all times relevant to this action, all Defendants named herein conducted business in the City of Detroit, County of Wayne, State of Michigan.

48. The City of Detroit is a municipal corporation, organized under the laws of the State of Michigan.

49. The damages claimed by the Plaintiffs named herein occurred and continue to occur in the City of Detroit, County of Wayne, State of Michigan.

BACKGROUND

The Easy Availability of Firearms to Juveniles, Criminals, and Other Prohibited Purchasers and Users Causes Substantial, Ongoing Harm to The City of Detroit And Its citizens

50. Paragraphs 1 through 49 are repeated and realleged as if set forth herein.

51. The widespread availability and misuse of handguns and other firearms by juveniles, felons, and other unauthorized users is a national problem. In 1996, the most recent year for which statistics are available, more than 34,000 people were killed with firearms. Of these more than 14,300 were homicides. In addition, based on 1992 data, approximately 99,000 individuals are treated annually in hospital emergency rooms for non-fatal firearm injuries.

52. One of the most serious problems facing the City of Detroit, as with most major cities in the United States, is the high level of violent crime committed with firearms. For example, firearm homicides occurring in Wayne County totaled 463 in 1998, 483 in 1997, and more than 581 as recently as 1993. So far in 1999, more than 150 people have been killed by firearms in the County. The majority of these felonies were committed in the City of Detroit. For each of these fatal shootings, there are roughly three non-fatal shootings that require emergency room care.

53. Firearms are also used in numerous other crimes in the Detroit area. For example, in 1997, approximately 4,300 robberies and 4,465 assaults were committed with firearms within Detroit, or about 12 robberies and assaults a day.

54. The firearms crisis is particularly egregious in the way it strikes at youths. From 1992 through 1998, more than 1,550 youths, aged 16 and under, were shot in Detroit, for an average of about 220 children per year. More than 135 of these children were killed by gunfire. In 1997 and 1998 alone, more than 100 youths, aged 18 and under, were killed by gunfire in Wayne County. The majority of these killings occurred in the City of Detroit. One study indicated that from 1980 until 1988, the homicide rate for children ages 10 to 18 increased 252% in Detroit, accounting for 41% of all deaths to children in those years. The study also found that the tripling of the homicide rate in Detroit among 15-to-18 year olds was attributable almost exclusively to firearm deaths. Homicides are the leading cause of death among children in Detroit today.

55. This staggering total of gun violence and crime is fueled by the easy movement of handguns and other firearms from the legal marketplace to unauthorized and illegal users through an illegal secondary firearms market.

56. Surveys have consistently shown how easily juveniles and convicted criminals can obtain handguns. For example, a recent survey showed that approximately 29% of 10th grade boys and 23% of 7th grade boys have at one time carried a concealed handgun. A different survey of high school students and incarcerated juveniles reported that 32% of respondents asked adults to buy guns on their behalf. A survey of adult prisoners showed that 70% felt they could easily obtain a firearm upon their release.

57. Quick movement of guns occurs from the legitimate marketplace into the illegitimate marketplace. This is demonstrated by the short time between retail sale and criminal misuse for a significant percentage of firearms. ATF tracing data indicates that as many as 43% of firearms traced to crime in urban centers across America have been bought from retail dealers less than three years earlier, which is a strong indication that the firearm has been trafficked. In Detroit, this percentage was 38% in the most recent ATF report.

Defendants' Lax Distribution Practices Have Channeled Firearms Directly and Indirectly Into The Hands of Juveniles, Criminals, And Other Prohibited Purchasers And Users

58. The flow of Defendants' firearms into the unlawful market, and into the hands of unauthorized and irresponsible persons, including juveniles and convicted felons, has occurred in numerous ways, including but not limited to the below listed. Defendants knew or should have known of these methods of illegal diversion and could have taken action to control and prevent the diversion, but have deliberately chosen not to do so.

59. Thousands of guns have flowed into the unlawful market by a method of diversion called "straw purchasing", wherein the purchaser buys the gun from a licensed dealer for a person who is not qualified to purchase the firearm under federal and state regulations, such as a juvenile or a convicted felon. Indeed, in one recent law enforcement study, more than 50% of the firearms subject to firearm trafficking investigations had been acquired as part of a straw purchase. Many of these straw

purchases have occurred under circumstances which have indicated or should have indicated to the firearm seller that a "straw purchase" was being made.

60. Thousands more guns have been diverted into the unlawful market after first being part of multiple sales, wherein the purchaser buys more than one gun at a time or several guns over a short period of time from a licensed dealer with the intention of later selling or transferring the gun or guns to a person who is not qualified to purchase them under federal and state regulations, such as a juvenile or a convicted felon. Many multiple sales have occurred under circumstances which have indicated or should have indicated to the firearm seller that the handguns being purchased were destined for the unlawful market.

61. For many years, Defendants have sold thousands of guns to "kitchen table" dealers, i.e., federally licensed firearm dealers who do not sell firearms from a retail store. Many of these firearms dealers, although federally licensed, are corrupt, and have sold firearms without completing background checks on purchasers or complying with other reporting requirements. Recent reports of Detroit area crime guns discussed several cases wherein corrupt dealers had diverted hundreds of firearms to the criminal market. Unsupervised storefront dealers have also engaged in criminal diversions of firearms. Defendants have done nothing to curb these dealers or their illegal practices, but have instead continued to supply them with firearms.

62. Thousands of firearms have also reached the unlawful market after having been stolen from retail dealers and other federal firearm licensees who have failed to provide adequate security of their premises. Defendants, in turn, have failed to ensure that persons distributing their dangerous products have implemented adequate security

to prevent these foreseeable thefts. A 1992 ATF report discusses the theft of 194 firearms from a single federal firearms dealer that were later peddled on the streets of Detroit. A 1993 ATF Detroit-area study found that of 184 stolen guns recovered in crime, 74 were recovered in narcotics investigations, 57 were retrieved during an arrest for a weapons offense, and 34 were used in homicides, assaults, robberies or other violent crimes.

63. Thousand of handguns diverted to crime also have had their serial numbers obliterated to prevent tracing of the firearm by law enforcement. Such guns are more useful to criminals who seek to eliminate the tracks of their crimes. Defendants are aware of this problem and the ease with which serial numbers can be obliterated, but have taken no initiative to make their serial numbers tamper-proof. The recent 1997 ATF study of 27 major urban centers found, on average, that more than 11% of the guns traced to crime had obliterated serial numbers. Recent ATF studies of the Detroit area found similar percentages, and noted that some federal firearms licensees obliterate the serial numbers of all of their guns before resale.

64. Defendants' corrupt distribution practices are revealed by numerous case summaries of firearm dealers' and others' illegal firearm trafficking schemes, which are spelled out in gun trafficking studies conducted by ATF in the Detroit area. These studies provide examples of how the Defendants' willful blindness to the corrupt distribution practices of many local federal firearm licensees facilitates the easy flow of firearms from the legal marketplace to illegal possessors and purchasers, such as criminals and juveniles, who thereafter use the guns in crime in Wayne County and the City of Detroit. For example:

- a. Federal firearms licensee ("FFL") Steve Durham d/b/a All Gun Cleaning Services, provided hundreds of firearms to the most violent narcotics organizations in the Detroit area, many of which were used for murder and narcotics trafficking. Mr. Durham did not keep records of these illegal sales.
- b. FFL Boris Taylor d/b/a Bulls Eye Guns, diverted between 300-350 firearms over two years, many of which turned up in the hands of narcotics dealers, often with obliterated serial numbers. Mr. Taylor claimed his acquisition and disposition records were stolen.
- c. FFL Deon Ogletree d/b/a Dee's Sporting Goods, provided hundreds of firearms to some of the most visible and violent drug organizations in Wayne County through various schemes, including not having purchasers complete required federal forms.
- d. FFL Wilfred Hart d/b/a Hart's Firearm Sales, who falsified his FFL renewal form after being convicted of a felony, purchased and resold over 300 firearms between 1987 and 1990, many of which turned up with obliterated serial numbers.
- e. FFL McClinton Thomas Jr. d/b/a M-Q Firearms, ordered over 400 firearms in January 1990 from a wholesaler in Ohio and disbursed them onto the streets of Detroit without completing required federal forms. Many of these firearms were thereafter traced to crime in Wayne County.
- f. Between 1991 and 1992, an unnamed FFL in Southfield, Michigan, used two aliases to obtain federal licenses and used them to order and resell 1,400 firearms on the streets of Detroit. Serial numbers on a significant number of these guns were obliterated.

g. In October 1990, an unnamed Wayne County FFL was found to be knowingly selling firearms to convicted felons, one of whom purchased an AK-47 assault rifle in a straw purchase multiple sale that was thereafter used in a double homicide in Southfield, Michigan.

h. FFL Kenneth Powell, a "kitchen table" dealer in Detroit who was arrested in 1993, admitted that during the six years he had been an FFL, he never kept records on any of the several hundred firearm sales he made.

i. FFL Kevin James McClaren purchased and resold in excess of 300 firearms, most of them inexpensive small caliber weapons commonly picked up in crime in Detroit, without completing required federal paperwork.

j. FFL Roderick Strong of Detroit used a convicted felon to pick up firearms ordered from out-of-state wholesalers, then resold more than 125 guns without completing forms, most of them to a Detroit area party store.

k. In 1994, an FFL and four co-conspirators illegally sold over 500 handguns in the Detroit area, making up names of listed purchasers. More than 60 of these guns have been traced to crime in Wayne County.

l. Also in 1994, a Detroit FFL who sold more than 200 firearms without completing records, was arrested by ATF along with a multi-convicted felon to whom the FFL transferred guns.

m. In 1993, an unnamed Detroit FFL admitted to being the middleman for Detroit-area narcotics traffickers, purchasing and selling between 400 and 500 firearms illegally to them.

n. FFL Jonathan Hunters d/b/a John's Firearms readily made straw sales to undercover agents in July 1993.

o. In August 1993, a Detroit FFL allowed a juvenile with state juvenile charges pending against him to use his license to purchase several firearms. Several Lorcin .380 pistols with obliterated serial numbers picked up in Detroit were traced to this dealer.

p. In January 1993, Hazel Park, Michigan FFL Daniel Werkmeister used a middleman to sell new firearms directly on the streets of Detroit. Two narcotics traffickers who had purchased guns from the FFL were arrested for reselling the guns to other traffickers.

q. Detroit FFL Michael Caldwell d/b/a Photo-Guns was indicted for selling over 725 firearms on the streets of Detroit without completing paperwork. Some of these firearms have turned up in homicide investigations, a near-fatal shooting of a 12-year-old boy, and in several narcotics cases.

65. The above-referenced sampling of case summaries further substantiates Plaintiffs' claims that the Defendants named in this action knew or should have known that their negligent conduct as herein alleged was fueling an illegitimate secondary market for firearms that was likely to create unreasonable risks of foreseeable harm to the City of Detroit and its citizens.

66. The examples listed above are just some of the ways in which Defendants' products have fallen into the hands of unauthorized and irresponsible persons, including juveniles and convicted felons, and used in crime. A substantial percentage of crime guns recovered from these prohibited users are quite new and have most likely been

deliberately and illegally trafficked. Moreover, in more than two-thirds of the firearms trafficking investigations in one study, improperly transferred firearms were known to have been subsequently involved in additional crimes, a high percentage of which were violent crimes. Such criminal activity has injured City of Detroit and has injured and killed its citizens.

**Defendants' Business Practices Are Calculated To Exploit
The Illegitimate Secondary Market in Handguns and Firearms**

67. For many years, Defendants have knowingly participated in a national firearms market and should have expected that their production, marketing and/or distribution of handguns and other firearms would have consequences throughout the United States, including the State of Michigan and the City of Detroit.

68. Defendants knew and know that a substantial percentage of the firearms that they manufacture, distribute, and sell will ultimately be purchased by unauthorized and irresponsible persons, including juveniles and convicted felons, and used in the commission of crime.

69. Defendants earn millions of dollars of profit annually from the sale of handguns and other firearms through the illegitimate secondary market to unauthorized and irresponsible persons, including juveniles and convicted felons, for use in the commission of crimes.

70. Defendants plan manufacturing strategies based on the knowledge that a substantial percentage of the handguns and other firearms they manufacture, distribute

and sell will ultimately be purchased by unauthorized and irresponsible persons, including juveniles and convicted felons, for use in the commission of crimes.

71. Defendants have distributed their firearms without self-regulation or supervision in order to increase their sales, knowing that many of those firearms will be purchased by unauthorized and irresponsible persons, including juveniles and convicted felons, for use in the commission of crimes.

72. Defendants make business and accounting decisions based on the knowledge that they can depend upon the sale of thousands of handguns and other firearms through the illegitimate secondary market to unauthorized and irresponsible persons, including juveniles and convicted felons, for use in the commission of crimes.

73. Defendants have acted in concert, and/or have tacitly agreed or cooperated with respect to their failure or refusal reasonably to supervise, oversee, or control the retail firearms dealers and others who distribute their handguns.

**Defendants Have Adopted a Strategy of Willful Blindness
In Order to Ensure That They Are Able to Supply Handguns
and Other Firearms to the Illegitimate Secondary Market**

74. Defendants have adopted a calculated strategy of willful blindness to the regular, ongoing sale of handguns and other firearms in the illegitimate secondary market.

75. Defendants have distributed handguns and other firearms without adequate self-supervision and regulation.

76. Defendants knew or should have known that their distribution practices were unreasonably unsafe.

77. Defendants knew or should have known that by distributing handguns and other firearms without adequate self-supervision and regulation that they were creating, maintaining, or supplying the illegitimate secondary market in firearms.

78. Defendants have adopted no procedures to stem the flow of handguns or other firearms to the illegitimate secondary market.

79. Defendants have not conducted research, or reviewed existing research, which would allow them to better monitor and control the flow of handguns and other firearms to the illegitimate secondary market.

80. Defendants have failed to investigate or screen distributors or dealers through which they distribute and sell firearms.

81. Defendants do not terminate sales to or discipline distributors or dealers whom they know or should know have distributed handguns or other firearms either directly or indirectly into the illegitimate secondary market.

82. Defendants have avoided monitoring or supervising distributors or dealers through which they distribute and sell firearms to help prevent the flow of those guns into the illegitimate secondary market. Certain Defendants have, however, monitored dealers, out of a concern for profit, with respect to how they display Defendants' products, and the price at which they sell their firearms.

83. Defendants do not adequately train dealers through whom they distribute firearms, nor do the Defendants encourage their dealers to act lawfully and responsibly.

84. Defendants have known or should have known for many years that they sell firearms which are frequently used in crimes but make no meaningful efforts to supervise, regulate or impose standards on the distribution practices of either the distributors or the dealers who channel their guns to the public.

85. Defendants know, or reasonably should know, that there is an absence of meaningful regulation of firearm distributors and dealers and Defendants are aware of the ease with which persons can become a federally licensed firearms dealer. Defendants fail to supervise, regulate or set standards for distributors' or dealers' conduct, but instead rely upon the mere fact that distributors and dealers are licensed by state and federal governments.

86. Defendants choose not to supervise, regulate or standardize distributors or dealers because such a practice will limit and/or eliminate sales of their firearms to a significant illegal market and thereby reduce their sales.

87. Robert Haas, the former Senior Vice-President of Marketing and Sales for defendant Smith & Wesson, said the following in a sworn statement concerning gun manufacturers' failure to promote responsible practices by distributors and dealers:

The company [Smith & Wesson] and the industry as a whole are fully aware of the extent of the criminal misuse of handguns. The company and the industry are also aware that the black market in handguns is not simply the result of stolen guns but is due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal handgun licensees. In spite of their knowledge, however, the industry's position has consistently been to take no independent action to insure responsible distribution practices to maintain that the present minimal federal regulation of federal handgun licensees is adequate and to call for greater criminal enforcement of those who commit crimes with guns as the solution to the firearm crime problem . . . I am familiar with the distribution and marketing practices of the [sic] all of the principal U.S. handgun manufacturers and wholesale distributors and none of them, to my knowledge, take additional steps, beyond determining the possession of a federal handgun license, to investigate, screen or supervise the

wholesale distributors and retail outlets that sell their products to insure that their products are distributed responsibly.

88. Defendants, their agents, servants, and employees are individually and jointly negligent and careless in, among other ways:

- a. distributing and promoting firearms without adequate supervision and/or control;
- b. distributing, promoting, advertising, and marketing firearms in such a way that it was reasonably foreseeable that they would be acquired by unauthorized and irresponsible persons, including juveniles and felons;
- c. failing to or refusing to implement reasonable controls, standards and mechanisms to regulate the distribution of firearms;
- d. causing, permitting, and allowing firearms to be promoted, marketed, distributed, and disseminated to unauthorized and irresponsible persons, including young people incapable of appreciating the dangers and hazards of these products;
- e. failing or refusing to interview, screen, and investigate the background and business practices of the distributors and retail sellers of their firearms;
- f. failing or refusing to take reasonable efforts to ensure that their dangerous and hazardous firearms were not acquired by unauthorized and irresponsible persons, including juveniles and convicted felons.

89. Defendants could, through means within their control, help prevent firearms they make, sell, and/or market from directly or indirectly entering the illegitimate firearms market from which they are thereafter used in crime or other injurious conduct in the City

of Detroit. Defendants could engage in practices, including but not limited to, the following:

a. systematically monitor distributors and dealers, and published studies and reports, in order to ascertain how best to prevent the flow of firearms into illegitimate markets, and then implement preventive strategies;

b. stop supplying firearms to distributors who resell them to dealers without determining whether the dealer sells those firearms in a manner likely to lead directly or indirectly to their diversion into the illegitimate marketplace;

c. stop supplying firearms to dealers who resell them under circumstances where they knew or should have known the firearms would likely not be used for the purchaser's personal use or otherwise would likely not be used for legal purposes;

d. provide adequate training to firearms distributors and dealers and their salespersons through which they distribute to ensure compliance with federal, state, and local laws, and in order to ensure that dealers and their salespeople are able to identify those circumstances under which they should realize that the firearms will likely not be used for the purchaser's personal use or otherwise will likely not be used for legal purposes;

e. direct and encourage dealers to refuse to sell firearms under circumstances where the dealer knows or should know that the firearms will likely not be used for the purchaser's personal use or otherwise will likely not be used for legal purposes;

f. direct and encourage dealers to refuse to sell multiple firearms to any given purchaser during a given time period; and

g. establish a tighter and more direct distribution system in which manufacturers remain in control of the distribution of their lethal products.

**Defendants Knew or Should Have Known That
Their Conduct Causes Substantial, Ongoing Harm
to The City of Detroit and Its Employees and Citizens**

90. Defendants knew or should have known that the thousands of handguns and firearms Defendants distribute through the legal firearms market will be quickly and easily diverted to juveniles, felons, and other prohibited purchasers and thereafter used in crime, which causes substantial ongoing harm to the City of Detroit, its employees and its citizens. Defendants' actions and omissions set forth above unreasonably facilitate violations of federal and state laws, contribute to physical harm, fear and inconvenience to the City of Detroit's citizens, and are injurious to the public health and safety of those citizens.

91. All the Defendants have made or sold firearms that have been and continue to be recovered by the City of Detroit in connection with crimes in the City.

92. At all times relevant to this action, all Defendants named herein possessed actual or constructive knowledge that the citizens and police officers of the City of Detroit would foreseeably fall victim to death and serious injuries caused by their actions. It was also reasonably foreseeable that the City of Detroit would be forced to bear substantial economic and/or social expenses as a result of Defendants' negligent acts.

93. At all times relevant to this action, all Defendants named herein engaged in these activities, either individually or in concert with one another, and continued to do so with actual or constructive knowledge that the City of Detroit, in its role of providing protection and care for its citizens, would provide and/or pay for, by way of example and not limitation, police protection, emergency response and other necessary services due to the threat posed by the illegal use of Defendants' products after they were easily obtained by juveniles and convicted criminals. In addition, Defendants knew or should have known that the City would be harmed as a result of the injuries to its citizens and police officers resulting from the flow of Defendants' products into unauthorized users' hands, as well as by the loss of substantial tax revenue.

94. The harm to the City of Detroit and its employees and citizens by firearms violence, as alleged herein, is widely publicized and is a matter of common knowledge. Defendants have specific knowledge and information of that harm. Gang-related shootings and other shooting incidents are regularly reported in the *Detroit Free Press*, the *Detroit News*, and other media. This public information confirms that juveniles and convicted felons are obtaining and using firearms to harm the City of Detroit, its employees and citizens.

95. The fact that a substantial percentage of the firearms used to harm the City of Detroit and its employees and citizens by firearms violence are wielded by juveniles and criminals able to obtain guns quickly and easily through the legal firearms market is also publicized and is common knowledge within the firearms industry. For example, firearm tracing reports on crime guns prepared by ATF for Detroit and other urban centers across the United States are publicly available. Many of these reports have been

available to Defendants for years. Thus, defendants have specific knowledge and information of the fact that a substantial percentage of the firearms used to inflict the harm to the City of Detroit and its employees and citizens by firearms violence are obtained through the legal firearms market and thereafter diverted to unlawful purchasers and users. Moreover, Defendants are aware that the specific guns they have made and/or sold have been traced to crime because ATF has contacted them in conducting traces of crime guns.

Defendant Dealers' Conduct Causes Ongoing Harm to The City of Detroit

96. Defendant firearms dealers engage in numerous illegitimate sales practices, including selling firearms to straw purchasers whom they know or should know will transfer those firearms to juveniles, convicted felons, or others not lawfully able to purchase or possess those firearms, and who will thereafter likely use those weapons in crime.

97. Defendant firearms dealers also sell multiple firearms at once or within a short period of time to persons whom the dealer knows or should know will transfer those firearms to juveniles, convicted felons, or others not lawfully able to purchase or possess those firearms, and who will thereafter likely use those weapons in crime.

98. Defendant firearms dealers have consciously failed to take any action to prevent violations of law when City of Detroit citizens and others make multiple purchases of guns, or otherwise purchase guns in a manner that would make it plainly

foreseeable that the purchaser is not buying the weapons for himself, but instead for the use and/or possession of the weapon by a felon, youth or other irresponsible person. Defendant dealers are aware that these straw purchases and multiple purchasers are only one way in which guns are provided to persons who are not eligible to possess them or who do not wish to be identified as a purchaser of a firearm in official records, and who are likely to use the firearms that they obtain in the commission of crimes.

99. The Defendant firearms dealers have sold guns or continue to sell guns to City of Detroit citizens under circumstances where they know or should know that the guns, in reality, are being purchased for felons' use, or other irresponsible people who will use the guns for illegal purposes in the City of Detroit or transfer the guns to others who will likewise possess or use the guns illegally in the City, the County of Wayne or elsewhere. By so acting, the Defendant dealers have aided and abetted violations of Federal and State laws.

100. Defendant firearms dealers have actual and/or constructive knowledge that their practices have created and caused a large illegitimate market for firearms to flourish in the City of Detroit. City of Detroit citizens can easily obtain firearms through this illegitimate market in contravention of law.

FIRST COUNT
PUBLIC NUISANCE
(ALL DEFENDANTS)

101. Paragraphs 1 through 100 are repeated and realleged as if set forth herein.

102. The citizens of the City of Detroit have a common right to be free from conduct that creates an unreasonable jeopardy to the public health, welfare and safety and to be free from conduct that creates a disturbance and reasonable apprehension of danger to person and property.

103. Defendants' conduct, as fully alleged in this Complaint, constitutes a public nuisance in the City of Detroit because it is an unreasonable interference with common rights enjoyed by the general public.

104. Defendants' conduct, as fully alleged in this Complaint, is an unreasonable interference with common rights enjoyed by the general public in the City of Detroit because it significantly interferes with the public's health, safety, peace, comfort and convenience.

105. Defendants' conduct, as fully alleged in this Complaint, is an unreasonable interference with common rights enjoyed by the general public in the City of Detroit because Defendants knew or should have known their conduct to be of a continuous and long-lasting nature so as to produce a permanent and long-lasting significant negative effect on the rights of the public.

106. Defendants' ongoing conduct produces an ongoing nuisance, as thousands of firearms that they directly or indirectly supply to the illegitimate secondary firearms market which are thereafter illegally used and possessed in the City of Detroit will remain in the hands of persons who will continue to use and possess them illegally for many years. As a result of the continued use and possession of many of these firearms, citizens of the City of Detroit will continue to be killed and injured by these firearms and the public will continue to fear for their health, safety and welfare and will be subjected to

conduct that creates a disturbance and reasonable apprehension of danger to person and property. The City has a clearly ascertainable right to abate conduct that perpetuates this nuisance.

107. The presence of illegitimately possessed and used firearms in the City of Detroit proximately results in significant costs to the City in order to enforce the law, arm its police force, and treat the victims of firearm crime. Stemming the flow of firearms into the illegitimate firearms market will help to alleviate this problem, will save lives, prevent injuries and will make the City of Detroit a safer place to live.

SECOND COUNT
NEGLIGENCE
(ALL DEFENDANTS)

108. Paragraphs 1 through 107 are repeated and realleged as if set forth herein.

109. Defendants had a duty to the City of Detroit and its employees and citizens not to create an unreasonable risk of foreseeable harm.

110. Defendants' conduct, as set forth in paragraphs 1 through 107 of this Complaint, constitutes a breach of Defendants' duty to the City of Detroit and its employees and citizens not to create an unreasonable risk of foreseeable harm.

111. Defendants' conduct, as set forth in paragraphs 1 through 107 of this Complaint, proximately caused substantial, foreseeable harm to the City of Detroit and its employees and citizens.

112. Defendants' conduct, as set forth in paragraphs 1 through 107 of this Complaint, constitutes actionable negligence because it violates Defendants' duty not to

impose an unreasonable risk of foreseeable harm to the City of Detroit and its employees and citizens, and has thereby proximately caused substantial and foreseeable harm to the City of Detroit and its employees and citizens.

THIRD COUNT
ALTERNATIVE LIABILITY
(ALL DEFENDANTS)

113. In addition and in the alternative to individual liability, Plaintiffs allege that:
- a. All Defendants have acted tortiously;
 - b. Plaintiffs have been harmed by the conduct of one or more of the Defendants; and
 - c. Plaintiffs, through no fault of their own, may be unable to identify which Defendant or Defendants caused particular harms.

FOURTH COUNT
CONCERT OF ACTION
(DEFENDANT MANUFACTURERS AND DISTRIBUTORS)

114. Paragraphs 1 through 113 are repeated and realleged as if set forth herein.

115. At all times material to this action all Defendant manufacturers acted tortiously, as fully alleged herein, individually and/or in concert with one another, thereby proximately causing substantial and foreseeable harm to the City of Detroit and its employees and citizens.

FIFTH COUNT
EXEMPLARY DAMAGES
(ALL DEFENDANTS)

116. Paragraphs 1 through 115 are repeated and realleged as if set forth herein.

117. Defendants' conduct has been malicious, willful, and wanton, such as to demonstrate a reckless disregard for the rights of the City of Detroit and its employees and citizens.

PRAYER FOR RELIEF

WHEREFORE, the City of Detroit hereby requests trial by jury and that this Court adjudge and decree that Defendants are liable for creating a public nuisance, negligence, and other tortious conduct as asserted herein, enter judgment for the City of Detroit and against Defendants and award the City of Detroit the following:

- a. Allocated monetary damages attributable to each Defendant to compensate the City of Detroit for the costs that it bears as a result of Defendants' conduct, in excess of the jurisdictional requirements of this Court.
- b. Exemplary damages against each Defendant in an amount to reflect and compensate for the fact that Defendants' conduct has been malicious, willful, and wanton, such as to demonstrate a reckless disregard for the rights of the City of Detroit and its employees and citizens.
- c. Interest upon any judgment entered as provided by law.
- d. Costs of suit and attorneys' fees herein incurred.
- e. Any other legal or equitable relief the Court deems appropriate.

Respectfully Submitted,

CHARFOOS & CHRISTENSEN, P.C.

BY: _____

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DATED: April 26, 1999

DEMAND FOR JURY

NOW COME the above named Plaintiffs, by and through their attorneys,
CHARFOOS & CHRISTENSEN, P.C. and THE CITY OF DETROIT CORPORATION

COUNSEL and hereby make formal demand for a trial by jury of the facts and issues involved in this cause of action.

Respectfully Submitted,

CHARFOOS & CHRISTENSEN, P.C.

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THE PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,

by and through JAMES K. HAHN, City Attorney

of the City of Los Angeles, LEGRAND H. CLEGG
II,
City Attorney of Compton, and MICHAEL
JENKINS,
City Attorney of West Hollywood; and THE
GENERAL
PUBLIC by and through Legrand H. Clegg II,
City Attorney of the City of Compton, and John
Heilman,
Mayor of the City of West Hollywood

Plaintiffs,

ARCADIA MACHINE & TOOL, BRYCO ARMS,
DAVIS INDUSTRIES, LORCIN ENGINEERING
CO., INC., PHOENIX ARMS, RAVEN ARMS,
SMITH & WESSON CORP., STURM, RUGER &
COMPANY, INC., BERETTA U.S.A., PIETRO
BERETTA SP. A., COLT'S MANUFACTURING
CO.,
GLOCK, INC., TAURUS INTERNATIONAL
MARKETING, INC. SIGARMS, INC., B.L.
JENNINGS,
INC., NAVEGAR, INC. (D/B/A/ "INTRATEC"),
FULL METAL JACKET, INC., ARMS
TECHNOLOGY,
INCORPORATED, AMERICAN SHOOTING
SPORTS
COUNCIL, INC., NATIONAL SHOOTING
SPORTS
FOUNDATION, INC., SPORTING ARMS AND
AMMUNITION MANUFACTURERS INSTITUTE,
INC., TRADER'S SPORTING EXCHANGE,
and DOES 1-250,

Defendants.

**COMPLAINT FOR UNFAIR,
UNLAWFUL, AND DECEPTIVE
BUSINESS PRACTICES AND
PUBLIC NUISANCE; REQUEST
FOR CIVIL PENALTIES,
INJUNCTIONS
AND OTHER EQUITABLE
RELIEF**

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The People of the State of California, for a cause of action against Defendants, and each of them, allege as follows, upon information and belief:

INTRODUCTION

1. This action is brought on behalf of the People of the State of California against handgun manufacturers, distributors, and retailers and trade associations that most adversely impact Southern California. These Defendants design, market, promote, and supply handguns in a manner which facilitates the easy access of criminals to handguns and their use in crime, and also allows their operation by children with the resulting yearly toll of injury and loss of life in the Southern California communities of Los Angeles, Compton, and West Hollywood.
2. Defendants' conduct constitutes a pattern of unlawful and unfair business acts and practices, the basis upon which defendants have been unjustly enriched.
3. Defendants have also engaged in conduct which has created and maintained a public nuisance in Southern California, and specifically in Los Angeles, Compton and West Hollywood, by interfering with the comfortable enjoyment of life in these communities.
4. Defendants market, distribute, and promote handguns -- a dangerous instrument that is the primary tool for violent crime -- in a manner that facilitates their easy access and misuse by felons, minors under age 21, and other prohibited or unauthorized purchasers or users, who thereafter use those guns in crime. Defendants also design, market, distribute and promote handguns that fail to incorporate reasonable safety features, and over promote the purported self-defense and home protection benefits of handguns, in a manner that undercuts the minimal warnings or instructions provided by Defendants regarding safe storage of guns and results in the irresponsible storage and handling of guns as well.
5. Defendants' unlawful, unfair, and deceptive business acts and practices have had the effect of undermining federal, state and local gun laws and the public policies embodied in those laws. Defendants have unjustifiably enriched themselves through these practices, and have shifted the burden of the true costs of Defendants' products to the victims of gun violence and to the taxpayers. The resulting levels of shooting deaths and injuries in California and the entire nation exceed those in almost every other area of the world, impose enormous economic costs, and unreasonably interfere with the safety, health, well-being and quality of life of the People of the State of California.
6. As a result of the unlawful, unfair and/or deceptive business practices of Defendants thousands of California residents have died, suffered serious bodily injury, or been exposed to increased criminal

activity involving handguns.

7. Young people throughout the State and in cities including Los Angeles, Compton, and West Hollywood, are particularly vulnerable to gun violence. Handguns are the leading cause of death for young people ages 1-19 in California. 669 young people between the ages of 0-19 died as a result of firearms in 1996. Of these, 520 were homicides; 107 were suicides; 35 resulted from an unintentional shootings, and in 7 cases the reason for the killing could not be determined.

8. In Los Angeles, 136 young people aged 19 or younger were killed in 1997 and an additional 413 were hospitalized for firearms-related injuries.

9. In Compton, a city with a population of approximately 95,000, 16 young people aged 19 or younger were killed in 1997 and an additional 48 were hospitalized for firearms-related injuries.

10. In West Hollywood, a city with a population of approximately 37,000, 2 young people aged 19 or younger were hospitalized in 1997 for firearms-related injuries.

11. Homicides committed with handguns is the leading cause of firearms related injuries and death in California. In 1997 alone, there were 1,835 homicides committed with a firearm in California and over 25,000 firearms-related injuries. The vast majority of these deaths and injuries are attributable to handguns.

12. In the City of Los Angeles, in 1997 there were 374 firearms deaths caused by homicides, including 116 homicide deaths of Los Angeles residents under the age of 21. Additionally, in 1997 there were 1,119 hospitalizations related to non-fatal, homicide attempts.

13. In 1997, in Compton, there were 51 homicides, and 151 hospitalizations related to non-fatal, homicide attempts and in West Hollywood, eight residents were killed by handguns and there were nine hospitalizations for non-fatal firearms injuries.

14. In addition to homicides, handguns are also used in a significant number of other crimes. In 1998, for example, there were more than 13,000 crimes, including assaults and armed robberies, most of which were committed with handguns, of which a significant percentage were obtained and possessed illegally.

15. These statistics demonstrate the magnitude of the problem caused by Defendants' conduct.

16. In order to reduce the endless succession of handgun-related tragedies, Plaintiffs bring this action to enjoin the unlawful and unfair business practices of Defendants, to obtain disgorgement of Defendants' wrongfully-obtained monies, to collect civil penalties, and abate the nuisance caused by Defendants' conduct explained herein.

JURISDICTION AND VENUE

17. The authority of James K. Hahn, City Attorney of Los Angeles, Legrand H. Clegg II, City Attorney of Compton, and John Heilman, Mayor of West Hollywood, to bring this action is derived from common law and the statutory law of the State of California, specifically Business and Professions Code Sections 17200, 17203, 17204 and 17206 and Civil Code Section 3480 and Code of Civil Procedure Section 731.

18. Defendants, and each of them, at all times mentioned in this Complaint have transacted business within the cities of Los Angeles, Compton and West Hollywood and elsewhere throughout the State of California. The violations of law herein alleged have been committed in the cities of Los Angeles, Compton and West Hollywood and elsewhere throughout the State of California.

PARTIES

PLAINTIFFS

19. This action is brought on behalf of the People of the State of California by Los Angeles City Attorney James K. Hahn and Compton City Attorney Legrand H. Clegg II, pursuant to California Business and Professions Code Section 17204 and by West Hollywood City Attorney Michael Jenkins pursuant to California Business and Professions Code Section 17204, and California Code of Civil Procedure Section 731.

20. This action is also brought on behalf of the general public of the State of California by Compton City Attorney Legrand H. Clegg II and West Hollywood Mayor John Heilman, pursuant to California Business and Professions Code Section 17204.

DEFENDANTS

21. Defendants, and each of them, are sued individually as a primary violator and as an aider and abettor. In acting to aid and abet the commission of the unlawful, unfair and deceptive business practices complained of herein, each Defendant acted with the actual or constructive awareness of the wrongfulness of such practices and nonetheless rendered substantial assistance or encouragement to accomplishment of the wrongful practices and was aware of the overall contribution to the common course of wrongful conduct alleged herein.

22. Each Defendant was the agent and employee of each remaining Defendant, and was acting within the scope of such agency and employment in performing the acts herein alleged.

23. Whenever in this Complaint reference is made to any act or omission of a corporate Defendant, such allegation refers to the officers, directors, employees and agents of the corporate Defendant who did or do authorize such act or omission while actively engaged in the management, direction, operation or control of the affairs of the corporate Defendant, and while acting in the course and scope of their agency and employment.

24. The following Defendants, and each of them, manufacture handguns that have been wrongfully marketed, distributed, and sold in California (hereinafter referred to as the "Defendant Manufacturers"):

25. Defendant Excel Industries, Inc., a/k/a Accu-tek ("Accu-tek") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

26. Defendant Arcadia Machine & Tool ("AMT") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

27. Defendant Bryco Arms, Inc. ("Bryco") is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in California.

28. Defendant Davis Industries, Inc. ("Davis") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

29. Defendant Lorcin Engineering Co., Inc. ("Lorcin") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

30. Defendant China North Industries (a/k/a "Norinco") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

31. Defendant Phoenix Arms ("Phoenix") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

32. Defendant Raven Arms, Inc. ("Raven Arms") is a corporation organized and existing under the laws of the State of California, with its principal place of business in California.

33. Defendant Sundance Industries, Inc. ("Sundance") is a corporation organized and existing under the

laws of the State of California with its principal place of business in California.

34. Defendant Arms Technology, Inc. ("Arms") is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah.

35. Defendant Beretta U.S.A. Corp. ("Beretta U.S.A.") is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Maryland, and imports handguns manufactured by defendant Pietro Beretta Sp. A., a corporation organized and existing under the laws of Italy with its principal place of business in Italy.

36. Defendant Pietro Beretta Sp. A. ("Pietro Beretta") is a corporation organized and existing under the laws of Italy with its principal place of business in Italy.

37. Defendant B.L. Jennings, Inc. ("Jennings") is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada.

38. Defendant Browning Arms Co. ("Browning") is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah.

39. Defendant Carl Walther GmbH ("Carl Walther") is a corporation organized and existing under the laws of the Federal Republic of Germany with its principal place of business in the Federal Republic of Germany.

40. Defendant Charter Arms, Inc. ("Charter Arms") is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in New Jersey.

41. Defendant Cobray Firearms is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Georgia.

42. Defendant Colt's Manufacturing Company, Inc. ("Colt") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut.

43. Defendant FMJ (a.k.a. "Full Metal Jacket") is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business in Tennessee.

44. Defendant Forjas Taurus, S.A. ("Forjas Taurus") is a corporation organized and existing under the laws of Brazil with its principal place of business in Brazil.

45. Defendant Glock, Inc. is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in Georgia, and imports handguns manufactured by defendant Glock GmbH, an Austrian corporation with its principal place of business in Austria.

46. Defendant Glock GmbH is a corporation organized and existing under the laws of Austria with its principal place of business in Austria.

47. Defendant H&R 1871 Inc. ("H&R") is a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business in Massachusetts.

48. Defendant Heckler & Koch, Inc. ("Heckler & Koch") is a subsidiary of Heckler & Koch, GmbH, organized in the Federal Republic of Germany, with its principle place of business in Virginia. Defendant Heckler & Koch, GmbH, is a corporation organized and existing under the laws of the Federal Republic of Germany with its principal place of business in the Federal Republic of Germany.

49. Defendant High Standard Mfg., Inc. and existing under the laws of the State of Texas place of business in Texas.

50. Defendant MKS Supply Inc. d/b/a Hi-Point Firearms ("Hi-Point") is a corporation organized and

existing under the laws of the State of Ohio, with its principal place of business in Ohio.

51. Defendant Mossberg & Sons, O.F., is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Connecticut.

52. Defendant International Armament Corp. d/b/a Interarms Industries, Inc. ("Interarms") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Virginia, and imports handguns manufactured by defendant Carl Walther GmbH, a German corporation with its principal place of business in Germany.

53. Defendant Kel-Tec CNC Industries, Inc. ("Kel-Tec") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Florida.

54. Defendant Navegar, Inc. d/b/a Intratec U.S.A., Inc. ("Intratec") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida.

55. Defendant North American Arms, Inc. is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah.

56. Defendant Rohm GmbH is a corporation organized and existing under the laws of the Federal Republic of Germany with its principal place of business in the Federal Republic of Germany. 57. Defendant Sigarms, Inc. ("Sigarms") is a corporation organized in the State of New Hampshire, with its principal place of business in New Hampshire.

58. Defendant Smith & Wesson Corp. ("Smith & Wesson") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Massachusetts. 59. Defendant Star Bonifacio Echeverria, S.A. is a corporation organized and existing under the laws of Spain with its principal place of business in Spain.

60. Defendant Sturm, Ruger & Company, Inc. ("Sturm Ruger") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut.

61. Defendant S.W. Daniel, Inc. is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Georgia.

62. Defendant Taurus International Manufacturing, Inc. ("Taurus") is a corporation organized and existing under the laws of the State of California with its principal place of business in California, and imports handguns manufactured by defendant Forjas Tauras, S.A., a Brazilian corporation with its principal place of business in Brazil.

63. Defendant U.S. Repeating Arms Co., Inc. (a/k/a Westchester) is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Connecticut.

64. At all times relevant herein, DOES 1-100, inclusive were business entities, the status of which are currently unknown. DOES 1-100 manufactured handguns that are or were distributed, marketed, and/or sold within the jurisdictional limits of California (hereinafter referred to as part of the "Defendant Manufacturers"):

65. The following Defendants are industry trade associations (hereinafter referred to as the "Defendant Trade Associations") that are composed of handguns manufacturers, distributors, and sellers, including some or all of the Defendant Manufacturers:

66. Defendant American Shooting Sports Council, Inc. (hereinafter referred to as the "ASSC") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Georgia with its principal office in Georgia. ASSC is an industry trade association composed of handgun manufacturers and sellers, including some or all of the Defendant Manufacturers.

67. Defendant National Shooting Sports Foundation, Inc. (hereinafter referred to as the "NSSF") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut with its principal office in Connecticut. NSSF is an industry trade association composed of firearm manufacturers and sellers, including some or all of the Defendant Manufacturers.

68. Defendant Sporting Arms and Ammunition Manufacturers' Institute, Inc. (hereinafter referred to as the "SAAMI") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut with its principal office in Connecticut. SAAMI is an industry trade association composed of handgun manufacturers and sellers, including some or all of the Defendant Manufacturers.

69. At all times relevant herein, DOES 101-125, inclusive were business entities, the status of which are currently unknown. DOES 101-125 are industry trade associations (hereinafter referred to as the "Defendant Trade Associations"), which are composed of handgun manufacturers, distributors, and sellers, including some or all of the Defendant Manufacturers.

70. The following Defendants, and each of them, distribute and market handguns that are or were found within the jurisdictional limits of California (hereinafter referred to as the "Defendant Distributors"):

71. Defendant B.L. Jennings is a corporation organized and existing under the laws of

the State of Nevada with its principal place of business in Nevada. B.L. Jennings distributes guns made by Defendant Manufacturer Jennings in California.

72. Defendant Ellett Brothers is a corporation organized and existing under the laws of

the State of South Carolina with its principal place of business in South Carolina. Ellett Brothers telemarkets handguns nationwide, including in California.

73. Defendant International Armament Corp. d/b/a Interarms Industries, Inc.

("Interarms") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Virginia. Interarms imports and/or distributes handguns made by several different manufacturers, including defendant Carl Walther GmbH. Interarms distributes its products to at least 46 California dealers, which are identified on its internet site.

74. RSR Wholesale Guns, Inc. is a corporation organized and existing under the laws of

the State of New York with its principal place of business in New York. Based on information and belief, RSR Wholesale Guns, Inc., distributes firearms in California, including guns manufactured by defendant Taurus International Manufacturing, Inc.

75. Southern Ohio Gun Distributors is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Ohio. Based on information and belief, Southern Ohio Gun Distributors distributes firearms in California.

76. At all times relevant herein, DOES 126-200, inclusive were business entities, the status of which are currently unknown. DOES 126-200 distribute and/or market firearms that are or were found within California (hereinafter referred to as the "Defendant Distributors").

77. The following defendants, and each of them, distribute and market handguns that are or were found within the jurisdictional limits of California;

78. Defendant B & B Group, Inc., is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

79. Defendant Andrews Sporting Goods, Inc., is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

80. Defendant National Gun Sales, Inc., is a corporation organized and existing under the laws of the State of Florida with its principal place of business in California.

81. Defendant S. G. Distributing, Inc., is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

82. Defendant Hawthorne Distributors, Inc., is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

83. At all times relevant herein, DOES 201-300, inclusive were business entities, the status of which are currently unknown. DOES 201-300 distribute, market and/or sell handguns that are or were found within California (hereinafter referred to as the "Defendant Dealers").

84. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1-300. Plaintiff alleges that each of the fictitiously named Defendants is responsible in some manner for the violations herein alleged. Plaintiff will seek leave to amend this complaint to allege such names and capacities when such have been ascertained. All of the above-named Defendants, DOES 1-300, and the agents and/or employees of those Defendants, were responsible in some manner for the obligations, liabilities and violations herein mentioned, which were legally caused by the aforementioned Defendants and DOES 1-300.

GENERAL ALLEGATIONS

I.

HANDGUN-RELATED CRIME IS A NATIONAL PROBLEM THAT VICTIMIZES THOUSANDS OF CALIFORNIANS

85. The widespread availability and misuse of firearms by minors, convicted criminals, and other unauthorized users is one of the most serious problems facing this nation. In 1996, the most recent year for which final nationwide statistics are available, more than 34,000 people were killed with firearms. Of these, more than 14,300 were homicides and about 18,100 were suicides, with more than 1,100 deaths from unintentional shootings. In addition, based on 1992 data, approximately 99,000 individuals are treated annually in hospital emergency rooms for non-fatal firearm injuries, with about one-fifth of these for accidental shootings. Handguns cause most of these injuries and deaths. By comparison, in other industrialized nations, no more than a few hundred people are killed each year by handguns.

86. Statewide statistics for California reveal similar patterns of handgun violence. In 1997 alone, there were 1,835 homicides committed with firearms, the majority of which are handguns. In 1997, firearms were the predominant means of committing homicide, constituting 72.3% of total homicides. Handguns alone represented over 64% of the total homicides and 89% of firearm homicides. During the five-year period 1992 through 1997, handguns were used in over 62% of the total homicides. In addition, in 1997, there were over 25,000 incidents in California in which a victim suffered serious injuries from a firearm.

87. This pattern of handgun violence is repeated in Los Angeles as well. For example, in 1997 there were 502 firearm deaths, of which 303 were homicides. In Compton, in 1997, there were 56 firearms deaths, 51 of which were homicides, and in West Hollywood, there were 5 firearms deaths.

88. For each of these fatal shootings, there are roughly three non-fatal shootings that require emergency room care. Indeed, the Los Angeles City Fire Department responded to the scene of 1,365 firearm incidents in 1997 after 911 was called. Furthermore, there were 1,928 hospitalizations due to firearms, of which 676 were fatal.

89. These deaths and injuries are devastating for the individuals involved, for their families and communities, and for the State of California. Moreover, the pervasive threat of handgun violence affects the tenor and quality of everyday life, even for those who are not direct victims.

II.

THE HIGH LEVELS OF FIREARM CRIME IN CALIFORNIA ARE FUELED BY THE EASY AVAILABILITY OF HANDGUNS TO ILLEGITIMATE USERS

90. Defendants, and each of them, employ a two-tier distribution system to market handguns to the public. Through a two-tier distribution system, handguns flow from the manufacturer to distributor to dealer to purchaser. A two-tier distribution system facilitates, and, in fact, is designed to facilitate, handgun acquisition by persons not authorized or intended to use, sell or possess handguns, such as criminals and children. In short, it is an inappropriate manner to market a lethal product such as a handgun, since it encourages distribution to the broadest market possible without employing safeguards against the illegal sale and use of handguns by illegitimate users.

91. A substantial percentage of the handguns used to inflict harm and injury on California residents are obtained through the illegitimate secondary market created and promoted by the conduct of Defendants. That Defendants' acts and omissions have created and promoted the illegitimate secondary market is a matter of common knowledge to Defendants, as is demonstrated by the following sworn statement of Robert Haas, the former Senior Vice-President of Marketing and Sales for defendant Smith & Wesson:

"The company [Smith & Wesson] and the industry as a whole are fully aware of the extent of the criminal misuse of handguns. The company and the industry are also aware that the black market in handguns is not simply the result of stolen guns but is due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal handgun licensees. In spite of their knowledge, however, the industry's position has consistently been to take no independent action to insure responsible distribution practices, to maintain that the present minimal federal regulation of federal handgun licensees is adequate and to call for greater criminal enforcement of those who commit crimes with guns as the solution to the firearm crime problem. . . . I am familiar with the distribution and marketing practices of the [sic] all of the principal U.S. handgun manufacturers and wholesale distributors and none of them, to my knowledge, take additional steps, beyond determining the possession of a federal handgun license, to investigate, screen or supervise the wholesale distributors and retail outlets that sell their products to insure that their products are distributed responsibly."

92. National surveys demonstrate that minors and convicted criminals have easy access to handguns through the illegitimate secondary market. For example, a recent survey showed that approximately 29% of 10th grade boys and 23% of 7th grade boys have at one time carried a concealed handgun. Another survey showed that 70% of all prisoners felt that they could easily obtain a firearm upon their release. Similarly, a recent study of 27 cities by the federal Bureau of Alcohol, Tobacco and Firearms ("ATF"), which analyzed more than 75,000 firearm trace requests, reported that more than 11% of firearms picked up in crime in major urban centers throughout the United States were possessed by juveniles under age 18. In Los Angeles, the percentage of crime guns seized from juveniles was higher, at 13.4%. The same ATF study indicated that in the United States another 15% of crime guns were seized from persons 18-20 years old, more than from any other three-year age group, adult or juvenile. Moreover, ATF tracing of trafficked crime guns found that more than 45% of the weapons seized were illegally possessed by convicted felons. Large percentages of these guns have been used in assaults, robberies, homicides, and other violent crimes. More than 80% of the firearms seized in crime are handguns.

93. Despite these statistics, Defendants have not taken reasonable steps to keep handguns out of the

hands of minors. To the contrary, Defendants market their products in such a way that they appeal to minors. For example, one of the gun industry's leading trade associations, Defendant National Shooting Sports Foundation (NSSF), announced in 1992 a "new focus on women and youngsters." NSSF started a "Youth Education Program" in a search for new customers and expansion of the gun market. The September/October 1992 issue of NSSF's magazine S.H.O.T. Business carried a column by a noted celebrity in the industry, Grits Gresham, in which he said:

"There's a way to help insure that new faces and pocketbooks will continue to patronize your business: Use the schools [I]t's time to make your pitch for young minds, as well as for the adult ones."

94. The ease with which guns are moved into the illegitimate marketplace is also demonstrated by the short time between retail sale and criminal misuse for a significant percentage of firearms. ATF tracing data indicates that as many as 43% of firearms traced to crime in cities across America have been bought from retail dealers less than three years earlier, which according to ATF is a strong indication that the firearm has been trafficked. An ATF study of Southern California crime guns, including those picked up in Los Angeles, found that 31% of the guns traced had been purchased from a licensed dealer less than one year earlier. This same study noted that pistols were especially prone to quick turnaround: a third of the crime guns that were pistols were seized within one year of being purchased, and more than half were seized within two years.

III.

DEFENDANTS' CONDUCT HAS CREATED A DISTRIBUTION SYSTEM THAT FACILITATES AND SUPPLIES AN ILLEGITIMATE SECONDARY MARKET OF HANDGUNS

95. Defendants' marketing and distribution policies and practices facilitate, promote and yield high volume sales, widespread availability and easy access without any meaningful attention to or concern for the consequences.

96. Defendants know and have known for years that a substantial percentage of the handguns they manufacture, distribute, market and sell are purchased by unauthorized persons, including minors and convicted criminals. Many of the guns illegally sold in this market are subsequently used in the commission of crime. Defendants knew or should have known that their conduct would facilitate and encourage their handguns to fall into an illegal market and be used by unauthorized persons, and further, it was foreseeable that defendants' conduct would facilitate and encourage their handguns to fall into an illegal market and be used by unauthorized persons.

A. Over-Saturation of the Legitimate Market

97. Defendants produce, market and distribute substantially more handguns than they reasonably expect to sell to legal purchasers. There are about 65 million handguns in the United States, and about 2.5 million more are added each year. This sales volume is well in excess of the sales volume that can be supported by the legitimate market. A substantial percentage of these sales is diverted to the secondary market. By their actions, defendants thus knowingly participate in and facilitate the secondary market for handguns.

B. Over-Saturation of Weak Gun Control Jurisdictions

98. Handguns move from jurisdictions with relatively weak gun control laws to jurisdictions with stronger gun control laws. Defendants are aware of and profit from this illegal trafficking movement, yet do nothing to control or monitor sales in weak gun control jurisdictions to curb illegal trafficking of guns from those jurisdictions into more heavily regulated jurisdictions. To the contrary, Defendants eagerly sell as many handguns as are necessary to feed the secondary market in weak gun control jurisdictions.

As an example of this problem, Arizona and Nevada both border California and have weaker gun control laws than this State. According to ATF statistics, approximately 30% of the firearms traced in Southern California were originally sold at retail locations outside of California, principally Nevada and Arizona. Although this migration of handguns across state lines contravenes federal law as well as reduces the efficacy of California and local law, Defendants continue to facilitate and encourage this migration by oversupplying those jurisdictions with weak gun control laws.

C. Distributing Handguns Without Exercising Adequate Control

99. Defendants' unrestrained distribution practices maximize their sales without any check or precaution, and without placing effective controls on their distributors or dealers, which include disreputable gun shops, pawnshops, gun shows, and telemarketers. Although Defendants' distribution practices increase sales volumes and hence profits, they minimize contacts between Defendant manufacturers and their distributors and dealers, and prevent any meaningful monitoring of compliance with federal, state and local laws.

100. Defendants do not monitor or supervise their distributors or dealers, except in ways aimed at maximizing profits. Some Defendants have distribution agreements that provide for the right of termination, and occasionally have terminated or warned distributors or dealers. However, engaging in a dangerous sales practice that would make handguns easily available for potential criminal use has not been the basis for termination and is not included in the terms of the agreements. The only reasons contemplated for termination are: not maintaining minimum prices, advertising the price that the distributor pays to the manufacturer, or, in some instances, selling to law enforcement or making foreign sales. There is no mention of termination for selling to or facilitating the crime market.

101. Defendants do not require that their dealers and retailers be trained or instructed to: (1) detect inappropriate purchasers; (2) educate purchasers about the safe and proper use and storage of handguns, or to require any training or instruction; or (3) inquire or investigate purchasers' level of knowledge or skill or purposes for buying handguns. Defendant Manufacturers do not provide their distributors and retailers with any feedback, require their distributors to monitor or supervise their dealers, or train their distributors and dealers regarding the dangers and practices alleged herein.

102. Defendants purposely avoid any connection to or vertical integration with the distributors and dealers that sell their products. They offer high volume monetary incentives and generally refuse to accept returns, and they contractually attempt to shift all liability and responsibility for the harm done by their products to the distributors and dealers.

103. Defendants do not use available computerized inventory and sales tracking systems that are commonly and inexpensively used throughout American industry to limit and screen customers, particularly in industries that produce dangerous or harmful products.

104. Other manufacturers of dangerous or harmful products, including manufacturers of chemicals and paints, place restrictions and limits on the distribution, distributors, and dealers of their products to avoid known detrimental consequences. In sharp contrast, Defendants have completely failed and refused to adopt any such limits or to engage in even minimal monitoring or supervision of their distributors and dealers.

D. Facilitating Straw Purchases and Multiple Sales

105. Defendants do not limit, or require or encourage their distributors and dealers to limit, the number, purpose or frequency of handgun purchases, nor do they monitor or supervise their distributors or dealers to encourage practices or policies that limit access to handguns for criminal purposes. As a direct, foreseeable and known result of defendants' conduct, a large number of handguns are regularly diverted to the illegal market through "straw purchases."

106. A "straw purchase" occurs where the purchaser of the handgun as reflected in the governmental application forms is a "dummy" purchaser for someone else, most often a person who is not qualified to

purchase the handgun under the applicable federal, state and local laws. In some situations, the real purchaser will be present during the sale of the handgun. He or she may select the handgun, handle it and even provide the cash for the purchase. In other situations, for example in a straw purchase for a gang, the straw purchaser will purchase a number of handguns within a short period of time. In this situation, a straw purchaser may engage in repeated multiple handgun purchases.

107. Straw purchases account for a substantial percentage of handguns diverted into the illegal market. According to a recent study, more than one-half of the firearms subject to firearm trafficking investigations were initially acquired as part of a straw purchase. Another study, this one involving firearms seized by law enforcement officials in Southern California, revealed that more than 80% of the guns retrieved by law enforcement were in the possession of a person other than the original purchaser.

108. Similarly, the level of multiple sales is substantial. One recent law enforcement study of Southern California analyzed 5,743 instances of multiple sales over a nine-month period involving the purchase of 13,181 guns. A significant percentage of these transactions involved the purchase of three or more guns at a time. The report concluded that "[m]ultiple purchases seem relatively common in California, where there has been no set limit to the number of guns that a private person can purchase." More recent data indicates that as many as 22% of all handguns purchased in California in 1998 were part of multiple sales.

109. Although straw purchases often occur under circumstances that indicate or should indicate that a straw purchase is being made, Defendants take no steps to prevent these straw purchases from occurring or to limit the number of straw purchases that occur. For example, Defendants offer no training or guidance to enable the store clerk to recognize when a straw purchase is occurring. Similarly, Defendants undertake no remedial actions to prevent a known straw purchaser from continuing to make purchases. Defendant Manufacturers also fail to adequately supervise and monitor both their distributors and dealers with respect to straw purchases. Additionally, they do not investigate their distributors and dealers or review their records to determine whether straw purchases are occurring or the extent to which they are. Finally, Defendant Manufacturers fail to impose any sanctions, including possible termination of the relationship, upon their distributors or dealers upon learning that a straw purchase or a series of straw purchases has occurred.

E. Allowing Sales to "Kitchen Table" Dealers

110. "Kitchen table" dealers are handgun dealers who do not sell handguns from an established retail store but rather sell firearms in informal settings, including but not limited to a house, car, flea market, gun show, or even on the street. Many of these kitchen table dealers operate illegally, in violation of state and local licensing and zoning laws. Many of these dealers also engage in other corrupt practices, including but not limited to selling handguns without completing the appropriate and necessary background checks on the purchaser, failing to report sales, failing to keep records of sales, falsifying records of sales, obliterating serial numbers on firearms, and/or falsely claiming that sold guns were stolen. A recent report of Southern California crime guns discussed several cases where corrupt dealers had diverted well over 1,000 firearms apiece to the criminal market.

111. Defendants know or should know about the practices of kitchen table dealers set forth herein. Defendants have nevertheless sold thousands of guns to kitchen table dealers, without taking appropriate steps to reduce unlawful resale by such dealers. Such steps include but are not limited to supervising and monitoring such dealers, tracking crime gun trace requests relating to such dealers, reviewing dealer records for inaccuracies and falsified information, requiring distributors to resell guns only to dealers with a permanent store location, and requiring all dealers to maintain a permanent store location.

F. Designing Weapons Without Features to Discourage Unauthorized Use

112. Illegal handguns trafficking depends upon the ability of unauthorized users to operate weapons obtained from traffickers. Use of designs and features that preclude this ability, such as designs and features that prevent unauthorized use or facilitate tracking of handguns, would discourage trafficking and reduce the flow of weapons to the illegal market. Notwithstanding the availability and feasibility of

such designs and features, Defendants have continued to manufacture, distribute and sell handguns that do not include a design or feature preventing unauthorized.

113. Thousands of handguns diverted to crime also have had their serial numbers obliterated to prevent tracing of the firearm by law enforcement. Such guns are more useful to criminals who seek to eliminate the tracks of their crimes. Defendants are aware of this problem, and the ease with which serial numbers can be obliterated, but have taken no initiative to make their serial numbers tamper-proof. The recent ATF study of 27 cities found, on average, that more than 11% of the guns traced to crime had obliterated serial numbers. In Los Angeles, another study identified a single corrupt dealer in Southern California who obliterated the serial numbers on a major portion of 1,200 guns the dealer diverted to the criminal marketplace.

IV.

DEFENDANTS HAVE DESIGNED HANDGUNS TO APPEAL TO CRIMINALS AND HAVE INCREASED PRODUCTION TO MEET DEMAND FROM THE ILLEGAL MARKET

114. Over the last 20 years, Defendants have changed certain design features and the production output of handguns. Previously, most handguns produced were revolvers, with six bullets stored in a rotating cylinder that could not be reloaded quickly. Now most handguns are semi-automatic pistols with bullets stored in magazines. These pistols fire at a faster rate, and their magazines typically can be detached and replaced very quickly, allowing for sustained firing against multiple targets.

115. Many of the pistols produced by Defendants and many of the recent revolvers are increasingly smaller, easier to conceal, more powerful, and rapid-firing. Hence, these weapons are ever more lethal. Many are also considerably cheaper than in the past.

116. The production of cheap handguns was especially prevalent among Defendants AMT, Lorcin, Bryco Davis, Phoenix and Raven Arms. This group of California manufacturers are all within 45 miles of the City of Los Angeles and has been dubbed by a well-known researcher as the "Ring of Fire." The older, established companies, like Defendants Smith & Wesson, Sturm, Ruger & Co., and Colt, have followed the lead of the "Ring of Fire" companies, producing similar handguns, while also making more expensive models.

117. Defendants have increased the production of particular handguns that are popular for use by criminals. For example, over the past decade, during which the overall demand for handguns has declined, Defendants increased their production of 9-millimeter handguns although their own market research showed that the market for 9 millimeters among law-abiding purchasers was already saturated. Nine-millimeter handguns are popular in the illicit drug trade and, according to most national studies, are among the handguns used most frequently in crime. A recent study concluded that 9 millimeter handguns are the weapons of choice for criminals, accounting for almost a third of all homicides.

118. Defendants know or should know that they manufacture and market handguns, the design of which stresses concealability, lethality, or other design features, which make these handguns attractive to criminals. Defendants' emphasis on concealability is particularly problematic in California, because state law bans possession of a concealed weapon without a concealed carry permit, and few such permits have been issued.

V.

DEFENDANTS' CONDUCT UNDERMINES THE PUBLIC POLICY EMBODIED IN LOCAL, STATE AND FEDERAL LAWS

119. Federal, state and local firearm laws have been enacted in an effort to curb the abuses of gun violence and to protect the general public's health and safety. Despite the fact that all level of government have implemented statutes and/or ordinances to lessen the incidences of gun violence, Defendants have manufactured, designed, distributed, marketed and sold handguns in ways that undermine and frustrate the public policies embodied in both state and local law. The conduct and practices of Defendants as set forth herein have undermined and frustrated the restrictions, prohibitions, and public policies set forth in local, state and federal laws and regulations including, but not limited to: Title 18, United States Code Sections 921 - 930 *et seq.* (Chapter 44 - Firearms); California Penal Code Sections 12020-12040 *et seq.* (Chap. 1, Article 2 - Unlawful Carrying and Possession of Weapons); 12050 - 12054 *et seq.* (Chap. 1, Article 3- Licenses to Carry Pistols and Revolvers); 12070 - 12085 *et seq.* (Chap. 1, Article 4 - Licenses to Sell Firearms); 12200 -12250 *et seq.* (Chap. 2 - Machine Guns); 12270 -12290 *et seq.* (Roberti-Roos Assault Weapons Control Act of 1989); 12100 *et seq.* (Chap.1, Article 7 - Juveniles - Sale or Transfer of Concealable Firearm to Minor); 12500 -12520 *et seq.* (Chap. 5, Articles 1 and 2 - Unlawful Possession of Firearm Silencers/Misc.); 12800 - 12809 *et seq.* (Chap. 6, Article 8 - Basic Firearms Safety Instruction and Certificate); Los Angeles Municipal Code ("LAMC") Section 45.01.Firearms -Sale to Minors; LAMC - Public Safety and Protection Section 55.00, Guns - Permits; LAMC Section 55.01, Concealed Weapons - Permit; LAMC Section 55.05, Assault Weapons - Sale or Possession Prohibited; LAMC Section 103.314. Seller of Firearms (Prohibition on Sale of Saturday Night Specials).

120. For example, the California Roberti-Roos Assault Weapons Control Act of 1989, California Penal Code sections 12275 -12290, and the United States 1968 Gun Control Act, 18 U.S.C. 925 *et seq.*, ban the importation, manufacture, sale, and possession of "assault weapons," which includes handguns. As the California legislature found and declared, this ban is based on the conclusion that such assault weapons "are particularly dangerous in the hands of criminals and serve no necessary hunting or sporting purpose for honest citizens." The ban enacted by the California legislature explicitly applies to both listed weapons and "any other models which are only variations of those weapons with minor differences, regardless of manufacturer."

121. Despite this statute, Defendant Navegar has marketed and sold in California assault weapon handguns substantially similar to or identical to the one banned by the statutes. In fact, Defendant Navegar has made only minor modifications to the banned assault weapon handguns or renamed the ones enumerated in the above-referenced statutes in order to avoid these laws. For example, after the California legislature banned the TEC-9 assault weapon, defendant Navegar continued to distribute and sell the identical assault weapon handgun in California under the name "TEC-DC9." Navegar later distributed and sold a handgun under the name "TEC-DC9" that was the same design as the banned TEC-9, with only cosmetic modifications. At all relevant times, Defendant Navegar has been on notice of the lethal consequences of this practice. Navegar's assault weapon handguns have frequently been used in multiple homicides, including the 101 California Street massacre in which a gun man killed eight and injured six law firm employees at a San francisco office building.

122. Additionally, numerous local ordinances prohibit the sale of "junk guns" or "Saturday Night Specials," including but not limited to ordinances adopted by the City of Los Angeles, Los Angeles Municipal Code Chapter X, Article 3, Section 103.314 and West Hollywood Municipal Code Section 4122. The "Saturday Night Special" ("SNS") ordinances enacted in over 40 jurisdictions throughout California were designed to protect the public from poorly made, easily concealable handguns. These handguns have been and continue to be used frequently in the commission of crimes. Notwithstanding these ordinances, certain Defendants unlawfully market, distribute or sell prohibited "Saturday Night Specials" adjacent to jurisdictions banning such sales.

VI.

DEFENDANTS HAVE FAILED TO INCORPORATE FEASIBLE AND EXISTING SAFETY TECHNOLOGY INTO THE DESIGN AND DISTRIBUTION OF FIREARMS

A. Adequate Warning and Safety Features Would Prevent Many Unintentional Shootings

123. Defendants, and each of them, contribute to the serious harm inflicted on Los Angeles residents and citizens throughout the State, by failing to adequately warn users and to incorporate feasible and existing safety technology into the design of handguns, which would prevent shootings and their unauthorized use.

124. Defendants, and each of them, have designed, manufactured, made or sold handguns that are defective because they lack basic safety features and contain inadequate warnings that result in unintentional shootings. Defendants continue to distribute their handguns without adequate warnings and instructions that inform the users of the risks of guns, including proper storage and use of the weapons, even though it is known or should be known by Defendants that approximately half of California residents who keep a firearm at home, a substantial percentage of which includes children, store their guns in an unsafe manner. Defendants also over-promote the purported self-defense and home protection benefits of their guns, in a manner that undercuts any warnings or instructions regarding safe storage of guns, and which results not only in irresponsible people possessing guns, but in the irresponsible storage and handling of guns as well. Despite this knowledge, Defendants market and promote their handguns in a manner that ignores or understates the risks that such handguns pose to their owners and to other members of the household. Defendants' marketing practices encourage unsafe storage practices and unsafe use of their products.

125. Defendants also manufacture, distribute and sell handguns that are defective and dangerous in that their design lacks safety features or contains inadequate safety features. For example, it was and continues to be foreseeable and known by Defendants that users of semi-automatic handguns would not understand or appreciate that an undetectable round of ammunition may be housed in the firing chamber of a semi-automatic gun even though the ammunition magazine had been removed or emptied. Consequently, it was and continues to be reasonably foreseeable that this hazardous design would result in preventable, unintentional shootings. This hazardous design could be easily corrected through the use of a "magazine-disconnect safety" that would prevent the gun from firing with the magazine removed. These tragic, foreseeable shootings could also be prevented by use of "chamber loaded indicator" that would warn a user when a bullet was in the firing chamber. Defendant Manufacturers have failed to incorporate such devices into their firearms.

126. The unsafe design of Defendants' guns results in 1,400-1,500 unintentional shooting deaths and over 18,000 non-fatal injuries from unintentional shootings every year. The U.S. General Accounting Office estimates that each year, 23% of the unintentional shooting deaths occur because the user of the gun was not aware that a round of ammunition had been loaded into the gun's firing chamber. This results in as many as 320 to 345 deaths nationwide each year. For each of these deaths, there are countless other unintentional shooting injuries that are not fatal.

127. Unintentional shootings with Defendants' unsafe handguns often involve adolescents. Adolescents are foreseeably attracted to guns and typically do not understanding the risks associated with handling a firearm. According to the U.S. General Accounting Office, approximately 35% of all unintentional shooting deaths involve users of guns who were between the ages of 13 and 16. Many such shootings have occurred in the State of California.

128. A number of these preventable shootings have occurred in Los Angeles. For example:

- August 1998 - A 23-year-old man in Pacoima was shot and killed by his 4-year-old neighbor who found the gun under a bed and thought it was a toy.
- February 1998 - A 12-year-old girl in Wilmington committed suicide with a handgun she obtained from an unknown source.
- July 1997 - A 3-year-old boy in Southwest Los Angeles accidentally shot himself with a handgun he found in his home.
- December 1995 - A 13-year-old Rowland Heights girl was severely injured by her 14-year-old brother when accidentally shot with a handgun he was playing with.

- September 1994 - A 14-year-old was shot in the head by a 12-year-old friend in Van Nuys. The shooter found the .38 caliber revolver and believed the gun to be unloaded when he fired it.
- January 1993 - A 15-year-old student at Fairfax High School was playing with a gun in his backpack when it fired, injuring one classmate and killing another. The gun was taken from the shooter's home where his grandfather kept it for protection.
- January 1990 - A 15-year-old Pacoima boy accidentally shot and killed his neighbor while handling a 9mm semi-automatic pistol he believed to be unloaded.

129. Defendants have failed to take reasonable steps to guard against such foreseeable unintentional shootings by designing their handguns with basic safety features and giving adequate warnings that would prevent or reduce such unintentional shootings. Defendants were aware of, and had available to them, devices, features, warnings, and other measures, which would prevent and decrease the dangers of their products. Defendants failed to remedy the deficiencies in their guns, or warnings, instructions, promotions and advertisements of the handguns. Defendants further failed to adequately warn customers of these dangers, failed to inform distributors, dealers and buyers of available devices and measures that could prevent or decrease these dangers, failed to incorporate safety devices and features into their handguns and discouraged the development and implementation of safety devices and features into their handguns. Defendant Trade Associations failed to adopt adequate guidelines or standards relating to the development and inclusion of such features in handguns. Defendants knew or should have known that, as a consequence of their actions, California residents have been and will continue to be killed or seriously injured.

B. Personalized Safety Technology Would Prevent Access to Firearms by Unauthorized Users

130. The unsafe and defective design of Defendants' handguns results in thousands of shootings each year by persons who are not authorized by law, or by reason of immaturity or other disability, to possess a handgun. Such shootings often occur when an adolescent or a criminal improperly obtains possession of a firearm.

131. Adolescent homicides and suicides are usually committed with a handgun that the adolescent has obtained from his or her home. In California, millions of minors live in homes where handguns are present. Studies have indicated that the odds that potentially suicidal minors will kill themselves double when a gun is kept in the home. Moreover, for many years, a youth aged 10-19 has committed suicide with a firearm at a rate of about once every six hours. Firearms are used in 65% of male teen suicides and 47% of female teen suicides. Among 15-19 year-olds, firearm-related suicides have been estimated to account for 81% of the increase in the overall rate of suicide from 1980-1992. In California, in 1996, there were 107 suicides of youth aged 19 and below.

132. At all pertinent times, it was reasonably foreseeable that Defendants' handguns would fall into the hands of unauthorized users. There are guns in approximately one-half of the homes in this country. One survey reports that 30% of gun-owners who have minors in the home keep their guns loaded. Another survey reports that 36% of gun owners with minors in the home keep their guns unlocked. The Federal Centers for Disease Control and Prevention estimates that 1.2 million elementary-aged, latchkey children have access to guns in their homes. Moreover, nearly 60% of juveniles between the ages of 10 and 19 have responded in surveys that they can acquire a handgun should they want one. 133. At all pertinent times, Defendants have also been aware, or should have been aware, that when unauthorized users gained access to Defendants' handguns, tragic and preventable shootings would result. Many teen suicides and shootings by minors and other unauthorized users could be prevented had Defendants cared to implement safer handgun designs, including personalized handgun technology that would prevent an unauthorized user from being able to fire the handgun. The Defendants further knew that by failing to make and sell handguns with the means to prevent their firing by unauthorized users, it was reasonably foreseeable that handguns stolen from private residences, gun stores and other locations could be employed by unauthorized users in violent criminal acts.

134. A study by the Johns Hopkins University School of Hygiene and Public Health's Center for Gun Policy and Research concluded that "[p]ersonalized handguns can eliminate many deaths and injuries by preventing the unauthorized firing of the firearm. . . . [and] can be especially effective in preventing

teenage [deaths], unintentional deaths and injuries of children, and shootings of police officers."

135. Defendants' dangerous and unsafe products have repeatedly victimized California residents. At the time the Defendants manufactured, distributed, marketed, designed, promoted and/or sold their handguns, Defendants knew or should have known of the dangers of their handguns, including those described herein. Defendants were also aware of, and had available to them, personalized safety features, warnings, and other measures, which would prevent and decrease the dangers of their products. Defendant Manufacturers nevertheless failed to remedy the deficiencies in their handguns. Defendant Manufacturers further failed to incorporate personalized safety features into their handguns and discouraged the development and implementation of personalized safety features. Defendant Trade Associations similarly failed to adopt adequate guidelines or standards relating to the development and inclusion of such personalized safety features in handguns. Defendants knew or should have known that, as a consequence of their actions, California residents would be killed or seriously injured.

C. Defendants Have Failed to Compete to Develop Firearms with Personalized Safety Technology

136. A handgun with personalized safety features sufficient to prevent or significantly reduce the risk of unauthorized use would have obvious appeal to a large segment of the legitimate handgun market. Despite this market appeal, Defendant Manufacturers have failed to compete with each other to develop and market handguns with such safety features.

137. Defendant Trade Associations have likewise discouraged the development of such safety features. For example, Defendant SAAMI holds itself out to the public as having been, since 1926, "the principle organization in the United States actively engaging in the development and promulgation of product standards for firearms and ammunition." Although SAAMI has promulgated numerous product standards for the firearms industry, it has failed to develop any standards relating to personalized safety devices.

138. Instead of encouraging Defendant manufacturers to develop safer products and distribution practices, defendant Trade Associations have in the past sought to discipline industry members who attempted to address safety issues. For example, when Defendant Smith & Wesson was faced in 1976 with a public outcry that might have resulted in a ban of most handguns in Massachusetts, Smith & Wesson announced that, as an alternative, it would support screening and registration of handgun owners. For this breach of industry policy, Smith & Wesson faced censure or ouster from SAAMI. To avoid possible action by SAAMI, Smith & Wesson for a time withdrew from SAAMI, then conformed its proposals and positions to industry policies.

VII.

DEFENDANTS' UNFAIR, FALSE, DECEPTIVE

AND/OR MISLEADING STATEMENTS UNDERMINE

MINIMUM WARNINGS ON PROPER STORAGE OF HANDGUNS

139. For years, and continuing to date, Defendants have misled, deceived and confused members of the general public in California regarding the safety of handguns and the need for firearms within the home. To increase sales and profits, Defendants have falsely and deceptively claimed through advertising and promotion of their handguns that the ownership and possession of handguns in the home increases one's security. For example, handgun manufacturers have promoted handguns with slogans such as "homeowner's insurance," "tip the odds in your favor," and "your safest choice for personal protection." Research demonstrates that, to the contrary, handguns actually increase the risk and incidence of homicide, suicide and intentional and unintentional injuries to gun owners and their families and friends. Defendants' over-promotional efforts have negated and undercut any warnings they have provided regarding the risks of handguns in the home.

140. Defendants have made these false and deceptive statements even though they knew and/or should

have known that studies and statistics demonstrate that the presence of handguns in the home increase the risk of harm to firearm owners and their families, as set forth in the following statistics:

- a. One out of three handguns is kept loaded and unlocked in the home;
- b. Studies that control for the relevant variables have demonstrated that the homicide of a household member is almost three times more likely in homes with guns than in homes without them, suicide is five times more likely; and for homes with teenagers, a suicide is ten times more likely;
- c. Studies have also shown that a gun in the home is at least 22 times more likely to kill or injure a household member than it is to kill or injure an intruder in self defense;
- d. A firearm is used for protection in fewer than two percent of home invasion crimes; and
- e. For every time a gun in the home was used for self-defense or a legally justifiable shooting, there were four unintentional shootings, seven criminal assaults or homicides, and eleven attempted or completed suicides.

141. Defendants' advertising and promotion activities deceptively convey the message that possession of a handgun, along with the enhanced lethality of particular handguns, will increase the personal safety of the owner and owner's household. Defendants fail to include any information or warning about the relative risk of keeping a handgun in the home. By failing to disclose such risks, the advertisements and promotions fail to correct a material misrepresentation in the minds of many consumers.

142. The U.S. Commission on the Causes and Prevention of Violence in a 1968 article entitled "Handguns and Violence in American Life," noted an increasing number of firearm deaths and injuries and concluded:

[Americans] may seriously overrate the effectiveness of guns in protection of their homes. In our urbanized society the gun is rarely an effective means of protecting the home against either the burglar or the robber . . . [A gun in the home] provides a measure of comfort to a great many Americans, but, for the homeowner, this comfort is largely an illusion bought at the high price of increased accidents, homicides, and more widespread illegal use of guns When the number of handguns increases, gun violence increases. (Pages xiii, 139.)

143. In California, a substantial number of deaths and injuries have occurred each year because handguns were purchased for home protection but were thereafter used in unintentional shootings, teen suicides, domestic disputes and other acts of violence as set forth herein. Defendants choose to disregard these well-known statistics and data in an effort to promote their firearms as security or "insurance" for the home, and to increase their sales and profits.

144. Moreover, although Defendants state publicly that they seek to preclude minors and criminals from possessing handguns, they in fact are engaging in practices that facilitate the illegal possession of handguns by minors and criminals through the secondary market. Defendants then utilize the threat posed by the criminal misuse of handguns -- a threat that their own practices have helped to create - to market and sell more handguns to the "home protection" market.

VIII.

DEFENDANTS HAVE PROFITED FROM THEIR UNFAIR, UNLAWFUL OR FRAUDULENT BUSINESS PRACTICES AT THE EXPENSE OF CALIFORNIA AND ITS RESIDENTS

145. Defendants' practices have contributed to the overall success and profit for the \$2 - \$3 billion firearm industry. Defendants, and each of them, knew or should have known that the thousands of handguns distributed through the illegitimate secondary market cause substantial injury and harm to California residents. Defendants' actions and omissions set forth herein facilitate violations of federal, state and local laws or negate and undermine the public policies established by those laws, contribute to physical harm, fear and inconvenience to California residents, and are injurious to the public health, well-being and safety of California residents, and in general contribute to the degradation of the quality of life of communities throughout the State of California. Defendants' conduct has directly and indirectly injured and harmed California residents in the form of loss of life, injury, increased criminal activity involving handguns, law enforcement costs, medical costs and emergency response costs. Defendants' conduct has allowed Defendants to profit from their unfair, unlawful and fraudulent business practices thereby contributing to Defendants' overall financial success and vitality at the expense of California and its residents.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200

ET SEQ. FOR UNLAWFUL, UNFAIR OR FRAUDULENT BUSINESS PRACTICES

(Supplying Firearms To An Illegitimate, Illegal Secondary Market)

BY PLAINTIFF THE PEOPLE AGAINST DEFENDANTS AND DOES 1-300

146. Paragraphs 1 through 145 are repeated and realleged as if set forth herein.

147. Within the four years preceding the filing of this Complaint, Defendants, and each of them, individually and in concert, have engaged in unfair business practices within the meaning of Business and Professions Code Section 17200. These acts of unfair competition have caused handguns to be distributed to an illegal market of users and additionally have resulted in intentional and accidental shootings by unauthorized users. In particular, these acts of unfair competition include, but are not limited to, the following:

148. Defendants, and each of them, have distributed, promoted, advertised, sold and marketed handguns using practices that encourage sales to unauthorized users, including minors and criminals;

149. Defendant Manufacturers and Distributors, and each of them, sell their handguns without adequately screening, supervising, monitoring or regulating their employees, distributors and dealers;

150. Defendant Manufacturers and Distributors, and each of them, sell their handgun without adequately training, instructing, advising or setting standards for distributors and/or dealers of handguns, regarding how to legally and responsibly sell handguns;

151. Defendant Manufacturers and Distributors, and each of them, have continued to make sales to distributors and dealers, even though they knew or should have known that such distributors and dealers had distributed handguns to illegal purchasers and the illegitimate secondary market;

152. Defendants, and each of them, knew or should have known that their distribution practices were unsafe, however, but despite this knowledge defendants have failed to change their practices or to adopt procedures to curb the flow of handguns to the illegitimate secondary market;

153. Defendants, and each of them, knew or should have known that by distributing handguns without adequate self-supervision and regulation that they were creating, maintaining, or supplying the illegitimate secondary market in handguns;

154. Defendants, and each of them, have failed to conduct research, or review existing research, which

would allow them to monitor and control the distribution of handguns and help to prevent the creation of an illegitimate secondary market. This includes, but is not limited to, Defendants' failure to implement a product marketing plan, an electronic inventory and sales tracking system, and customer coverage policies;

155. Defendants, and each of them, have caused, permitted, and allowed their lethal handguns to be promoted, marketed, distributed, and disseminated to unauthorized persons, including criminals and minors, and have failed or refused to take reasonable steps to ensure that their handguns were not acquired by unauthorized persons;

156. Defendant Manufacturers and Distributors, and each of them, have adopted distribution policies that allow and encourage distributors and dealers to make sales to likely straw purchasers, including sales involving large numbers of handguns in a single transaction;

Certain Defendant Manufacturers and Distributors have adopted distribution policies that allow sales to dealers who do not maintain a retail place of business for the resale of the handguns;

157. Defendants, and each of them, have marketed their products in such a way as to appeal to minors;

158. Defendants, and each of them, produce, market and distribute substantially more handguns than they reasonably expect to sell to legitimate purchasers. In particular, defendants over saturate markets with handguns in jurisdictions with relatively weak gun control laws to meet the demand of the illegitimate secondary market in jurisdictions with more restrictive gun control laws;

159. Defendant Manufacturers and Distributors, and each of them, have distributed handguns to dealers without requiring dealers to ensure that purchasers' identification, documentation and/or address is accurate;

160. Defendants, and each of them, have designed their handguns to appeal to criminals and have increased production to meet the illegal demand;

161. Defendants, and each of them, do not monitor tracing data from the Bureau of Alcohol, Tobacco and Firearms, in order to discover and prevent trafficking;

162. Defendant Manufacturers, and each of them, have designed and sold handguns without incorporating feasible safety features and personalized gun technology which would prevent unintentional shootings and unauthorized and unintended users from gaining access to the handguns, have discouraged the development and implementation of such features and devices, and have not competed with each other by introducing handguns utilizing such technology Defendant Manufacturers, and each of them, have designed and sold handguns without incorporating feasible technology that would prevent persons from unlawfully obliterating the serial numbers required by law to be placed on those guns;

163. Defendants, and each of them, sell their handguns without providing adequate warnings and instructions regarding the storage or use of their handguns;

164. Defendant Manufacturers, and each of them, have over-promoted the purported self-defense and home protection benefits of their handguns in a manner that negates or undercuts any warnings or instructions regarding safe storage of handguns.

165. Certain Defendants have engaged in unlawful business practices by evading and undermining the public policies and prohibitions contained in California Penal Code section 12020.5, which bans any advertising in California of certain unlawful weapons, including assault weapons;

166. Defendants' conduct undermines the public policies embodied in local, state, and federal laws.

167. Defendants, and each of them, knew or should have known that by engaging in the foregoing

distribution and marketing practices that it was foreseeable that handguns would be acquired and used by persons not authorized or intended to use, sell or possess handguns, such as criminals and minors, and that such usage could be in a manner involving unreasonable, and foreseeable risk to the user and others.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS

CODE SECTION 17200 ET SEQ. FOR UNLAWFUL, UNFAIR OR

FRAUDULENT BUSINESS PRACTICES

(Failing to Provide Adequate Warnings and Failing to Incorporate

Technologically Feasible Safety Features in Firearms , All of Which

Would Prevent Intentional and Accidental Shootings)

BY PLAINTIFF THE PEOPLE AGAINST DEFENDANTS AND DOES 1-300

168. Plaintiff hereby incorporates by reference paragraphs 1 through 167 as though fully set forth herein.

169. Within the four years preceding the filing of this Complaint, Defendants, and each of them, individually and in concert, have engaged in unfair competition within the meaning of Business and Professions Code Section 17200. Defendants' business practices are unlawful and unfair in that handguns are manufactured and marketed without incorporating technologically feasible safety features without providing adequate warnings, all of which would prevent intentional and accidental shootings. Defendants business practices are also unlawful and unfair in that Defendants have over promoted the purported self-defense and home protection benefits of handguns, the effect of which has been to undercut any warnings or instructions regarding the safe storage of handguns, and which has led to intentional and accidental shootings. In particular, these acts of unfair competition include, but are not limited to, the following:

170. Defendant Manufacturers, and each of them, have failed to incorporate feasible safety features and personalized gun technology which would prevent unintentional shootings and unauthorized and unintended users from gaining access to the handguns, and have discouraged the development and implementation of such features and devices;

171. Defendants, and each of them, have failed to provide adequate warnings and instructions regarding the storage and usage of their handguns; and

172. Defendants, and each of them, have deceived, misled, and confused the citizens of California regarding the safety of handguns by marketing their product in a manner that promotes the fallacy that the use of handguns will increase home safety and security, without mentioning the fact that handguns actually increase the risk and incidence of homicide, suicide, and unintentional injuries to handgun owners, their families and friends.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS

CODE SECTION 17200 ET SEQ. FOR UNLAWFUL BUSINESS PRACTICES

(Defendants have unlawfully created a public nuisance as defined by

Penal Code Section 370 and Civil Code Sections 3479 and 3480)

BY PLAINTIFF THE PEOPLE AGAINST DEFENDANTS AND DOES 1-300

173. Plaintiff hereby incorporates by reference paragraphs 1 through 172 as though fully set forth herein.

174. Within the four years preceding the filing of this Complaint, Defendants, and each of them, individually and in concert, have engaged in unfair competition within the meaning of Business and Professions Code Section 17200 by unlawfully creating a public nuisance as defined by Penal Code section 370 and Civil Code sections 3479 and 3480.

FOURTH CAUSE OF ACTION

**VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS
CODE SECTION 17200 FOR UNLAWFUL BUSINESS PRACTICES**

(Defendants have unlawfully created a private nuisance as defined by

Civil Code sections 3479 and 3481)

BY PLAINTIFF THE PEOPLE AGAINST DEFENDANTS AND DOES 1-300

175. Plaintiff hereby incorporates by reference paragraphs 1 through 174 as though fully set forth herein.

176. Within the four years preceding the filing of this Complaint, Defendants, and each of them, individually and/or in concert, have engaged in unfair competition within the meaning of Business and Professions Code Section 17200 by unlawfully creating a public nuisance as defined by Penal Code section 370 and Civil Code sections 3479 and 3480.

FIFTH CAUSE OF ACTION

(PUBLIC NUISANCE)

BY PLAINTIFF THE PEOPLE AGAINST DEFENDANTS AND DOES 1-300

177. Paragraphs 1 through 176 are repeated and realleged as if set forth herein.

178. The citizens of the Cities of Los Angeles, Compton, and West Hollywood, have a common right to be free from conduct that creates an unreasonable jeopardy to the public health, welfare and safety and to be free from conduct that creates a disturbance and reasonable apprehension of danger to person and property.

179. Defendants' ongoing conduct relating to their supply of an illegitimate secondary market for handguns has created and maintained a public nuisance in the Cities of Los Angeles, Compton and West Hollywood and throughout Southern California, as thousands of handguns that they directly or indirectly supply to the illegitimate handguns market are thereafter used and possessed in connection with criminal activity in the cities of Los Angeles, Compton and West Hollywood and throughout Southern California. As a result of the continued use of many of these handgun after they enter Cities, residents of Los Angeles, Compton, and West Hollywood, have been and will continue to be killed and injured by these handguns and residents will continue to fear for their health, safety and welfare and will be subjected to conduct that creates a disturbance and reasonable apprehension of danger to their person and property.

180. Defendants' conduct, as set forth above, constitutes a public nuisance in the Cities of Los Angeles, Compton and West Hollywood, because it is an unreasonable interference with common rights enjoyed by the general public.

181. Defendants' conduct, as set forth above, is an unreasonable interference with common rights

enjoyed by the general public in the Cities of Los Angeles, Compton and West Hollywood, because it significantly interferes with the public's health, safety, peace, comfort and convenience.

182. Defendants' conduct, as set forth above, is an unreasonable interference with common rights enjoyed by the general public in the Cities of Los Angeles, Compton and West Hollywood, because Defendants knew or should have known that conduct to be of a continuous and long-lasting nature that produces a permanent and long-lasting significant negative effect on the rights of the public.

183. Defendants' ongoing conduct produces an ongoing nuisance, as thousands of handguns that they directly or indirectly supply to the illegitimate handguns market which are thereafter illegally used and possessed in the Cities of Los Angeles, Compton and West Hollywood will remain in the hands of persons who will continue to use and possess them illegally for many years. As a result of the continued use and possession of many of these handguns, residents of the Cities of Los Angeles, Compton and West Hollywood will continue to be killed and injured by these handguns and the public will continue to fear for its health, safety and welfare and will be subjected to conduct that creates a disturbance and reasonable apprehension of danger to person and property. The City has a clearly ascertainable right to abate conduct that perpetuates this nuisance.

184. The presence of illegitimately possessed and used handguns in the Cities of Los Angeles, Compton and West Hollywood proximately results in significant costs to the Cities in order to enforce the law, arm its police force and treat the victims of handgun crime. Stemming the flow of handguns into the illegitimate handguns market will help to abate the nuisance, will save lives, prevent injuries and will make the Cities of Los Angeles, Compton and West Hollywood a safer place to live.

185. Defendants' conduct constitutes a public nuisance in the Cities of Los Angeles, Compton and West Hollywood, because it significantly interferes with the public's health, safety, peace, comfort and convenience. Defendants knew or should have known that conduct to be of a continuous nature that produces a permanent and significant negative effect on the rights of the public. Defendants' conduct constitutes a public nuisance within the meaning of Civil Code § 3480 and this action is brought under Civil Code § 3490, *et seq.*, and Code of Civil Procedure § 731. The affected cities have a clearly ascertainable right to abate conduct that perpetuates this nuisance. Stemming the flow of handguns into the illegitimate handguns market will help to abate the nuisance, will save lives, prevent injuries and will make the Cities of Los Angeles, Compton and West Hollywood a safer place to live.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for relief and judgment against the Defendants jointly and severally, as follows:

1. For injunctive and declaratory relief pursuant to Business and Professions Code § 17203.
 - a. Declaring that Defendants have engaged in unlawful, unfair, and deceptive business acts and practices in violation of Business and Professions Code Section §§17200 *et seq.*
 - b. Permanently enjoining Defendants, and each of them, and their respective successors, agents, servants, officers, directors, employees and all persons acting in concert with them directly or indirectly from engaging in conduct in the manner alleged in the first through fourth causes of actions in the Complaint.
2. On the fifth cause of action, alleging Public Nuisance, that the Court grant a permanent injunction to abate the public nuisance as alleged in the Complaint.
3. For pre-judgment and post-judgment interest as provided by law.
4. For civil penalties in the sum of \$2,500 for each separate act in violation of Business and Professions Code Section 17200, pursuant to Section 17206, according to proof.

5. For restitution and/or disgorgement of wrongfully obtained monies pursuant to Business and Professions Code § 17203.
6. For costs of suit as provided by law.
7. For attorneys' fees as provided by law.
8. For such further relief as the Court deems equitable and just.

Dated: May 25, 1999

Respectfully submitted,

JAMES K. HAHN, City Attorney
CARMEL SELLA, Special Assistant City Attorney
DON KASS, Deputy City Attorney
MARK FRANCIS BURTON, Deputy City Attorney

By

JAMES K. HAHN, City Attorney
Attorney for the PEOPLE OF
THE STATE OF CALIFORNIA

DEPARTMENT OF HOUSING &
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facsimile transmittal

To: Courtney Grigore Fax: 202-456-2878
From: MAX STIER Date: August 3, 1999
Re: NAACP SUIT Pages: 52
CC: [Click here and type name]

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INITIALS: JAM DATE: 5-28-17

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2013-0717-5

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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**NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,**

Plaintiff,

-against-

**A.A. ARMS, INC.; AMERICAN ARMS, INC.;
AMERICAN DERRINGER CORPORATION;
AMERICAN FIREARMS TECHNOLOGY;
ARCADIA MACHINE & TOOL, INC; ARMS
TECHNOLOGY, INC.; ASTRA-STAR
C/LBRR, S.A.; AUGUSTA ARMS, INC.;
BOND ARMS, INC.; BRAZTECH, INC.;
BERSA, S.A.; B.L. JENNINGS, INC.;
BROWNING ARMS CO.; BRYCO ARMS;
CALICO LIGHT WEAPON SYSTEMS, INC.;
CASPIAN ARMS, LTD.; CENTURY
INTERNATIONAL ARMS, INC.; CESKA
ZBROJOVKA; CHARCO 2000, INC.;
CHINA NORTH INDUSTRIES a/k/a NORINCO;
COBRAY FIREARMS, INC.; COLT'S
MANUFACTURING COMPANY, INC.;
CZ USA; DAEWOO PRECISION
INDUSTRIES, LTD.; DAVIS INDUSTRIES,
INC.; DESERT MOUNTAIN MANUFACTURING;
EAGLE IMPORTS; EUROPEAN AMERICAN
ARMORY CORP.; EXCEL INDUSTRIES a/k/a
ACCU-TEK; FABRICA D'ARMI PIETRO
BERETTA S.p.A; FELK INCORPORATED;
FERUNION/HUNGARIAN ARMS;
FORT WORTH ARMS; FREEDOM ARMS,
INC.; FIREARMS INTERNATIONAL CORP.;
F.M.I., INC. d/b/a FULL METAL JACKET, INC.;
GLOCK GmbH; GLOCK, INC.; GREDEL, INC.;
HAMMERLI LTD. a/k/a HAMMERLI GmbH;
HARRINGTON & RICHARDSON, INC.;
HASKELL, INC.; HECKLER & KOCH, GmbH;
HECKLER & KOCH, INC.; HERITAGE
MANUFACTURING, INC.; HIGH STANDARD
MANUFACTURING, INC.; HI-POINT
FIREARMS; H&R 1871, INC.;**

CIVIL ACTION No:

COMPLAINT

BENCH TRIAL DEMANDED

HOWA MACHINERY LTD.; IMPORT
SPORTS CORP.; INTERNATIONAL ARMAMENT
CORPORATION d/b/a INTERARMS; ISRAEL
MILITARY INDUSTRIES; K.B.I. INC.;
KEL-TEC CNC INDUSTRIES, INC.; L.A.R.
MANUFACTURING, INC.; LASERAIM
TECHNOLOGIES, INC.; LLAMA GABILONDO
Y CIA; LORCIN ENGINEERING CO.; INC.;
L.W. SEECAMP CO., INC.; MAGNUM
RESEARCH INC.; MAUSER WEKE
OBERNDORF WAFFNSYSTEME GmbH;
MAVERICK ARMS, INC.; MITCHELL
ARMS, INC.; MKS SUPPLY, INC.;
NAVEGAR, INC. d/b/a INTRATEC;
NAVY ARMS, INC.; NORTH AMERICAN
ARMS; NORTH CHINA INDUSTRIES
NORINCO, INC.; OLYMPIC ARMS, INC.;
PARA-ORDNANCE MANUFACTURING, INC.;
PARA-ORDNANCE, INC.; PHOENIX ARMS,
INC.; QUALITY ARMS, INC.; QUALITY
FIREARMS, INC.; QUALITY FIREARMS
OF IDAHO, INC.; RAM-LINE CORP.;
RAVEN ARMS, INC.; REMINGTON ARMS
COMPANY; REPUBLIC ARMS; RG
INDUSTRIES, INC.; ROCKY MOUNTAIN
ARMS, INC.; ROHM GmbH; ROSSI, S.A.;
SAFARI ARMS, INC.; SAVAGE ARMS, INC.;
SGS IMPORTS INTERNATIONAL, INC.;
SGW ENTERPRISES, INC.; SIGARMS, INC.;
SIGARMS/SAUER; SMITH & WESSON
CORPORATION; SPORTSMEN OF FLORIDA;
STALLARD/MAVERICK ARMS, INC.;
STALLARD ARMS; STAR, BONIFACIO
ECHEVERRIA S.A.; STI INTERNATIONAL;
STOEGE, INC.; STURM, RUGER & COMPANY;
SUNDANCE INDUSTRIES, INC.; S.W. DANIEL,
INC.; TANFOGLIO S.r.l.; TAURUS HOLDINGS,
INC.; TAURUS INTERNATIONAL
MANUFACTURING, INC.; FORJAS
TAURUS, S.A.; THOMPSON/CENTER
ARMS; UBERTI ALDO; UBERTI USA, INC.;
ULTRA LIGHT ARMS, INC.; VEBA AG;
WALTHER GmbH; WEATHERBY, INC.;

**BRUCE JENNINGS; SYLVIA DANIEL;
and WAYNE DANIEL,**

Defendants.

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Plaintiffs National Association for the Advancement of Colored People (hereinafter "NAACP"), on behalf of themselves, their individual members, and those whose interests they represent, by way of Complaint against the defendants, and each of them, allege as follows:

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NATURE OF THE ACTION

1. Plaintiff, NAACP, brings this action for equitable relief against the defendants seeking changes to the marketing, distribution and sales practices of the defendants – practices which have led to disproportionate numbers of injuries, deaths and other damages among those whose interests the plaintiff represents.

2. Handguns designed, manufactured, imported, marketed, distributed and sold by the defendants kill and seriously injure tens of thousands of people in the United States every year. Many of those who are injured, killed or placed at risk by the defendants' handguns are children, including the children of members of the NAACP, and other children whose interests and welfare the NAACP represents and endeavors to protect.

3. These handgun-related injuries and deaths are the result of the defendants' conduct in failing to regulate, supervise and otherwise exercise reasonable control over the marketing, distribution and sale of their handguns, resulting in an oversupply of illegal handguns in the United States.

4. For years the handgun industry comprising the defendants has negligently distributed handguns and by doing so has flooded and saturated the lawful handgun market so as to create, maintain and supply an unlawful, unregulated and underground handgun market. Defendants knew, or reasonably should have known and foreseen, that they were producing, marketing and distributing handguns far in excess of the reasonable legitimate demand from responsible and legal consumers in the lawful handgun market, but they have failed and refused to take any meaningful steps to regulate and control the marketing and distribution of their handguns. Defendants' acts and omissions, both individually and collectively as an industry, have established the conditions necessary to facilitate the supply of handguns to an unlawful underground market in handgun. It is in this unlawful market, which is the source of handguns involved in thousands of shootings annually, that criminals, juveniles, the mentally ill and other persons not lawfully authorized to own or possess handguns, can and do quickly and easily obtain such lethal weapons.

5. These injuries and deaths are also the result of the defective and/or negligent design of the defendants' handguns, which fail to incorporate feasible basic safety devices that would prevent or reduce their improper use. The irresponsible production, marketing, distribution and sale of these handguns through both the lawful and unlawful handgun markets further acts to ensure that they will be misused when they fall into the hands of those who are inexperienced and/or incapable of using them safely, including children.

6. These injuries and deaths are also the result of the defendants' failure to provide adequate warnings about the risks and dangers associated with their handguns. Instead of warning about the risks and dangers of handgun ownership, possession and use, the defendants

have concealed and down-played these risks and dangers, especially to children and others persons inexperienced in the use of handguns. Defendants further over promote the purported benefits of handgun ownership. They advertise, portray and emphasize handgun ownership as providing safety and security, even though handgun ownership actually increases dramatically the risks of injury and death to household members.

7. Defendants are and have been aware of the enormous scale of human suffering caused by their handguns, but for decades have shirked any responsibility for the tragedies caused by their products, instead shifting the blame to the users of their deadly products. Their lack of care and concern for the suffering caused to victims by their negligent marketing and distribution practices, their defectively and negligently designed, marketed, and distributed handguns, and their failure to warn of the true risks and dangers of handgun ownership, possession and use is the result of callous disregard, gross indifference to the right and safety of others, greed, and a complete absence of civic responsibility. The handgun industry has historically denied that it bears any responsibility for the misuse of its product by either youths or criminals, and it has resisted any efforts made to institute safer sales or marketing practices, or to incorporate available safety features in the design of its products to prevent accidental discharges. On the contrary the handgun industry uses the lobbying efforts of the National Rifle Association and other organizations of which the defendants are members to oppose and defeat any proposed legislative changes in industry practices which would make handguns less accessible to criminals, juveniles and other prohibited persons.

8. As a consequence of the defendants' marketing, distribution and sales practices, plaintiff NAACP, and persons whose interests they seek to protect, have suffered, and will continue to suffer, irreparable harm, in the nature of serious personal injuries, deaths and other

damages, unless the defendants are prevented from engaging in their harmful activities. There being no adequate remedy at law, plaintiffs invoke the Court's historical equitable authority to grant the injunctive relief requested herein.

II.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 on the basis of diversity of citizenship, the amount in controversy being in excess of \$75,000.

10. Venue of this matter in the Eastern District of New York is proper pursuant to 28 U.S.C. § 1391 in that all defendants conduct business and advertise in this district, have caused their products to be distributed in this district and have received substantial profits from the sale of their products in this district.

III.

THE PARTIES

Plaintiffs

11. Plaintiff NAACP is a citizen of the States of New York and Maryland, being organized and existing under the laws of New York, with its principal place of business in Maryland. It is a national organization with more than 500,000 members and more than 2,200 local branches covering all 50 states and the District of Columbia, as well as locations overseas. Founded in 1909 and incorporated in 1911, it is the oldest and largest civil rights organization the United States. Its purposes include the promotion of social justice and protection of the well-being and security of African-Americans and other persons of color. The NAACP is committed to non-violence and the achievement of its goals by moral, political and legal persuasion through the press, the political process, and the legal system. The NAACP is particularly concerned about the level of handgun violence in African-American communities and it has consistently taken a strong

position against such violence in favor of handgun control. Plaintiff NAACP brings this action for permanent injunctive relief in order to protect the well-being and security of its membership which has been disproportionately injured by defendants' conduct, and those other persons whose interests it represents, and such action is germane to its purposes.

12. A significant number of NAACP members could have brought this action in their own right in that a number of NAACP members have been injured by negligently marketed underground market firearms and a greater number have been placed at risk of harm as a result of the prevalence of underground market handguns.

13. The claims for injunctive relief asserted by plaintiff does not require the participation of individual members in that it can adequately be presented by the plaintiff organization.

Defendant Manufacturers

14. At all times relevant to this action, defendant A.A. ARMS, INC., ("A.A. Arms") was and still is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in North Carolina. At all times relevant to this action, A.A. Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

15. At all times relevant to this action, defendant AMERICAN ARMS, INC. ("American Arms") was and still is a corporation organized and existing under the laws of the State of Kansas with its principal place of business in Kansas. At all times relevant to this action, American Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

16. At all times relevant to this action, defendant AMERICAN DERRINGER

CORPORATION ("American Derringer") was and still is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Texas. On July 1, 1999 American Derringer filed a petition for reorganization under Chapter 11 of the Bankruptcy Code, which petition was granted in November, 1996. At all times relevant to this action, American Derringer manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

17. At all times relevant to this action, defendant AMERICAN FIREARMS TECHNOLOGIES ("American Firearms") was and still is a corporation organized and existing under the laws of the State of Michigan with its principal place of business in Michigan. At all times relevant to this action, American Firearms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

18. At all times relevant to this action, defendant ARCADIA MACHINE & TOOL, INC. ("Arcadia") was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. At all times relevant to this action, Arcadia manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

19. At all times relevant to this action, defendant ARMS TECHNOLOGY, INC. ("Arms Technology") was and still is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah. At all times relevant to this action, Arms Technology manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

20. At all times relevant to this action, defendant ASTRA-STAR, C/LBARRA S.A. ("Astra-Star") was and still is a corporation organized and existing under the laws of Spain with

its principal place of business in Spain. At all times relevant to this action, Astra-Star manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

21. At all times relevant to this action, defendant AUGUSTA ARMS, INC. ("Augusta Arms") was and still is a corporation organized and existing under the laws of the State of Alabama with its principal place of business in Alabama. At all times relevant to this action, Augusta Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

22. At all times relevant to this action, defendant BOND ARMS, INC. ("Bond Arms") was and still is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Texas. At all times relevant to this action, Bond Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

23. At all times relevant to this action, defendant BRAZTECH, INC., ("BrazTech") was and still is a corporation organized and existing under the laws of Florida, with its principal place of business in Florida. At all times relevant to this action, BrazTech imported and distributed handguns within the United States, including the State of New York.

24. At all times relevant to this action, defendant BERSA S.A. ("Bersa") was and still is a corporation organized and existing under the laws of Argentina with its principal place of business in Argentina. At all times relevant to this action, Bersa manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

25. At all times relevant to this action, defendant B.L. JENNINGS, INC. ("B.L. Jennings") was and still is a corporation organized and existing under the laws of the State of

Nevada with its principal place of business in Nevada. At all times relevant to this action, B.L. Jennings , Inc. manufactured, assembled and directed the manufacture, assemblage and distribution of handguns for defendant, Bryco Arms, and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

26. At all times relevant to this action, defendant BROWNING ARMS CO. ("Browning") was and still is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah. At all times relevant to this action, Browning manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

27. At all times relevant to this action, defendant BRYCO ARMS ("Bryco") was and still is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in California. At all times relevant to this action, Bryco manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

28. At all times relevant to this action, defendant CALICO LIGHT WEAPON SYSTEMS, INC. ("Calico") was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. At all times relevant to this action, Calico manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

29. At all times relevant to this action, defendant CASPIAN ARMS, LTD. ("Caspian Arms") was and still is a corporation organized and existing under the laws of the State of Vermont with its principal place of business in Vermont. At all times relevant to this action, Caspian Arms manufactured, assembled and/or imported handguns, which were marketed,

distributed and/or sold within the United States, including the State of New York.

30. At all times relevant to this action, defendant CENTURY INTERNATIONAL ARMS, INC. ("Century") was and still is a corporation organized and existing under the laws of the State of Vermont with its principal place of business in Vermont. At all times relevant to this action, Century manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

31. At all times relevant to this action, defendant CESKA ZBROJOVKA ("Ceska") was and still is a corporation organized and existing under the laws of Argentina with its principal place of business in Argentina. At all times relevant to this action, Ceska manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

32. At all times relevant to this action, defendant CHARCO 2000, INC. ("Charco") was and still is a foreign corporation with its principal place of business in Connecticut. At all times relevant to this action, Charco manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

33. At all times relevant to this action, defendant CHINA NORTH INDUSTRIES ("China North") a/k/a NORINCO was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. At all times relevant to this action, China North manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York..

34. At all times relevant to this action, defendant COBRAY FIREARMS, INC. ("Cobray") was and still is a foreign corporation with its principal place of business in Tennessee. At all times relevant to this action, Cobray manufactured, assembled and/or imported handguns,

which were marketed, distributed and/or sold within the United States, including the State of New York.

35. At all times relevant to this action, defendant COLT'S MANUFACTURING COMPANY, INC. ("Colt's") was and still is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut. At all times relevant to this action, Colt's manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

36. At all times relevant to this action, defendant CZ USA was and still is a corporation organized and existing under the laws of the State of Kansas, with its principal place of business in Kansas. At all times relevant to this action, CZ USA manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

37. At all times relevant to this action, defendant DAEWOO PRECISION INDUSTRIES, LTD. ("Daewoo") was and still is a corporation organized and existing under the laws of Korea with its principal place of business in Korea. At all times relevant to this action, Daewoo manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

38. At all times relevant to this action, defendant DAVIS INDUSTRIES, INC. ("Davis") was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. On May 27, 1999 Davis filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court, Central District of California, Case No. RS99-19302 MJ. At all times relevant to this action, Davis manufactured, assembled and/or imported handguns, which were marketed, distributed

and/or sold within the United States, including the State of New York.

39. At all times relevant to this action, defendant DESERT MOUNTAIN MANUFACTURING ("Desert Mountain") was and still is a corporation organized and existing under the laws of the State of Montana with its principal place of business in Montana. At all times relevant to this action, Desert Mountain manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

40. At all times relevant to this action, defendant EAGLE IMPORTS ("Eagle Imports") was and still is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in New Jersey. At all times relevant to this action, Eagle Imports manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

41. At all times relevant to this action, defendant EUROPEAN AMERICAN ARMORY CORP. ("E.A.A.") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, E.A.A. manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

42. At all times relevant to this action, defendant EXCEL INDUSTRIES ("Excel"), a/k/a ACCU-TEK, was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. At all times relevant to this action, Eagle Imports manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

43. At all times relevant to this action, defendant FABRICA D'ARMI PIETRO BERETTA S.p.A. ("Pietro Beretta") was and still is a corporation organized and existing under

the laws of Italy with its principal place of business in Italy. At all times relevant to this action, Pietro Beretta manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

44. At all times relevant to this action, defendant FELK INCORPORATED ("Felk") was and still is a corporation organized and existing under the laws of the State of Virginia with its principal place of business in Virginia. At all times relevant to this action, Felk manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

45. At all times relevant to this action, defendant FERUNION/HUNGARIAN ARMS ("FEG") was and still is a corporation organized and existing under the laws of Hungary with its principal place of business in Hungary. At all times relevant to this action, FEG manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

46. At all times relevant to this action, defendant FORT WORTH ARMS ("Fort Worth Arms") was and still is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Texas. At all times relevant to this action, Fort Worth Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

47. At all times relevant to this action, defendant FREEDOM ARMS, INC. ("Freedom Arms") was and still is a corporation organized and existing under the laws of the State of Wyoming with its principal place of business in Wyoming. At all times relevant to this action, Freedom Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York

48. At all times relevant to this action, defendant FIREARMS INTERNATIONAL CORP. ("Firearms International") was and still is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Texas. At all times relevant to this action, Firearms International manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

49. At all times relevant to this action, defendant F.M.J., INC. d/b/a FULL METAL JACKET, INC. ("Full Metal Jacket") was and still is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business in Tennessee. At all times relevant to this action, Full Metal Jacket manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

50. At all times relevant to this action, defendant GLOCK GmbH was and still is a corporation organized and existing under the laws of Austria with its principal place of business in Austria. At all times relevant to this action, Glock GmbH manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the state of New York.

51. At all times relevant to this action, defendant GLOCK, INC. ("Glock") was and still is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in Georgia. At all times relevant to this action, Glock manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

52. At all times relevant to this action, defendant GRENDAL, INC. ("Grendel") was and still is a corporation organized and existing under the laws of the State of Florida with its

principal place of business in Florida. At all times relevant to this action, Grendel manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

53. At all times relevant to this action, defendant HAMMERLI LTD ("Hammerli") a/k/a HAMMERLI GmbH was and still is a corporation organized and existing under the laws of the Switzerland with its principal place of business in Switzerland. At all times relevant to this action, Hammerli manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

54. At all times relevant to this action, defendant HARRINGTON & RICHARDSON, INC. ("Harrington & Richardson") was and still is a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business in Massachusetts. At all times relevant to this action, Harrington & Richardson manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

55. At all times relevant to this action, defendant HASKELL, INC. ("Haskell") was and still is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Ohio. At all times relevant to this action, Haskell manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York

56. At all times relevant to this action, defendant HECKLER & KOCH GmbH ("Heckler & Koch") was and still is a corporation organized and existing under the laws of Germany with its principal place of business in Germany. At all times relevant to this action, Heckler & Koch manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

57. At all relevant times to this action, defendant HECKLER & KOCH, INC. was and still is a corporation organized and existing under the laws of the State of Virginia, with its principal place of business in Virginia. At all times relevant to this action, Heckler & Koch, Inc. imported, marketed, distributed and/or sold handguns within sold within the United States, including the State of New York.

58. At all times relevant to this action, defendant HERITAGE MANUFACTURING, INC. ("Heritage") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, Heritage manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

59. At all times relevant to this action, defendant HIGH STANDARD MANUFACTURING, INC. ("High Standard") was and still is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Texas. At all times relevant to this action, High Standard manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

60. At all times relevant to this action, defendant HI-POINT FIREARMS ("Hi-Point") was and still is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Ohio. At all times relevant to this action, Hi-Point manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

61. At all times relevant to this action, defendant H&R 1871, INC. ("H&R 1871") was and still is a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business in Massachusetts. At all times relevant to this action, H&R 1871

manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

62. At all times relevant to this action, defendant HOWA MACHINERY LTD. ("Howa") was and still is a corporation organized and existing under the laws of Japan with its principal place of business in Japan. At all times relevant to this action, How manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

63. At all times relevant to this action, defendant IMPORT SPORTS CORP. ("Import Sports") was and still is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in New Jersey. At all times relevant to this action, Import Sports manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

64. At all times relevant to this action, defendant INTERNATIONAL ARMAMENT CORPORATION d/b/a INTERARMS ("Interarms") was and still is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Virginia. At all times relevant to this action, Interarms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

65. At all times relevant to this action, defendant ISRAEL MILITARY INDUSTRIES ("IDI") was and still is a corporation organized and existing under the laws of Israel with its principal place of business in Israel. At all times relevant to this action, IDI manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

66. At all times relevant to this action, defendant K.B.I., INC. ("KBI") was and still is

a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business in Pennsylvania. At all times relevant to this action, KBI manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

67. At all times relevant to this action, defendant KEL-TEC CNC INDUSTRIES, INC. ("Kel-Tec") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, Kel-Tec manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

68. At all times relevant to this action, defendant L.A.R. MANUFACTURING, INC. ("L.A.R.") was and still is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah. At all times relevant to this action, L.A.R. manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

69. At all times relevant to this action, defendant LASERAIM TECHNOLOGIES, INC. ("Laseraim") was and still is a corporation organized and existing under the laws of the State of Arkansas with its principal place of business in Arkansas. At all times relevant to this action, Laseraim manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

70. At all times relevant to this action, defendant LLAMA GABILONDO Y CIA ("Llama") was and still is a corporation organized and existing under the laws of Spain with its principal place of business in Spain. At all times relevant to this action, Llama manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold

within the United States, including the State of New York.

71. At all times relevant to this action, defendant LORCIN ENGINEERING CO., INC. ("Lorcin") was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. On November 17, 1996 Lorcin filed a petition for reorganization under Chapter 11 of the Bankruptcy Code. At all times relevant to this action, Lorcin manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

72. At all times relevant to this action, defendant L.W. SEECAMP CO., INC. ("L.W. Seecamp") was and still is a foreign corporation with its principal place of business in Connecticut. At all times relevant to this action, L.W. Seecamp manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

73. At all times relevant to this action, MAGNUM RESEARCH, INC. ("Magnum") was and still is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business in Minnesota. At all times relevant to this action, Magnum imported, marketed, distributed and/or sold handguns within the United States, including the State of New York.

74. At all times relevant to this action, defendant MAUSER WERKE OBERNDORF WAFFENSYSTEME, GmbH ("Mauser") was and still is a corporation organized and existing under the laws of Germany with its principal place of business in Germany. At all times relevant to this action, Mauser manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

75. At all times relevant to this action, MAVERICK ARMS, INC. ("Maverick") was and still is a corporation organized and existing under the laws of the State of Connecticut and

having its principal place of business in Connecticut. At all times relevant to this action, Maverick manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

76. At all times relevant to this action, defendant MITCHELL ARMS, INC. ("Mitchell") was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. At all times relevant to this action, Mitchell manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York.

77. At all times relevant to this action, defendant MKS SUPPLY, INC. ("MKS Supply") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Ohio. At all times relevant to this action, MKS Supply manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

78. At all times relevant to this action, defendant NAVEGAR, INC. d/b/a INTRATEC ("Intratec") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, Intratec manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within sold within the United States, including the State of New York

79. At all times relevant to this action, defendant NAVY ARMS, INC. ("Navy Arms") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in New Jersey. At all times relevant to this action, Navy Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

80. At all times relevant to this action, defendant NORTH AMERICAN ARMS

("North American Arms") was and still is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah. At all times relevant to this action, North American Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

81. At all times relevant to this action, defendant NORTH CHINA INDUSTRIES NORINCO, INC. ("Norinco") was and still is a corporation organized and existing under the laws of China with its principal place of business in China. At all times relevant to this action, Norinco manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

82. At all times relevant to this action, defendant OLYMPIC ARMS, INC. ("Olympic") was and still is a corporation organized and existing under the laws of the State of Washington with its principal place of business in the State of Washington. At all times relevant to this action, Olympic manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

83. At all times relevant to this action, defendant PARA-ORDNANCE MANUFACTURING, INC. ("Para-Ordnance") was and still is a foreign corporation with its principal place of business in Ontario, Canada. At all times relevant to this action, Para-Ordnance manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

84. At all times relevant to this action, defendant PARA-ORDNANCE, INC. ("Para-Ordnance") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, Para-Ordnance manufactured, assembled and/or imported handguns, which were marketed, distributed

and/or sold within the United States, including the State of New York.

85. At all times relevant to this action, defendant PHOENIX ARMS, INC. ("Phoenix Arms") was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. At all times relevant to this action, Phoenix Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

86. At all times relevant to this action, defendant QUALITY ARMS, INC. ("Quality Arms") was and still is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Texas. At all times relevant to this action, Quality Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

87. At all times relevant to this action, defendant QUALITY FIREARMS, INC. ("Quality Firearms") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, Quality Handgun manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

88. At all times relevant to this action, defendant QUALITY FIREARMS OF IDAHO, INC. ("Quality Firearms of Idaho") was and still is a corporation organized and existing under the laws of the State of Idaho with its principal place of business in Idaho. At all times relevant to this action, Quality Firearms of Idaho manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

89. At all times relevant to this action, defendant RAM-LINE CORP. ("Ram-Line") was a foreign corporation with its principal place of business in Colorado. At all times relevant to this action, Ram-Line manufactured, assembled and/or imported handguns, which were marketed,

distributed and/or sold within the United States, including the State of New York.

90. At all times relevant to this action, defendant RAVEN ARMS, INC. ("Raven") was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. At all times relevant to this action, Raven manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

91. At all times relevant to this action, REMINGTON ARMS COMPANY ("Remington") was and still is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in North Carolina. At all times relevant to this action, Remington manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

92. At all times relevant to this action, defendant REPUBLIC ARMS ("Republic") was and still is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Texas. At all times relevant to this action, Republic manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

93. At all times relevant to this action, RG INDUSTRIES, INC. was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, RG Industries manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

94. At all times relevant to this action, defendant ROCKY MOUNTAIN ARMS, INC. ("Rocky Mountain") as and still is a corporation organized and existing under the laws of the State of Colorado with its principal place of business in Colorado. At all times relevant to this

action, Rocky Mountain manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

95. At all times relevant to this action, defendant ROHM GmbH ("Rohm") was and still is a corporation organized and existing under the laws of Germany with its principal place of business in Germany. At all times relevant to this action, Rohm manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

96. At all times relevant to this action, defendant ROSSI S.A. ("Rossi") was and still is a corporation organized and existing under the laws of Brazil with its principal place of business in Brazil. At all times relevant to this action, Rossi manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

97. At all times relevant to this action, defendant SAFARI ARMS, INC. ("Safari") was and still is a corporation organized and existing under the laws of the State of Washington with its principal place of business in the State of Washington. At all times relevant to this action, Safari manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

98. At all times relevant to this action, defendant SAVAGE ARMS, INC. ("Savage Arms") was and still is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Massachusetts. At all times relevant to this action, Savage Arms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

99. At all times relevant to this action, defendant SGS IMPORTS

INTERNATIONAL, INC. ("SGS International") was and still is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in New Jersey. At all times relevant to this action, SGS Imports International, Inc. manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

100. At all times relevant to this action, defendant SGW ENTERPRISES, INC. ("SGW") was and still is a corporation organized and existing under the laws of the State of Washington with its principal place of business in the State of Washington. At all times relevant to this action, SGW manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

101. At all times relevant to this action, defendant SIGARMS, INC. ("Sigarms") was and still is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New Hampshire. At all times relevant to this action, Sigarms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

102. At all times relevant to this action, defendant SIGARMS/SAUER ("Sigarms Sauer") was and still is a corporation organized and existing under the laws of Germany with its principal place of business in Germany. At all times relevant to this action, Sigarms Sauer manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

103. At all times relevant to this action, defendant SMITH & WESSON CORPORATION ("Smith & Wesson") was and still is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Massachusetts. At all

times relevant to this action, Smith & Wesson manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

104. At all times relevant to this action, defendant SPORTSMEN OF FLORIDA ("Sportsarms") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, Sportsarms manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

105. At all times relevant to this action, defendant STALLARD/MAVERICK ARMS, INC. ("Stallard/Maverick") was and still is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Connecticut. At all times relevant to this action, Stallard/Maverick manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

106. At all times relevant to this action, defendant STALLARD ARMS ("Stallard") was and still is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Connecticut. At all times relevant to this action, Stallard manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

107. At all times relevant to this action, defendant STAR, BONIFACIO ECHEVERRIA S.A. ("Star") was and still is a corporation organized and existing under the laws of Spain with its principal place of business in Spain. At all times relevant to this action, Star manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

108. At all times relevant to this action, defendant STI INTERNATIONAL ("STI International") was and still is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Texas. At all times relevant to this action, STI International manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

109. At all times relevant to this action, defendant STOEGER, INC. ("Stoeger") was and still is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in New Jersey. At all times relevant to this action, Stoeger manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

110. At all times relevant to this action, defendant STURM, RUGER & COMPANY, ("Sturm Ruger") was and still is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut. At all times relevant to this action, Sturm Ruger manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

111. At all times relevant to this action, defendant SUNDANCE INDUSTRIES, INC. ("Sundance") was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. At all times relevant to this action, Sundance manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

112. At all times relevant to this action, defendant S.W. DANIEL, INC. ("S.W. Daniel") was and still is a corporation organized and existing under the laws of the State of

Georgia with its principal place of business in Tennessee. At all times relevant to this action, S.W. Daniel manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

113. At all times relevant to this action, defendant TANFOGLIO S.r.l. ("Tanfoglio") was and still is a corporation organized and existing under the laws of Italy with its principal place of business in Italy. At all times relevant to this action, Tanfoglio manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

114. At all times relevant to this action, defendant TAURUS HOLDINGS, INC. ("Taurus Holdings") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, Taurus Holdings manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

115. At all times relevant to this action, defendant TAURUS INTERNATIONAL MANUFACTURING, INC. ("Taurus") was and still is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. At all times relevant to this action, Taurus manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

116. At all times relevant to this action, defendant FORJAS TAURUS, S.A. ("Forjas Taurus") was and still is a corporation organized and existing under the laws of Brazil with its principal place of business in Brazil. At all times relevant to this action, Taurus Forjas manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

117. At all times relevant to this action, defendant THOMPSON/CENTER ARMS ("Thompson") was and still is a corporation organized and existing under the laws of the State of New Hampshire with its principal place of business in New Hampshire. At all times relevant to this action, Thompson manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

118. At all times relevant to this action, defendant UBERTI ALDO ("Uberti Aldo") was and still is a corporation organized and existing under the laws of Italy with its principal place of business in Italy. At all times relevant to this action, Uberti Aldo manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

119. At all times relevant to this action, defendant UBERTI USA, INC. ("Uberti USA") was and still is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Connecticut. At all times relevant to this action, Uberti USA manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

120. At all times relevant to this action, defendant ULTRA LIGHT ARMS, INC. ("Ultra Light") was and still is a corporation organized and existing under the laws of the State of West Virginia with its principal place of business in West Virginia. At all times relevant to this action, Ultra Light manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

121. At all times relevant to this action, defendant VEBA AG ("Veba") was and still is a corporation organized and existing under the laws of Germany with its principal place of

business in Germany. At all times relevant to this action, Verba manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

122. At all times relevant to this action, defendant WALTHER GmbH ("Walther") was and still is a corporation organized and existing under the laws of Germany with its principal place of business in Germany. At all times relevant to this action, Walther manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold within the United States, including the State of New York.

123. At all times relevant to this action, defendant WEATHERBY INC. ("Weatherby") was and still is a corporation organized and existing under the laws of the State of California with its principal place of business in California. At all times relevant to this action, Weatherby manufactured, assembled and/or imported handguns, which were marketed, distributed and/or sold in the United States, including the State of New York.

124. At all times relevant to this action, defendant Bruce Jennings was and still is a citizen of the State of Nevada. Defendant Bruce Jennings organized or caused to be organized B.L. Jennings, Inc. under the laws of the State of Nevada for the purpose of operating a firearm assembly and distribution company and, upon information and belief, defendant Bruce Jennings has held the office of President from the date of incorporation to the present time. Defendant Bruce Jennings, as the alter ego of defendant, B.L. Jennings Corporation, is and has been managing, controlling and conducting the affairs of the corporation since its incorporation, as though it were defendant Bruce Jennings' own business and has used defendant corporation for the purpose of defrauding plaintiff and others similarly situated.

125. At all times relevant to this action, defendant Sylvia Daniel was and still is a citizen

of the State of Tennessee, and the owner of S.W. Daniel, Inc., Cobray and Full Metal Jacket. Defendant Sylvia Daniel organized or caused to be organized the corporations S.W. Daniel, Cobray and Full Metal Jacket under the laws of the State of Tennessee for the purposes of operating firearm manufacturing, assembly and distribution companies and, upon information and belief, defendant Sylvia Daniel has held the office of President of each corporation from the dates of incorporation to the present time. Defendant Sylvia Daniel, as the alter ego of defendants, S.W. Daniel, Inc., Cobray and Full Metal Jacket, is and has been managing, controlling and conducting the affairs of the corporations since their incorporation, as though they were defendant Sylvia Daniel's own businesses and has used defendant corporations for the purpose of defrauding plaintiff and others similarly situated.

126. At all times relevant to this action, defendant Wayne Daniel was and still is a citizen of the State of Tennessee, and is the owner of defendants S.W. Daniel, Inc., Cobray and Full Metal Jacket. Defendant Wayne Daniel organized or caused to be organized the corporations S.W. Daniel, Inc., Cobray and Full Metal Jacket under the laws of the State of Tennessee for the purposes of operating firearm manufacturing, assembly and distribution companies and, upon information and belief, defendant Wayne Daniel has held the office of President from the dates of incorporation to the present time. Defendant Wayne Daniel, as the alter ego of defendants, S.W. Daniel, Inc., Cobray and Full Metal Jacket, is and has been managing, controlling and conducting the affairs of the corporations since their incorporation, as though they were defendant Wayne Daniel's own businesses and has used defendant corporations for the purpose of defrauding plaintiff and others similarly situated.

IV.

GENERAL FACTUAL ALLEGATIONS

127. The widespread availability and use of handguns is a national problem of disastrous health, social and economic proportions. Handguns are involved in the deaths of approximately 34,000 people each year and are the instrumentalities most commonly used in homicides. Handguns were used to commit 69% of all homicides in 1995 and 68% of all homicides in 1996.

128. Plaintiff NAACP is particularly concerned about the level of handgun violence in the African-American communities, as well as other minority communities, and supports background checks under the Brady Handgun Violence Prevention Act, 18 U.S.C. §922. The human cost suffered by victims of handgun violence, their families and communities is disproportionately borne by African-Americans. According to a 1990 study by the Federal Centers for Disease Control ("CDC"), homicide is the leading cause of death for black males aged 15-17 and handguns were involved in 78% of these homicides. According to the same CDC study, a young African-American male is nine (9) times more likely to be murdered than a young white male. The American Academy of Pediatrics reported that handgun shot wounds among children in urban areas increased 300% from 1986 to 1988, and the NAACP estimates that, if this rate of handgun violence continues, one out of every twenty-five African-American males now in kindergarten will be wounded with a handgun before he reaches the age of 18 years. Despite overall decreases in handgun-related crimes, according to a 1998 *Uniform Crime Report* compiled by the Department of Justice ("DOJ"), the only demographic which did not indicate a decrease in handgun-related homicides was that of black males between the ages of 14 and 24. The National Center for Health Statistics, DOJ *Crime Statistics Report* for 1998, revealed that two-thirds of homicide victims are non-white.

129. Plaintiff NAACP is very concerned not only about the physical and social impact of handgun violence on African-Americans and other minorities, but also the economic cost.

According to a 1994 report of the *New England Journal of Medicine*, nationally, \$24 billion is spent annually on medical services for the victims of handgun-related violence, and of that figure, 85% goes to the care and treatment of people with no health insurance and who receive state assistance, a substantial portion of whom are minorities. The collateral economic affect of handgun violence on communities of color is devastating.

**Defendants' Unsafe Handguns And Assault Weapons Pose
A Clear Risk Of Harm To Millions Of Children**

130. The high level of handgun violence has had a particularly drastic impact on young people, particularly African-American males. *See ante at* ¶127. Between 1984 and 1987, the firearm death rate for ages 15-19 increased by approximately 10% to 14%. From 1987 to 1989, the rate of increase more than doubled, to between 23% and 25%. In 1990, 82% of all homicides of persons aged 15-19 were committed with handguns. Homicide is the second-leading cause of death for youths aged 15-19.

131. It is estimated by the CDC that 1.2 million elementary school-aged "latch-key" children have access to handguns in their homes. There are handguns in millions of homes sold within the United States, including the State of New York. One survey reports that 30% of handgun-owners who have children in their homes keep their handguns loaded. Another survey reports that 36% of handgun owners with children in their homes keep their handguns unlocked. In one survey, nearly 60% of children between the ages of 10 and 19 years responded that they can acquire a handgun should they want one. The same survey reports that 15% of children between the ages of 10 and 19 years reported that they had carried a handgun on their persons in the past 30 days.

132. In one study, the General Accounting Office ("GAO") estimated that 23% of the annual 1,400-1,500 unintentional shooting deaths occur because handgun users are not aware that a round of ammunition has been loaded into the handgun's firing chamber. A significant percentage of the injuries and deaths caused by an undetected round of ammunition in the firing chamber occur when an unintended user of the handgun, such as a child, unintentionally shoots another person. According to the GAO, approximately 35% of all unintentional shooting deaths involve users of handguns who were between the ages of 13 and 18 years. Children are naturally attracted to accessible handguns and are either unaware of or can not fully comprehend the risks associated with handling a firearm.

133. Currently, defendants design their handguns without incorporating safety features that could eliminate or substantially reduce injuries and death, in order to maximize profits and based on the fallacy that handguns without such safety devices are more effective.

134. Child-proofing devices are not new and have been available on some models in the past. For example, defendant Smith & Wesson offered child-proof handguns from approximately 1888 to 1937. These weapons would not shoot unless a bar on the back of the grip was firmly pressed, and the pressure required to do this made it impossible or very difficult for a child to press the bar and pull the trigger simultaneously. Other child-proof designs have been patented, including one in 1926 (Patent No. 1,638,068) and another in 1977 (Patent No. 4,031,648).

135. There are several feasible devices and designs which can be fitted to a firearm after purchase, which effectively personalize the handgun so that it cannot be used by any person other than the owner. New technology, if supported, developed and adopted by the defendants could effectively and with reasonable cost allow handguns to be personalized and rendered inoperable by any other user, particularly children, and would alert anyone in possession of a pistol that a

round of ammunition is in the firing chamber. The Johns Hopkins University School of Hygiene and Public Health's Center for Handgun Policy and Research has concluded that personalized handguns can eliminate many deaths and injuries by preventing the unauthorized firing of the firearm, and can be especially effective in preventing unintentional deaths and injuries to children and police officers.

136. The failure of defendants to support, develop and adopt the aforementioned safety features, child proofing, and personalized gun technology is further evidence of the defendants' unwillingness to limit their sales, advertising distribution and marketing of handguns solely and exclusively to lawful owners, and discloses defendants' efforts to attract and serve the market of unlawful users.

**Defendants Intentionally Target Sales Of Unsafe Handguns
To Children, Juveniles And Women**

137. After defendants experienced stagnant or declining sales in their traditional markets consisting overwhelmingly of men, they embarked on a concerted effort in the 1990s to promote sales to women and youth. In 1992, one of the handgun industry's leading trade associations of which the defendants are members, the National Shooting Sports Foundations ("NSSF"), announced a "new focus on women and youngsters" and started a "Youth Education Program," all in a search for new customers and expansion of the handgun market. At that time the NSSF stated that "bringing women and youngsters to the shooting sports is the goal of fully half of" the NSSF's new programs. The September/October 1992 issue of NSSF's magazine *SHOT Business* carried a column by a noted celebrity in the industry, Grits Gresham, in which he said:

There's a way to help insure that new faces and pocketbooks will
continue to patronize your business: Use the schools . . . they can

be a huge asset. Think about it. Schools collect, at one point, a large number of minds and bodies that are important to your future well-being. How else would you get these potential customers and future leaders together to receive your message about handguns and hunting, without the help of the schools....Schools are an opportunity. Grasp it.

138. An NSSF pamphlet entitled *When Your Youngster Wants a Handgun* clearly reveals that the industry places no age limit on the possession of handguns, stating, "Age is not the major yardstick. Some youngsters are ready to start at 10, others at 14."

139. The NSSF advertises in children's magazines, such as *Boys Life* and *Scouting*. *Shooting Industry*, a journal catering to handguns dealers, reported that at a conference held by the NSSF in 1996: "One important area addressed at the summit was youth involvement. Each year scouting, 4-H, FFA and other programs introduce 3 million young people to recreational shooting." All of these advertisements and programs are designed to enhance the defendants' customer base and to encourage the purchase of the defendants' unsafe handguns.

140. Defendants' advertisements and other promotional activities are also targeted at women with children. For example, an advertisement by Colt in the July 1992 southeast regional issue of *Ladies Home Journal* shows a woman leaning over her daughter at bedtime with the headline "Self-protection is more than your right . . . it's your responsibility." Colt placed a similar advertisement in the *SHOT Business* issue of March/April, 1993, but with the emphasis placed on the bottom line: "You Might Think This Ad Is About Handguns. It's Really About Doubling Your Business."

141. Defendants design, manufacture, advertise and sell handguns for women and children, such as Smith & Wesson's *LadySmith* revolver and Harrington & Richardson's 929 *Sidekick* revolver, with full knowledge that many of these customers are unskilled and

inexperienced in the use of handguns and lack an awareness of the dangers, injuries and death cause by their products. Yet, unlike any other responsible industry, the defendants refuse to incorporate safety devices in their products that would substantially reduce the number of fatalities and serious injuries which result from the use of handguns.

142. The defendants' efforts to solicit sales from youth and women is designed and intended to increase the number of unsafe handguns in the homes of the American public, with the result that many of those handguns are accessible to young and inexperienced users persons. No mention is made in the defendants' advertisements of the statistical and anecdotal information referring to the deaths and injuries caused by handguns, particularly in the home context, and no warnings are provided, as they are for other much less lethal products.

143. It is now generally recognized in the field of public health that introducing a firearm into the home is dangerous to the people who live there and to their family, friends and associates because it is demonstrably much more likely to be used against them than against an intruder or other aggressor. Such uses include intentional shootings (often of a spouse), suicides, and unintentional/accidental shootings (most often involving children). The death of a household member is almost three times more likely in homes with handguns than in homes without them, and a handgun in the home is four times more likely to be involved in a fatal or non-fatal unintentional shooting than to be used to injure or kill in self-defense.

144. The dangers of handguns and the consequences of widespread sales without restraints or limits have been well-known for many years. For example, over 30 years ago a staff report of the U.S. Commission on the Causes and Prevention of Violence, entitled *Firearms and Violence in American Life* (1968), noted an increasing number of deaths and injuries and concluded.

[Americans] may seriously overrate the effectiveness of handguns in protection of their homes. In our urbanized society the handgun is rarely an effective means of protecting the home against either the burglar or the robber. . . [A handgun in the home] provides a measure of comfort to a great many Americans, but for the homeowner, this comfort is largely an illusion bought at the high price of increased accidents, homicides, and more widespread illegal use of handguns.

**Defendants Fail To Exercise Control Over Production, Marketing And Distribution,
Resulting In Purchase Of Their Handguns By Criminals And
Other Prohibited Persons**

145. There were approximately 122 handgun distributors or wholesalers (not including handgun manufacturers) in the United States in 1997, according to the trade magazine *Shooting Industry*. Many of those distributors require nothing more than a copy of the dealer's federal handguns license before supplying handguns to that dealer. The requirements for a federal firearms license are minimal: virtually any adult who is 21 years old or over, has no criminal record, has business premises and complies with local laws can obtain a license. In addition, there are unlicensed dealers who sell handguns at handgun shows and elsewhere, and who are indistinguishable from licensed handguns dealers.

146. As a result of the ready availability of defendants' handguns, homicides by youths involving the use of handguns more than doubled between 1985 and 1992, although there was no similar increase in non-handgun homicides. Studies indicate that during this same period handguns became "ubiquitous" in inner-city neighborhoods and were a major factor in the doubling of the homicide rate both by and of those under 18 years of age. Defendants oversupply states with weak handgun controls and restrictions, flooding them with substantially more handguns than their residents reasonably can be projected to purchase, and thus facilitating the channeling of those handguns to states with stricter controls and restrictions, such as New York.

147. Defendants have increased the production of particular handguns that are popular in criminal use. For example, over the past decade defendants have increased their production of 9-millimeter handguns, which are popular in the illicit drug trade and are the most frequently used in crime. This production increase was initiated even though defendants' own market research showed that the legitimate market for 9-millimeter handguns among law-abiding purchasers was already saturated. Moreover, defendants have designed and advertised particular features of their products specifically to appeal to purchasers with criminal intent. For example, defendant Navegar's brochure for its *Intratec* line states that a trademarked coating yields "excellent resistance to finger prints."

148. Defendants in fact view the popularity of their handguns among criminals as a marketing advantage generating increased sales. For example, the marketing and sales director for the *Intratec* line was candidly quoted in the *New York Times* as actually being pleased by the notorious reputation of the TEC-9 semiautomatic assault weapon, (one of the weapons used in the Columbine High School shootings): "It has just that advertising tingle to it. Hey, it's talked about, it's read about, the media write about it. That generates more sales for me. It might sound cold and cruel, but I'm sales-oriented."

149. The marketing and distribution structure, policies and practices established and maintained by defendants facilitate the criminal handgun market. For example, the manufacturing defendants avoid any connection to or vertical integration with the distributors and dealers who sell their products. Moreover, they do not use available computerized inventory and sales tracking systems that are commonly and inexpensively used by other industries to limit and screen customers – particularly in businesses that produce dangerous or harmful products.

150. The legal wholesale and retail markets established by defendants and the

underground criminal market are substantially and directly connected. According to Robert I. Hass, a former senior vice president of marketing and sales for defendant Smith & Wesson:

The company and the industry as a whole are fully aware of the extent of the criminal misuse of handguns. The company and the industry are also aware that the black market in handguns is not simply the result of stolen handguns but is due to the seepage of handguns into the illicit market from multiple thousands of unsupervised federal handguns licensees. In spite of their knowledge, however, the industry's position has consistently been to take no independent action to insure responsible distribution practices. . . .

I am familiar with the distribution and marketing practices of all of the principal U.S. handguns manufacturers and wholesale distributors and none of them, to my knowledge, . . . investigate, screen or supervise the wholesale distributors and retail outlets that sell their products to insure that their products are distributed responsibly.

151. Although the defendants are aware that the black market in handguns is in large part the result of seepage of handguns into the illicit market from the lawful handgun market, they have persistently failed and refused to exercise any control over the channels of distribution for their products. Defendants have failed to impose on handgun distributors franchise relationships or other contractual arrangements under which manufacturers could regulate the distributors' wholesale disposal of their handguns. Instead, the defendants have favored a lack of control and responsibility, making liberal use of large numbers of low-end dealers/retailers, with respect to whose activities the defendants take a "hear-no-evil, see-no-evil" approach.

152. Among other things, defendants have failed to impose on distributors and dealers any requirements that they:

- 1.) monitor Bureau of Alcohol, Tobacco and Handguns ("ATF") tracing data

- to identify dealers who sell weapons that are repeatedly the subject of traces;
- 2.) provide warnings to dealers about products that have been the frequent subject of ATF traces;
 - 3.) require dealers to keep accurate records of sales made in order to monitor the dealers' customer base and, in particular, to ensure that dealers do not make multiple sales to the same individual acting as a gun trafficker and/or "straw" purchaser for prohibited persons;
 - 4.) require dealers to examine documentation from each purchaser prior to sale, including ensuring that each purchaser's firearm owner's identification card contains a valid address and that the other items of documentation provided by the purchaser are accurate;
 - 5.) require dealers to inquire as to a purchaser's intended use for the handgun in order ensure that the handgun is proper for that intended use;
 - 6.) provide dealers with a detailed protocol with each weapons shipment outlining steps that need to be taken to minimize the risk of transfers to illegitimate purchasers;
 - 7.) otherwise train dealers to detect inappropriate purchasers; and
 - 8.) institute such other requirements that would enable control the channels of distribution and sale.

153. According to Kansas City stocking handgun dealer Robert Lockett, who was named 1993 Dealer of the Year by the National Alliance of Stocking Handgun Dealers, handgun manufacturers are aware of the implications of not policing handgun sales more vigilantly, and

could do so by establishing direct franchise relationships with a limited number of handgun dealers, each of whom would have an exclusive sales territory. Each franchisee would be subject to restrictions on the sale of handguns, including a ban on selling handguns at gun shows (all four of the handguns used in the Columbine High School massacre were obtained at gun shows); a ban on selling more than two or three handguns at a time; a requirement that dealers provide manufacturers with monthly sales reports; and other restrictions designed to prevent the sale of handguns to prohibited persons and eliminate flooding of the legal handgun market. Manufacturers could also reduce flooding the market with cheap and readily accessible handguns by ceasing to market handguns through discount mass retailers and engaging in the widespread publication of wholesale prices that facilitates the sale and purchase of handguns at lower prices, particularly at gun shows from licensed and unlicensed sellers with lower overhead.

154. However, defendants acting individually, as well as collectively through their industry and trade associations NSSF, ASSC and SAAMI (and often in conjunction with the National Rifle Association), have vigorously opposed attempts to impose restrictions or controls on the marketing and distribution of handguns and assault weapons, and have consistently refused to implement effective measures to voluntarily police the sale of their handguns. They have also consistently failed to provide with their handguns, either at the time of manufacture or by way of post-sale retrofit, any of several available devices or technologies which would effectively make their handgun safer and "personalize" their handguns so that they cannot be used by anyone other than the lawful owners.

V.

CLAIMS FOR RELIEF

CLAIM FOR INJUNCTIVE RELIEF

Negligent Marketing And Distribution

155. Plaintiff NAACP, on behalf of itself, its individual members, and other persons whose interests the plaintiff represents, reallege and incorporate herein each and every allegation contained in paragraphs above.

156. At all times relevant hereto, defendants were engaged in the business of manufacturing, importing, marketing, distributing and/or selling handguns throughout sold within the United States, including the State of New York.

157. Defendants owed a duty of care to the plaintiff's members and other persons whose interests the plaintiff represents to conduct their business in such a manner as to avoid foreseeable risks of harm arising from the manufacture, importation, marketing, distribution and/or sale of their handguns, including the implementation of marketing and distribution practices designed to prevent or reduce the likelihood that the defendants' handguns would come into the ownership or possession of criminals, juveniles, the mentally ill, and other persons not lawfully authorized to own, possess or use such handguns.

158. Defendants breached their duty of care in that they manufactured, imported, marketed, distributed and/or sold handguns far in excess of the reasonable legitimate demand generated by responsible and legal consumers in the lawful handgun market. In producing, marketing and distributing excess amounts of handguns without reasonable care into channels where they were likely to come into the hands of unauthorized persons, the defendants knew, or reasonably should have known and foreseen, that they were creating, maintaining and supplying an unlawful "underground market" for handguns in which criminals, juveniles, the mentally ill and other prohibited persons would gain access to these weapons.

159. Defendants have failed and refused to take meaningful or effective steps to regulate, supervise and otherwise exercise that degree of control over the marketing, distribution and sale of their handguns necessary to prevent or reduce their unlawful ownership, possession and use. In failing and refusing to regulate, supervise and control the marketing and distribution of their handguns as alleged herein, the defendants knew, or reasonably should have known and foreseen, that their marketing and distribution practices would flood the lawful handgun market, greatly increase the supply and availability of handguns in the unlawful handgun market, and lead to such handguns being acquired by criminals, juveniles, the mentally ill and other prohibited persons not lawfully authorized to own, possess or use such handguns and have used those handguns to cause injury and death to persons, including plaintiff's members and their children and others whose interests are represented by the plaintiffs.

160. As a direct and proximate result of the defendants' negligent marketing and distribution practices, criminals, juveniles, the mentally ill and other prohibited persons not lawfully authorized to own, possess or use handguns have acquired ownership or possession of the defendants' handguns, and have used those handguns to cause injury and death to persons, including plaintiff's members and their children and others whose interests are represented by the plaintiff.

161. As a direct and proximate result of the acquisition and use of the defendants' handguns as alleged herein, the plaintiff's members and other persons whose interests the plaintiff represents, have suffered, and will continue to suffer, injuries, death and other damages.

162. Defendants' negligent marketing and distribution practices have been a substantial factor in causing injuries, death and other damages to the plaintiff's members and other persons whose interests it represents, and unless enjoined, will continue to be a substantial factor in

causing injuries, death and other damages to the plaintiff's members and other persons whose interests it represents.

163. As a direct and proximate result of the defendants' negligent marketing and distribution practices as alleged herein, the plaintiff's members and other persons whose interests the plaintiff represents, have suffered irreparable harm, and will continue to suffer irreparable harm, for which there is no adequate remedy at law. Plaintiff NAACP is, therefore, entitled to injunctive relief, including but not limited to:

(1) An order that each defendant establish the following mandatory requirements of its distributors and/or retailers:

*Relief
Required*

(a) distributors will not sell to retailers who are non-stocking dealers;

(b) distributors will not sell to retailers who do not maintain adequate liability insurance;

(c) distributors will not sell to retailers who do not maintain inventory requirements of \$250,000;

(e) distributors and retailers are not to engage in the sale of more than one (1) handgun to the same person in a thirty (30) day period;

(f) distributors and retailers must not have more than two (2) criminal trace requests in any one (1) month period;

(g) distributors and retailers must allow manufacturers to review distributor's and retailer's handguns acquisition and disposition records, aka "bound books", and all other records relating to sales including sales incentive records, at least four (4) times per year;

(h) distributors and retailers must supply state sales and data to manufacturers.

(2) An order that each defendant will implement the following mandatory procedures which it will comply with:

- (a) defendant will not market, distribute and sell handguns to distributors and retailers who sell handguns at gun shows;
- (b) defendant will procure, keep and maintain adequate liability insurance;
- (c) defendant will conduct quarterly inspection of all distributors and retailers;
- (d) defendant, acting in conjunction with all other defendants herein, will institute an industry-wide program of warranty revocation upon individual resale of handguns, unless the firearm is resold only through a bona fide stocking handgun retailer so that secondary sales are subject to background checks under the Brady Handgun Violence Prevention Act, 18 U.S.C. §922.
- (e) defendant, acting in conjunction with all other defendants herein, will institute and contribute to a fund for the education, supervision and regulation of the approximately 16,000 stocking gun dealers.

VI.

PRAYER FOR EQUITABLE RELIEF

164. Plaintiff NAACP, its members and other persons whose interests the plaintiff represents have no plain, adequate or complete remedy at law, and have suffered and will continue to suffer irreparable harm, including injuries, death and other damages, unless defendants are enjoined from continuing in their tortious conduct. A mere award of damages to the plaintiff will not be adequate to protect them, their members, and other persons whose interests they

represent from the defendants' continuing tortious conduct.

WHEREFORE, plaintiff NAACP, on behalf of itself, its members and other persons whose interests the plaintiff represents, pray for judgment against the defendants, and each of them jointly and severally, as follows:

A. For an order directing that each defendant establish, implement and enforce the following mandatory requirements of its distributors and/or retailers:

- (1) distributors will not sell to retailers who are non-stocking dealers;
- (2) distributors will not sell to retailers who do not maintain adequate liability insurance;
- (3) distributors will not sell to retailers who do not maintain inventory requirements of \$250,000;
- (4) distributors and retailers are not to engage in the sale of more than one (1) handgun to the same person in a thirty (30) day period;
- (5) distributors and retailers must not have more than two (2) criminal trace requests in any one (1) month period;
- (6) distributors and retailers must allow manufacturers to review distributor's and retailer's handguns log at least four (4) times per year;
- (7) distributors and retailers must supply state sales and data to manufacturers.

B. For an order directing that each defendant establish, implement and enforce the following mandatory procedures which it will comply with:

- (1) defendant will not market, distribute and sell handguns to distributors and retailers who sell handguns at handgun shows;

(2) defendant will procure, keep and maintain adequate liability insurance;

(3) defendant will conduct quarterly inspection of all distributors and retailers for the purpose of insuring compliance with A(1) - (6) and B (1) and (2).

(4) defendant, acting in conjunction with all other defendants herein, will institute an industry-wide program of warranty revocation upon individual resale of handguns, unless the firearm is resold only through a bona fide stocking handgun retailer so that secondary sales are subject to background checks under the Brady Handgun Violence Prevention Act, 18 U.S.C. §922.

C. For an order requiring defendants to institute and contribute to a fund for the education, supervision and regulation of approximately 16,000 stocking gun dealers.

D. For reasonable attorneys' fees and costs;

E. For such further relief as this Court deems just and proper.

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July 16, 1999

Respectfully Submitted,

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