# Withdrawal/Redaction Marker
## Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001. email | Andrea Bell to Sue Frederick re: People Shot (1 page) | 8/12/1999 | b(6) |

**COLLECTION:**
Clinton Presidential Records
Domestic Policy Council
Eric Liu
OA/Box Number: 16238

**FOLDER TITLE:**
Crime - City Suits [Folder 3]

2013-0717-S
sb9

**RESTRICTION CODES**

**Presidential Records Act - [44 U.S.C. 2204(a)]**

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

b(1) National security classified information [(b)(1) of the FOIA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

**Crime** – City Suits

Bruce Reed

Eric - FYI

# Carleton S. Finkbeiner, Mayor

## Testimony
## Gun Manufacturers Litigation

**August 16, 1999**

**City of Toledo, Council Chambers 4:30PM**

**Law and Criminal Justice Committee**

DURING THE COURSE OF THE PAST YEAR, SCHOOL CHILDREN HAVE BEEN KILLED AND MAIMED IN DOZENS OF SCHOOLS ACROSS THE UNITED STATES. U.S. POSTAL WORKERS HAVE BEEN KILLED AND MAIMED ON U.S. PROPERTY IN THREE CITIES. LAST WEEK, PRE-SCHOOLERS AT A CALIFORNIA SYNAGOGUE BECAME THE MOST RECENT SITE OF GUN VIOLENCE AND CARNAGE IN THE UNITED STATES.

FOR YEARS THE SMALL IN NUMBER, BUT VOCAL AND WELL-FINANCED NATIONAL RIFLE ASSOCIATION, HAS POLITICALLY INTIMIDATED THE CONGRESS OF THE UNITED STATES FROM CURBING THE MASS DISTRIBUTION OF WEAPONS IN AMERICA. IN FACT, THE MORE THERE ARE MASS KILLINGS AND CARNAGE IN AMERICA, THE MORE THE NRA TELLS US WE MUST BE ARMED. THERE ARE NOW 200 MILLION FIREARMS IN THE U.S. NO OTHER NATION HAS ANYWHERE CLOSE TO THIS NUMBER OF GUNS. AND, OF COURSE, NO OTHER NATION ON THIS EARTH KILLS MORE PEOPLE ANNUALLY THAN THE UNITED STATES OF AMERICA.

THE MAJORITY OF THOSE KILLED ARE INNOCENT VICTIMS! IN FACT, THE TWELVE (12) MOST CIVILIZED NATIONS IN THE WORLD IN TERMS OF EDUCATION LEVEL, ECONOMICS AND INTERNATIONAL TRADE, <u>TOGETHER</u> HAVE FEWER DEATHS BY GUNFIRE THAN THE LEADING ECONOMIC NATION IN THE WORLD, THE U.S. !

THAT IS WHY PRESIDENT CLINTON HAS ADVANCED THE MOST COMPREHENSIVE PACKAGE OF GUN SAFETY MEASURES IN THE NATION'S HISTORY.

THAT IS WHY THE NATION'S NEWSPAPERS, FROM THE NEW YORK TIMES TO THE DETROIT FREE PRESS, TO THE CHICAGO TRIBUNE, TO THE TOLEDO BLADE ARE URGING THE CONGRESS, STATE LEGISLATORS AND CITY COUNCILS TO STEP-UP AND ESTABLISH CONTROLS OVER THE MANUFACTURE AND DISTRIBUTION OF GUNS. WE SIMPLY CAN'T COUNT ON THE CHICKEN-HEARTED IN CONGRESS TO GET THE JOB DONE!

RECENTLY, BOTH STATE GOVERNMENTS AND LOCAL GOVERNMENTS ARE MOVING TO TAME THE VIOLENCE. CALIFORNIA HAS BEEN THE LEADING STATE IN WEAPONS' CONTROL. IN 1989, AFTER FIVE CHILDREN WERE SHOT TO DEATH IN AN ELEMENTARY SCHOOL YARD IN STOCKTON, CALIFORNIA PASSED LAWS BANNING DOZENS OF SPECIFIC WEAPONS. HOWEVER, GUN MANUFACTURERS ELUDED THOSE LAWS BY CHANGING THE NAMES AND MODEL NUMBERS OF THE BANNED WEAPONS. RECENTLY, GOVERNOR GRAY DAVIS STATED FLATLY, "GUNS DO KILL PEOPLE" WHEN HE PRECEDED TO SIGN INTO LAW THE MOST COMPREHENSIVE GUN LEGISLATION IN THE NATION.

IT IS BECAUSE 1) CONGRESS HAS LACKED THE COURAGE TO PASS MEANINGFUL GUN CONTROL LEGISLATION AND 2)

BECAUSE GUN MANUFACTURERS HAVE ATTEMPTED TO THWART GUN SAFETY INITIATIVES SUCH AS THOSE IMPOSED IN CALIFORNIA AND FINALLY 3) BECAUSE THERE IS A REAL COST TO THE TAXPAYERS, AS IDENTIFIED BY THE AMERICAN MEDICAL ASSOCIATION, OF $2.3 BILLION/YEAR, THAT 22 AMERICAN CITIES INCLUDING CLEVELAND AND CINCINNATI ARE SEEKING REDRESS FROM GUN MANUFACTURERS THROUGH LITIGATION.

THE AMA STUDY RELEASED IN THE AUGUST, 1999 EDITION OF THE JOURNAL OF AMERICAN MEDICINE , IDENTIFIED THAT OF THE $2.3 BILLION IN TOTAL ANNUAL MEDICAL COSTS OF TREATING GUN SHOT WOUNDS, $1.1 BILLION OF THAT IS PAID OUT OF THE TAXPAYER'S POCKET. AND THAT IS JUST THE MEDICAL COST, WHICH COMES OUT TO $17,000 PER GUN SHOT VICTIM. THAT DOES NOT INCLUDE THE COSTS TO THE CITY OF DEALING WITH GUN INCIDENTS, MEDICAL TRANSPORTATION COSTS OR MAN-HOURS LOST TO OTHER CRIME FIGHTING NEEDS. TOLEDO FIRE DEPARTMENT AND POLICE DEPARTMENT PERSONNEL AVERAGE 2,000 GUN RELATED COMPLAINTS PER YEAR. THE ANNUAL COST FOR THESE SERVICES TOTAL $2 MILLION TO THE TOLEDO TAXPAYERS.

TOLEDO, THROUGH COUNCIL ACTION, CAN INSURE A SAFER COMMUNITY FOR ALL OF ITS CITIZENS IN GENERAL AND ITS CHILDREN IN PARTICULAR. PURSUANT TO OUR CITY CHARTER, CITY COUNCIL AND THE MAYOR ARE CHARGED WITH THE

DUTY "TO DEFINE, PROHIBIT, ABATE OR SUPPRESS ALL THINGS DETRIMENTAL TO THE HEALTH, MORALS, COMFORT, SAFETY, CONVENIENCE AND WELFARE OF THE PEOPLE, AND ALL NUISANCES AND CAUSES THEREOF." TOLEDO'S LAWSUIT AGAINST THE GUN MANUFACTURERS ADDRESSES THIS DUTY DIRECTLY.

THIS LITIGATION IS NOT ABOUT BANNING GUNS. IT IS ABOUT CURTAILING IRRESPONSIBLE AND DAMAGING ACTIVITIES OF AN INDUSTRY, WHICH HAS THE ABILITY TO REMEDY THE UNSAFE NATURE OF ITS PRODUCTS. TO DATE IT HAS BEEN UNWILLING TO DO SO.

GUN MAKERS DO NOT MANUFACTURE WEAPONS WITH SAFETY DEVICES TO PREVENT CHILDREN AND OTHER UNAUTHORIZED USERS FROM FIRING THEIR GUNS, EVEN THOUGH THE TECHNOLOGY EXISTS TO MAKE GUNS SAFE. UNLIKE MOST CONSUMER GOODS, FIREARMS ARE INHERENTLY DANGEROUS PRODUCTS. YET, THE MANUFACTURERS REFUSE TO DISTRIBUTE THEIR WEAPONS WITH WARNINGS OR EVEN INSTRUCTIONS AS TO THEIR RISKS OR PROPER STORAGE. MANY FATAL SHOOTINGS OCCUR AS A RESULT OF THE GUN USER OR OWNER BEING UNAWARE THAT THE WEAPON WAS LOADED. A SIMPLE WARNING DEVICE BUILT INTO THE GUN COULD PREVENT THIS.

THE GUN MANUFACTURERS KNOW OF THESE LURKING DANGERS AND CAN FORESEE THEM BUT HAVE FAILED TO TAKE ANY STEPS TO PREVENT THEM.

CHILDREN AND TEENAGERS BETWEEN THE AGES OF 10 AND 19 COMMIT SUICIDE WITH A GUN EVERY SIX HOURS IN THIS COUNTRY. GUNS ARE THE METHOD USED IN 65% OF MALE TEEN SUICIDES AND 47% OF FEMALE TEEN SUICIDES. THE CENTERS FOR DISEASE CONTROL ESTIMATE THAT 1.2 MILLION ELEMENTARY AGED CHILDREN HAVE ACCESS TO GUNS IN THEIR HOMES. IT IS FORESEEABLE TO THE GUN MANUFACTURERS THAT THESE TEEN SUICIDES CAN AND WILL OCCUR BUT THEY HAVE NOT TAKEN THE STEPS NECESSARY TO DESIGN AND MARKET PRODUCTS THAT PREVENT OR DECREASE THESE DANGERS.

HANDGUNS ARE THE CAUSE OF SUBSTANTIAL DAMAGES. THE HANDGUN MANUFACTURERS HAVE LONG BEEN AWARE OF THE INHERENTLY DANGEROUS NATURE OF THEIR PRODUCT. THEY HAVE ALSO LONG BEEN AWARE OF THEIR ABILITY TO MODIFY HANDGUNS AND INCORPORATE SAFETY DEVISES, WHICH WILL PREVENT THE UNINTENDED USE BY UNAUTHORIZED PERSONNEL. IN AN AGE WHEN WE HAVE ACCEPTED THE NEED FOR A PASSWORD TO USE THE COMPUTER, ACCEPT THE NEED FOR A KEY TO START OUR CAR, ACCEPT THE FACT THAT ONLY ADULTS MAY PURCHASE ALCOHOL AND TOBACCO, <u>HOW CAN</u>

<u>WE TOLERATE THE EXISTENCE OF HAND GUNS WITHOUT APPROPRIATE SAFETY DEVICES WHICH WILL ALLOW ONLY THE RIGHTFUL OWNER TO FIRE SUCH A DEADLY DEVICE</u>?

BY FAILING TO MAKE GUNS THAT CANNOT BE USED BY UNAUTHORIZED PERSONS, THE GUN MANUFACTURERS MAKE IT POSSIBLE FOR GUNS STOLEN FROM PRIVATE RESIDENCES, GUN STORES AND OTHER LOCATIONS TO BE EMPLOYED BY UNAUTHORIZED USERS IN VIOLENT CRIMINAL ACTS. TWO OF TOLEDO'S FIREFIGHTERS RECENTLY BECAME VICTIMS OF SUCH AN ACT. BECAUSE OF HIS INJURIES AT THE HANDS OF A DERANGED GUNMAN, LT. JEFF COOK WAS FORCED TO RETIRE ON DISABILITY FROM THE FIRE DEPARTMENT.

IT SHOULD BE MADE CLEAR THAT OUR LAWSUIT IS NOT AIMED AT BANNING GUNS OR INFRINGING ON PEOPLE'S RIGHT TO OWN GUNS. IT IS AIMED AT SIGNIFICANTLY REDUCING DEATHS AND INJURIES FROM GUN VIOLENCE.

I ASK YOU TO JOIN ME TODAY IN ACCEPTING OUR RESPONSIBILITY TO OUR CITIZENS. LET'S WORK TOGETHER TO MAKE TOLEDO A SAFER PLACE TO LIVE AND RAISE OUR CHILDREN.

THIS IS A TOUGH ISSUE WHICH REQUIRES COURAGE FROM EVERYONE INVOLVED. THE NATIONAL RIFLE ASSOCIATION AND ITS SUPPORTERS WILL ATTEMPT TO CLOTH THEMSEVES IN

THE CONSTITUTION. IT IS NOT ABOUT THE CONSTITUTION. IT IS ABOUT RESPONSIBILTY AND SAFETY. AND ALLOWING CHILDREN TO FEEL UNTHREATENED AS THEY ATTEND SCHOOL DAILY.

## Table of Contents

EXH A

# OFFICE OF THE MAYOR
# CITY OF CAMDEN
NEW JERSEY

MILTON MILAN
MAYOR
CITY HALL, FOURTH FLOOR
P.O. BOX 95120
CAMDEN, NEW JERSEY 08101-5120
(609) 757-7200
FAX (609) 963-1841

CANDICE D. JEFFERSON
AIDE TO THE MAYOR

JOSE RODRIGUEZ
LIAISON

August 11, 1999

Mayor Carleton S. Finkbeiner
One Government Center, Suite 2200
Toledo, OH 43604

Dear Mayor Finkbeiner:

I choose to file a lawsuit against eighteen (18) manufacturers of handguns, distributors and three (3) trade associations composed of gun manufacturers and sellers, for many reasons, including:

- Around 85% of all firearms confiscated in this City are purchased outside the State of New Jersey.

- Trigger locks, magazine disconnects, chamber load indicators and personalization technology is widely available, however, manufactures choose to ignore it.

- Gun violence has substantial economic cost to this City, estimates are in the millions of dollars, due to emergency medical service, police service, school security, and court system costs.

Our goal is to change the way the gun industry conducts business, and force the industry to undertake reforms that will prevent injuries and save lives. I remain,

Very truly yours,

Milton Milán,
Mayor

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

LOUISE H. RENNE
City Attorney

August 11, 1999 EXH B

Mayor Carleton S. Finkbeiner
One Government Center, Suite 2200
Toledo, Ohio 43604

*Via Facsimile and U.S. Mail (419) 245-1370*

Re: City and County Firearm Litigation

Dear Mayor Finkbeiner:

I am writing this letter to urge your city council members to support the City of Toledo's involvement with the firearm lawsuit. It is time for the lethal and unregulated firearm industry to take responsibility for the illegal and unsafe use of its products. The city lawsuits are an effective way to force change upon an industry that refuses to take responsibility for its actions.

The City of San Francisco and our office enthusiastically supports your decision to sue the firearm industry. If we can provide any further information, please contact us.

Very truly your,

LOUISE H. RENNE
City Attorney

cc: John Maddigan, Esq.
Via Facsimile (419) 245- 1090

CITY HALL · 1 DR. CARLTON B. GOODLETT PLACE, SUITE #234 OR FLOOR #2 · SAN FRANCISCO, CALIFORNIA 94102-0917
RECEPTION: (415) 554-4700 · FACSIMILE: (415) 554-4715

EXH. C

CITY COUNCIL
URGENCY ITEM

MAY 24, 1999

SUBJECT: RESOLUTION CALLING ON THE CITY OF WEST HOLLYWOOD TO JOIN WITH THE CITY OF LOS ANGELES AND OTHERS IN FILING A LAWSUIT AGAINST GUN MANUFACTURERS

INITIATED BY: COUNCIL MEMBER STEVE MARTIN
(Sarah Bradshaw, Council Deputy)
COUNCIL MEMBER JOHN HEILMAN
(Fran Solomon, Council Deputy)

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STATEMENT OF THE SUBJECT: The City Council will consider participating in a joint effort with the City of Los Angeles in filing a lawsuit against gun manufacturers.

RECOMENDATIONS: Authorize the City Manager and/or Mayor to sign the necessary documents and retainers needed to participate in the lawsuit set forth below.

## INTRODUCTION

Los Angeles City Attorney James K. Hahn has requested participation by the City of West Hollywood in a lawsuit to be filed against the firearms industry. The lawsuit will allege a cause of action seeking abatement of a public nuisance as well as relief under Business and Professions Code Section § 17200, which prohibits illegal or unfair trade practices. Such litigation will be of no cost to the City of West Hollywood.

In October 1998, the City of New Orleans was the first city in the nation to file a lawsuit against the gun industry. New Orleans' Complaint alleges product liability causes of action and seeks damages, in an amount to be determined at trial, as compensation for the city's medical, police, and other municipal costs associated with responding to gun violence.

New Orleans was followed shortly thereafter by the City of Chicago and Cook County in suing the gun industry. Chicago's complaint alleged a public nuisance cause of action and seeks $433 million in damages. To date, ten cities nationwide have sued the gun industry including Bridgeport, Newark, Atlanta, Miami-Dade County, and Detroit.

In order to coordinate the efforts of California cities and counties in their review and consideration of gun litigation, Los Angeles City Attorney James K. Hahn established and co-chairs with San Francisco City Attorney Louise Renne, a California Government Gun Task Force. This Task Force is comprised of elected and appointed government counsel and includes the County of Los Angeles, Huntington Beach, Long Beach, San Diego, Oakland, and Berkeley.

The City and County of San Francisco will file a similar lawsuit simultaneously. It is anticipated that the Courts may consolidate suits into a single action.

The Cities of Los Angeles and San Francisco have retained the services of the law firms of Millberg, Weiss, Bershad & Hynes and Leif, Cabraser, Heimman & Bernstein, which will provide a team of litigators to pursue this claim. Each office will be retained on a contingency fee basis with the client cities being responsible only for litigation costs. City Attorney Hahn has indicated that Los Angeles and San Francisco have committed to absorbing the majority of the costs so that smaller cities such as West Hollywood will be encouraged to participate.

While financial recovery is not the primary focus of this litigation, any recovery, by award of court or by way of settlement, shall first be directed to payment of fees and reimburse of litigation costs. Any recovery beyond those expenses will be apportioned in a manner to determined at the conclusion of the litigation.

Anticipated Causes of Action

1. Business and Professions Code 17200

The lawsuit will allege a cause of action based on California Business and Professional Code ("B&P) § 17200, which prohibits illegal or unfair business practices.

The business practices at issue in this case are the manufacturer and sale of handguns which fails to include such safety devices as: (1) a magazine disconnect which disables a handgun when a magazine is removed; (2) a load indicator which indicates when a bullet is in a chamber, and (3) the implementation of technologically feasible personalized handguns which allow operation only by the handguns lawful purchaser.

Also to be addressed under this cause of action is the gun industry's sales and marketing practices which facilitate the easy access of criminals to handguns and the proliferation of gun trafficking and the secondary gun market from which moist criminals obtain handguns.

B&P § 17200 can be asserted by jurisdictions with populations under 750,000 by the naming of an individual plaintiff, typically a mayor or city attorney, who, pursuant to statute represents the interests of the People of the State of California. The remedies of disgorgement and restitution are available to such jurisdictions, although civil penalties are not.

2. Public Nuisance

The city of Los Angeles will allege a public nuisance cause of action on the grounds that the proliferation of unsafe handguns and the gun industry's marketing and distribution practices unreasonable interfere with City residents' health, safety and well being.

The remedy for this cause of action is abatement of the nuisance. Damages are not available to government entities.

The lawsuit will seek to restrict multiple sales; controls on distribution to geographic areas; implement product warrants; and seek restrictions on various marketing and advertising practices.

ALTERNATIVES: The city could decline to participate at this time or choose to file its own legal action.

OFFICE OF PRIMARY RESPONSIBILITY: Council Member Martin's office.

FISCAL IMPACT: None.

EXH. D

NEWARK PUBLIC INFORMATION OFFICE

City Hall, 920 Broad Street, Room 214
Newark, New Jersey 07102
(201) 733-8004
Pamela E. Goldstein, Director

Press Release

**For Immediate Release**
**March 17, 1999**
**For Further Information, Contact: David H. Lippman (973) 733-3697**

**NEWARK FILES SUIT AGAINST GUNMAKERS**

The City of Newark is taking aim at gun makers, by joining with other major cities in a class-action lawsuit against firearms manufacturers.

"I am holding the gunmakers accountable for their trail of death and destruction," said Mayor Sharpe James. "Firearms makers sell guns without adequate safety devices and without properly controlling distribution of their product. Their negligence leaves thousands of people dead or injured each year nationwide, and puts an intolerable burden on city agencies and taxpayers."

The Newark City Council is expected to vote tonight on a proposal to hire a New Orleans-based consortium of attorneys, the Castano Safe Gun Legislation Group, to handle this suit. The contract calls for the group to be paid $20,000, solely for expenses.

Newark is joining the cities of New Orleans, Chicago, Miami, and Atlanta, in this class-action suit. In these cases, the cities are seeking reimbursement for money spent on dealing with the consequences of handgun violence. These include police investigators, emergency vehicles, publicly funded medical care, and prosecutors.

- MORE -

Nationwide, more than 36,000 people are killed by guns annually – more than the total number of Americans killed in the Korean War. Every day, 16 persons aged 19 and under, are killed by guns – more than one every two hours. Nationally, direct health care costs of these injuries are about $4 billion a year.

"The gun industry has decided to invest its energies in making guns that are more lethal, and more concealable, instead of making guns that are more safe," wrote Michelle Hollar-Gregory, Newark's Corporation Counsel, in her statement of purpose on the issue. "And knowing that a substantial share of its market is made up of those with criminal purposes – from either direct or secondary sales – it has fought to protect that market (and the profits it produces), by aggressively fighting restrictions which would prevent criminals from obtaining guns, and by negligently marketing guns that criminals want. For its failure to take reasonable steps to prevent the tragic consequences its guns cause on our streets and in our homes, the gun industry must, finally, share some responsibility."

The Newark suit seeks to recover costs caused by the industry's failure to include safety devices on its guns, and costs caused to the city by the industry's negligent distribution and marketing of its guns.

James noted that guns are the only consumer product exempt from safety regulations, and the industry's clout has allowed guns to fall a century behind the state of safety technology. As a result, guns are sold without safety devices that would prevent shootings by untrained or unauthorized users of guns – who are frequently children.

He also noted that the gun industry knows that many criminals obtain guns through "straw purchases," multiple sales, and gun shows, yet it chooses to allow its guns to be sold in all of these ways, and does not bar its distributors from engaging in these and other suspect transactions.

- MORE -

"Gun manufacturers put profit concerns over concerns for life. They have been allowed to sell weapons as if they were popcorn and ice cream," James said. "The negligence of handgun manufacturers is killing children in my city. This must stop."

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EXH. E

**DEPARTMENT OF LAW**

August 13, 1999

**TO:** John T. Madigan, Acting General Counsel

**FROM:** Susan E. Frederick, Senior Attorney

**SUBJECT: Information in support of gun litigation.**

---

You have requested the following information in support of gun litigation:

1. Fire Department - What is the number of emergency runs in the past two to three years that have been in response to reports of gunshots and what is the estimated cost of same?

| | | |
|---|---|---|
| 1995 | 2521 | |
| 1996 | 1927 | |
| 1997 | 2014 | |
| 1998 | 1889 | |
| 1999 | 952 | (year to date) |

Battalion Chief Jim Thomas has completed a cost analysis of the expenses of the fire department in personnel and non-personnel (cost of apparatus, etc.) per run which averages out to $300.00 per run (see attached). The calculated expenditure for the City of Toledo for emergency runs in response to gunshots is as follows:

| | | |
|---|---|---|
| 1995 | $756,300.00 | |
| 1996 | $578,100.00 | |
| 1997 | $604,200.00 | |
| 1998 | $566,700.00 | |
| 1999 | $285,600.00 | (year to date) |

2. Amount of money expended on medical treatment for officers or firefighters wounded by a gunshot in the past two to three years.

According to Deputy Chief Coleman, only one firefighter has been injured by gunshot - Lt. Jeff Cook who was shot in the line of duty during the Jackman Road incident. He has had to retire on disability due to his extensive injuries for which he is still receiving treatment. Andrea Bell from the Department of Human Resources has retrieved the attached medical payment records concerning Lt. Cook.

Firefighter Dave Billius was shot at in the same incident and the information concerning his medical payments from Andrea Bell is attached.

There have been no police officers injured by a gunshot in the past three years.

3. The amount of money spent on medical treatment for gunshot injuries for prisoners housed at CCNO or LCJ for the past two to three years.

   The Law Department was unable to obtain this information.

4. The annual cost for treatment from welfare and/or out of pocket hospital expenses at St. Vincent's and Toledo Hospital for victims of gunshot wounds.

   St. Vincent's Hospital is working on the request and has promised to try to get the information to me by Monday morning. It may just be information regarding billing for gunshot injuries in general and not broken down by welfare payment or out of pocket for the hospital. As of this date, Toledo Hospital has returned the call with the information that I requested.

# Withdrawal/Redaction Sheet
## Clinton Library

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Subj: **People Shot**
Date: 8/12/1999 2:44:43 PM Eastem Daylight Time
From: Andrea.Bell@ci.toledo.oh.us (Bell, Andrea)
To: sfreder104@aol.com ('Sue Frederick')

Here is the information that is available on the BWC tapes. They can be many months behind in posting, but it is the only avenue we have available, as we do not pay bills direct.

On Cook we have paid a total of (b)(6) in medical bills. As stated, he has also been forced to take an early retirement from the dept. They are on-going medical expenses on this claim, and I anticipate they will continue for some time.

On Bilius, the BWC records show that only (b)(6) has been paid to date on medical. I know that these figures are not accurate, that the costs are higher, but have no data to support. As stated, BWC's reporting is not very reliable.

Let me know when you get the officers name.
Andrea Bell, Manager Workers' Compensation & Safety
City of Toledo- A 21st Century Community

———————— Headers ————————
Return-Path: <Andrea.Bell@ci.toledo.oh.us>
Received: from aol.com (rly-yc04.mail.aol.com [172.18.149.36]) by air-yc01.mail.aol.com (v60.25) with ESMTP; Thu, 12 Aug 1999 14:44:43 -0400
Received: from exchange-1.cityoftoledo.oh.us (mail.ci.toledo.oh.us [208.16.183.66]) by rly-yc04.mx.aol.com (v60.25) with ESMTP; Thu, 12 Aug 1999 14:44:39 -0400
Received: by EXCHANGE-1 with Internet Mail Service (5.0.1460.8)
id <QGAT6R7Y>; Thu, 12 Aug 1999 14:44:06 -0400
Message-ID: <21B918F27F4CD111933500805FBBA47753F57C@EXCHANGE-1>
From: "Bell, Andrea" <Andrea.Bell@ci.toledo.oh.us>
To: "'Sue Frederick'" <sfreder104@aol.com>
Subject: People Shot
Date: Thu, 12 Aug 1999 14:44:04 -0400
Return-Receipt-To: "Bell, Andrea" <Andrea.Bell@ci.toledo.oh.us>
MIME-Version: 1.0
X-Mailer: Internet Mail Service (5.0.1460.8)
Content-Type: text/plain;
charset="iso-8859-1"

EXH. F

August 12, 1999

To: Chief Michael L. Navarre, Chief of Police Operations

Through: Lieutenant Ronald Navarro, Administrative Assistant

From: Lieutenant David C. Wells, Communications Division

Subject: Gun Related Calls for Service

The following data is a low ball estimate of the GUN related incidents that are handled by the Toledo Police Department. The data encompasses those typecodes used to indicate a firearm has been discharged or displayed in an unlawful manner. These typecodes are by no means all inclusive of those calls involving firearms and reflect an undetermined percentage of the total gun related incidents occurring in Toledo.

| Year | Calls for Service | Average Response Time |
|---|---|---|
| 1994* | 2,904* | 47:30* |
| 1995 | 2,521 | 56:09 |
| 1996* | 1,927* | 44:19* |
| 1997 | 2,014 | 57.59 |
| 1998 | 1,889 | 57.23 |
| 1999 | 952 | 90:27 |
| | **12,207** | **59:37** |

* = indicates that a month of data was missing from that year

A random sampling of gun related calls for the month of June 1999 provided an average response of **4.6** officers to each of those calls each sampled.

cc: Deputy Chief Michael L. Schroeder, Support Services

DCW:dcw

Cost Per Rig/Per Hour
To Respond to a Shooting

Average Salary

| | | |
|---|---|---|
| 10 yr. Firefighter | \$21.837/hr. | |
| 15 yr. Lieutenant | 25.645 | 27.569/hr. average for officer |
| 15 yr. Captain | 29.493 | |
| 10 yr. Medic | 23.147 | |

Personnel Cost

| | | |
|---|---|---|
| A) | 4 person rig - | 3 privates + average of Lt/Capt. x benefits |
| B) | 5 person rig - | 4 privates + average of Lt/Capt. x benefits |
| C) | 3 person rig - | 2 privates + Lt. rate x benefits |
| D) | 2 person medic - | 2 medics x benefits |

Benefits = 4.25% W/C
28.00% Pension
1.45% Medicare
33.70% Total

+ Health care = \$2.64 per hr/per person

A)
\$93.08
x 1.337
\$124.45
+ 10.56 (4 x \$2.64)
\$135.00

B)
\$114.92
x 1.337
\$153.65
+13.20 (5 x \$2.64)
\$166.85

C)
\$69.32
x 1.337
\$92.68
+ 7.92 (3 x 2.64)
\$100.60

D)
\$46.29
x 1.337
\$61.89
+ 5.28
\$67.17

Cost of apparatus per hour includes equipment, fuel, maintenance, training, as well as the vehicle. \$100 approximately.

\$2,425,000 (Budget in 2000 & 3000 codes)
2445 (Runs per station per year)

August 12, 1999

To: Chief Michael L. Navarre, Chief of Police Operations

Through: Lieutenant Ronald Navarro, Administrative Assistant

From: Lieutenant David C. Wells, Communications Division

Subject: Gun Related Calls for Service

The following data is a low ball estimate of the GUN related incidents that are handled by the Toledo Police Department. The data encompasses those typecodes used to indicate a firearm has been discharged or displayed in an unlawful manner. These typecodes are by no means all inclusive of those calls involving firearms and reflect an undetermined percentage of the total gun related incidents occurring in Toledo.

| **Year** | **Calls for Service** | **Average Response Time** |
|---|---|---|
| 1994* | 2,904* | 47:30* |
| 1995 | 2,521 | 56:09 |
| 1996* | 1,927* | 44:19* |
| 1997 | 2,014 | 57.59 |
| 1998 | 1,889 | 57.23 |
| 1999 | 952 | 90:27 |
| | **12,207** | **59:37** |

* = indicates that a month of data was missing from that year

A random sampling of gun related calls for the month of June 1999 provided an average response of **4.6** officers to each of those calls each sampled.

cc: Deputy Chief Michael L. Schroeder, Support Services

DCW:dcw

August 12, 1999

To:

Through:

From: Michael J. Navarre, Chief of Police

Subject: Weapons Used in Part 1 Crimes

An analysis of the type of weapons used in Part I Violent Crime was conducted for the years 1992 through 1998. The results are shown in the listed table and in the graph included in Addendum #1.

**WEAPONS USED IN PART I VIOLENT CRIMES**

| Crime/Weapon | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|---|---|
| Total Murder | 43 | 45 | 40 | 35 | 30 | 24 | 22 |
| Handgun | 29 | 35 | 30 | 15 | 16 | 16 | 11 |
| Long gun | 2 | 3 | 3 | 1 | 0 | 3 | 3 |
| Total Robbery | 125 | 154 | 140 | 99 | 138 | 92 | 87 |
| Firearm | 32 | 58 | 46 | 28 | 37 | 26 | 23 |
| Knife | 8 | 13 | 6 | 7 | 11 | 7 | 6 |
| Other | 14 | 21 | 21 | 26 | 19 | 12 | 11 |
| Total Assaults | 1,198 | 1,148 | 1,177 | 1,036 | 1,329 | 903 | 945 |
| Firearm | 32 | 33 | 35 | 26 | 32 | 18 | 24 |
| Knife | 23 | 13 | 17 | 15 | 12 | 26 | 18 |

A search of the data entered through the NORIS system indicates the Toledo Police Department since 1992 has confiscated in excess of 6,000 weapons. See Addendum #2.

Toledo Police Property Room records indicate a total of 5,202 guns in their possession have been destroyed since 1991. See Addendum #3.

cc: Mike Justin, Assistant Chief Operating Officer

EXH. 6



# Conference Report

*Product Liability—Firearms*

## Taking Aim at the Gun Industry: Are Firearms the Next Tobacco?

American society is on the threshold of a third revolution in product liability law—strict liability for products that are unreasonably dangerous despite the best efforts of manufacturers, a law professor said at the outset of a two-day conference on gun violence liability. But other speakers maintained that accidental shooting cases can be prosecuted under traditional product liability law theories.

The program, "Gun Violence Liability: Taking Aim at the Gun Industry—Are Guns the Next Tobacco?" was sponsored by the American Bar Association's Torts and Insurance Practice Section in conjunction with the Center to Prevent Handgun Violence. The conference, geared towards practicing attorneys, focused on the growing litigation against the gun industry, including a spate of suits by municipalities. Other controversial gun issues—many now under debate in Congress and courtrooms—were also discussed.

Bringing together experienced attorneys, public health specialists, and other experts who study guns and violence, presenters at the June 4-5 conference held in Washington, D.C., put statistics and data as well legal theories and strategies before the large audience.

**Three Revolutions.** This third revolution in product liability law, often called generic or category liability, is controversial, but law professor Carl T. Bogus told participants it is less radical than the second generation. Included in the second category is the now-accepted concept of crashworthiness—the argument that a vehicle's defective design worsened the injuries suffered by a plaintiff in an accident. The first revolution was the concept of strict liability in tort.

Bogus argued that this third revolution of liability will expand product liability to protect non-purchasers who are injured by a highly dangerous, but properly functioning, product.

Cities and others suing the gun industry should press for the third revolution, generic liability, according to Bogus, a professor at Roger Williams University School of Law. Guns with high-capacity magazines could well fall into the category of products that judges and juries might find suitable for this classification because they are inherently dangerous, he suggested. He criticized municipalities, which have brought suits against firearm manufacturers, for relying on a second revolution argument that the guns should have had safety devices (67 U.S.L.W. 2444).

Expansion into third generation category liability for products such as tobacco and guns is "where the future lies," Bogus said.

**'Viable Product Liability Claims.'** However, attorneys representing individuals and the local jurisdictions that have sued the gun industry were quick to describe their suits in less radical terms. Accidental shooting cases, said Jonathan Lowy of the Legal Action Project of the Center to Prevent Handgun Violence, are "viable product liability claims under traditional product liability law."

His colleague Brian Siebel agreed, noting that traditional product liability arguments, such as those based on the foreseeability of misuse, should impose liability on manufacturers. The CPHV lawyers also emphasized that reasonable safety devices currently exist, an argument used in all of the city and county suits that include product liability claims.

**Accidental shooting cases are "viable product liability claims under traditional product liability law."**

ATTORNEY JONATHAN LOWY, CENTER TO PREVENT HANDGUN VIOLENCE

Gun industry lawyer Anne Kimball, of the Chicago law firm of Wildman, Harrold, Allen & Dixon, rejecting Bogus's third revolution theory, maintained that the *Restatement (Third) of Torts: Product Liability* completely rejects the concept of category liability. She also rejected the CPHV attorneys' position, arguing that current product liability law does not apply to guns that function as they are intended. For a plaintiff to maintain a product liability suit, there must be a defect in the product, and the defect cannot be simply that the gun caused injury, Kimball said.

Kimball also argued that the cities have no standing to sue: Their damages are remote, and they are seeking reimbursement for things cities pay for as a matter of course. Moreover, she maintained, most courts have held that the issues raised by the gun suits are matters for the legislatures, not the courts. Quoting from *Wasylow v. Glock Inc.*, 975 F. Supp. 370 (D. Mass. 1996), Kimball said: "Frustration at the failure of legislatures to enact laws sufficient to curb handgun injuries is not adequate reason to engage the judicial forum in efforts to implement a broad policy change."

Noted defense lawyer Victor Schwartz, of Crowell & Moring, in Washington, D.C., agreed. Safety arguments in the gun cases are based on a different theory from typical defect cases, he said. He also cautioned about the dangers of precedents set by cases involving unpopular defendants, citing asbestos cases as an example, and criticized—on public policy grounds—contingent fee lawyers working together with state and local governments.

 LW ISSN 0148-8139

Quoting criminologist Richard Wright, Schwartz said: "The era of big government may be over, but the era of regulation by litigation has just begun."

**Manufacturers' Responsibilities?** Plaintiffs' lawyers speaking at the conference emphasized that guns differ from other products. Dennis Henigen, who heads the CPHV Legal Action project, urged participants to confront the "salient facts" about guns: They are designed to inflict harm. Noting that guns are used more than 800,000 times a year in criminal acts, and citing data that domestic assaults involving guns are 12 times more likely to be lethal than those without, Henigen asked the group to consider appropriate legal responsibilities for manufacturers whose products are used by violent criminals.

Steve Teret, director of the Johns Hopkins Center for Gun Policy and Research, pointed out that the Consumer Product Safety Commission is prohibited by Congress from regulating guns and ammunition. Although there are many laws regulating firearms, very few of them regulate the design and manufacture of guns, Teret said. Most of the laws regulate the user. Teret argued that society needs to go beyond legislation and regulation—that's why suits are being filed.

However, Richard Feldman, former executive director of the American Shooting Sports Council, asked the group: What activity do we want to stop that isn't already illegal? Focus on the segment of the population that misuses guns, not on the guns themselves, Feldman urged.

Commenting on the public debate on gun violence, Feldman noted that there are "more ill-informed, misinformed, and uninformed experts than spent cartridges after a day's shooting." The issue has become so polarized that the middle is left out, he said, adding that most Americans believe in the right to own guns, but also favor some restrictions.

Addressing in particular the concerns over straw purchases, Feldman contended that proper and increased use of Bureau of Alcohol, Tobacco, and Firearms Form 4473 when more than one gun is purchased at a time would help trace these guns. Form 4473 is required to create a record of all firearms transactions. Many straw purchasers—those who purchase guns for convicted felons, minors, people who live in strict gun control jurisdictions, or others who are not legally allowed to purchase guns—buy several guns at one time. He suggested that requiring dealers to fax the form to BATF at the time of sale would reduce illegal sales because it would speed up the review process.

**Suits Not Aimed at Banning Guns.** The CPHV lawyers pointed out that the city suits, many of which include public nuisance claims, were intended to significantly reduce deaths and injuries from gun violence, not to get rid of guns completely. "These are not cases about banning guns," Siebel said.

Three mayors and two other representatives of local jurisdictions echoed Siebel's sentiment. Miami-Dade County Mayor Alex Penelas emphasized that the city and county suits are not about infringing people's rights. He also said, in a comment echoed by the other city officials, "These lawsuits are not about money." Saying he hoped that "lawsuits may bring industry to the table," Penelas said, "I would gladly drop my lawsuit today if the gun industry would agree to reasonable safety measures."

New Orleans Mayor Marc Morial, whose city was the first to sue the gun industry, said people should understand that the mayors have done much more than file suits. They are taking a number of actions to decrease violence, including putting more police officers on the streets. He noted, though, that "prosecuting people after there's been a death is not saving lives."

Wayne County, Mich., Deputy Executive Officer Michael Duggan presented videos of gun store clerks selling guns to obvious straw purchasers. He noted that nine out of 10 retailers in the Detroit-Wayne County area sold guns to illegal purchasers during the county's sting operation.

Duggan stressed that gun manufacturers, like those of other products, should require more than a federal firearms license from those who would sell their products. The gun industry chooses to be "willfully blind" about straw purchases and other illegal sales. Observing that Wayne County does not want to put gun manufacturers out of business, but only wants them to use safety measures and regulate their dealers, he warned industry representatives: If you push us to go to a jury, we will do it and be successful.

**Secondary Market Problem.** Straw purchases, and other methods by which criminals obtain guns, are a major issue in some of the city suits. Many speakers stressed that manufacturers have no legal responsibility as long as they sell their products to federally licensed firearms dealers.

Jens Ludwig, a professor of public policy at Georgetown University, emphasized the large size of the secondary market in gun sales. For every 2 million in legal primary market sales, he said, there are 1.2 million secondary market sales.

Holding the industry liable would give it incentives to back the regulation of the secondary market, Ludwig said. Teret also said he hoped the litigation would lead to some real changes in both product design and distribution patterns—not just small changes to meet the actual claims of the suits. He pointed out that laws that blocked the importation of cheap "Saturday night specials"—inexpensive handguns—led to strong domestic "junk gun" production.

Tom Diaz, a policy analyst for the Violence Policy Center, noted the large increase in handgun sales in the United States after 1946, as the industry has produced larger numbers of automatic pistols. Saying that the industry has not acted responsibly in the absence of regulation, he suggested that exempting firearms from CPSC regulation was unwise.

**Handling Discovery.** Many speakers at the conference focused on the practical concerns both sides encounter in handling the claims asserted against the gun industry. Daniel Abel, of the Metairie, La., firm of Gauthier, Downing, LaBarre, Beiser & Dean, which represents New Orleans and several other cities in the gun litigation, observed that the gun industry differs from the tobacco industry in one major respect: The firearms industry is not secret. Handgun transactions leave an extensive paper trail, he said.

But, noting that he has a "jaded view" of traditional discovery, he said that plaintiffs' attorneys "almost need to know the answers before [they] formulate the questions." To find the answers first, he said, attorneys should first survey the "landscape" of the industry—organizational structure, production aspects, suppliers, recalls.

Next, the environment around the industry should be examined. Documents of federal, state, and local regulators are available under the Freedom of Information Act, Abel said. The BATF, Federal Bureau of Investigation, Central Intelligence Agency, and the U.S. military all conduct weapons testing. He added that print information is widely available, from sources as varied as the Library of Congress and the Internet.

By doing the initial work, Abel said, plaintiffs' attorneys can be well-prepared before beginning traditional discovery, and will have enough information to:

- overcome dispositive motions;
- provide an overview;
- know where to check responses to discovery; and
- create a well-documented timeline on what the industry knew and when they knew it.

**Tobacco v. Guns.** Jack D. Maistros of Climaco, Lefkowitz, Peca, Wilcox & Garofoli, which represents Cleveland in its suit against the gun industry, noted some of the differences and similarities between tobacco and gun litigation.

The two products are similar in that:

- both are legal;
- both are widely used and widely misused;
- both are historical products;
- both bring about divergent views;
- the plaintiffs' bar is organized, and the defense bar is highly competent; and
- tragedies across the country are affecting public opinions.

Among the differences cited by Maistros:

- guns are not addictive;
- guns do not become obsolete;
- millions of guns already exist; and
- the gun industry cannot handle the volume of cases currently being filed by local jurisdictions, and, as consequently, bankruptcy may well become a defense tool.

**Class Actions Proposed.** Denise Dunleavy, one of the attorneys for the plaintiffs in *Hamilton v. Accu-Tek*, E.D.N.Y., No. 95-49, jury verdict, Feb. 11, 1999, the first case in which a jury found liability on the part of gun manufacturers, proposed expanded use of class actions in addressing the gun industry. Arguing that "only litigation can bring about the changes that are needed," Dunleavy suggested that statewide class actions would be a potent tool. She suggested four subclasses:

- all those injured or killed in accidental shootings against all manufacturers and importers;
- all those injured or killed by stolen guns, using an argument based on availability of personalized gun technology;
- all those injured or killed by criminals, against manufacturers and distributors, perhaps using a market share argument; and
- an injunctive relief class.

Dunleavy said, "We're not asking this industry to do any more than other industries who have products with potential for criminal misuse."

Plaintiffs' attorneys who have waged successful cases against retailers also demonstrated how tort law can be used in these cases. Randy Singer, of Wilcox & Savage, in Norfolk, Va., said cases involving clear straw purchases against retailers are "Tort Law 101," based on negligence per se, proximate cause, and foreseeability.

Robert Garvey, of Tomas, Garvey, Garvey & Sciotti, in St. Clair Shores, Mich., has sued Kmart Corp. several times because of actions by untrained clerks in selling firearms. For example, an underage clerk sold a gun to a schizophrenic with improper identification. While some of these cases present proof problems—the clerk is usually a hostile witness—a federal firearms transaction record can be the "smoking gun," Garvey declared.

**"This is a people problem, not a product problem."**

DEFENSE ATTORNEY TIM BUMANN

Richard Miller, of Monsees, Miller & DeFeo, in Kansas City, Mo., said these cases were a "hodge-podge," and are fact-driven. But more and more courts are saying that firearms are a dangerous instrumentality. And that determination leads to findings of negligence in more passive actions, such as suits based on negligent storage, not just on negligent supervision or entrustment. The duty is extending to the public in general, Miller noted.

Defense attorney Tim Bumann, of Cozen & O'Connor, in Atlanta, also emphasized the importance of federal paperwork. BATF Form 4473 is the "beginning and the end" of a retailer liability case. It is the friend of the good retailer, the "knife in the throat" of the bad one, he said.

Bumann argued that the locks and safeties proposed by the strict liability suits will create product liability problems of their own. He also said crime tends to be cyclical. Moreover, crime is not tied to the availability of guns, he said, suggesting that drug issues might be a bigger cause.

Addressing arguments that manufacturers should do a better job of educating their distributors, Bumann said such efforts would interfere with efforts by the BATF. The federal agency does not want manufacturers to get involved in law enforcement, he said. And, emphasizing a point made by many of those who represent the gun industry, Bumann added, "This is a people problem, not a product problem."

BY NANCY J. MOORE

  LW ISSN 0148-8139

# *Annual Cost of Treating Gunshot Wounds Is Put at $2.3 Billion*

By PHILIP J. HILTS

*Taxpayers pick up nearly half the cost of gun violence, a study finds.*

Gunshot wounds cost the nation $2.3 billion a year in medical treatment, and almost half that sum is paid for with taxpayers' dollars, a study by a group of economists has found.

The study, being reported today in The Journal of the American Medical Association, used data collected in 1994 to calculate the expense of treating the 134,445 gunshot wounds reported during that year. The total did not take into account other costs, like those of mental health treatment for victims or lost days of work.

Because the study was so large, said the paper's chief author, Dr. Philip J. Cook of Duke University, it gives the clearest picture to date of both the financial impact of firearms violence and of who is paying the bills.

care and $35,400 for lifetime medical care resulting from the shooting, the study found. The researchers established an annual total cost of $2.3 billion by adding all the emergency care expense for 1994 to a figure, arrived at by formula, reflecting that year's share of lifetime medical costs.

Of the $2.3 billion in total annual medical costs, $1.1 billion, or 48 percent, was paid by taxpayers through Medicaid, Medicare, workers' compensation and other government programs, the researchers said. About 33 percent was paid by the wounded themselves or other people, and about 18 percent was paid by private medical insurance.

Wounds that resulted from assaults with firearms, as opposed to accidents or suicide attempts, accounted for three-quarters of the total cost, the study found. In addition, the data showed that while only about 2 percent of gunshots resulted in spinal cord injuries, such cases accounted for half the total cost of gunshot wounds.

Because the study is the largest and most complete of its kind, it is likely to figure in policy debates on gun violence in America.

In a telephone interview, Paul Blackman, research coordinator of the Institute for Legislative Action at the National Rifle Association, said that although the cost identified in the study might seem large, "put in perspective it is only one-quarter of 1 percent of the nation's $950 billion medical costs, and in that way seems less burdensome."

Mr. Blackman also said that others had estimated the portion of the nation's gunshot medical bill paid by taxpayers to be much higher. So the new, more detailed figures, he said, might lower concern about how much of the burden the public is carrying.

Dr. Cook, meanwhile, said he and his colleagues were now working on an estimate of society's total costs, beyond just medical expenses, attributable to gun violence.

# Gun violence costs nation $2.3 billion a year

By Kate N. Grossman
*Associated Press*

**CHICAGO** — The cost of treating the nation's gunshot victims in a recent year was $2.3 billion, an amount that matches what Americans spend on guns annually, according to a study released today.

The researchers, the first nationally to ask who foots the bill for gunshot wounds, also reported that the federal government paid for about half of those medical costs.

"We have been concerned that a lot of folks don't see gun violence as their problem," said one of the researchers, Philip J. Cook, director of the Sanford Institute of Public Policy at Duke University.

The study is published in the Journal of the American Medical Association.

"The costs are shared by everyone through government payment," Cook said.

The study looked at the costs hospitals incurred treating almost 135,000 gunshot injuries, including fatal ones. The average cost per injury was $17,000. When a victim was hospitalized, the average lifetime cost jumped to $35,000.

The $2.3-billion figure is an estimate of what the nation spent treating gunshot victims in 1994, based on data from hospitals in Maryland and New York that year, from South Carolina emergency rooms in 1997 and other sources.

EXH: I

JAMA
The Journal of the American Medical Association



Abstracts - August 4, 1999

# The Medical Costs of Gunshot Injuries in the United States

Philip J. Cook, PhD
Bruce A. Lawrence, PhD
Jens Ludwig, PhD
Ted R. Miller, PhD

**Context** The cost of treating gunshot injuries imposes a financial burden on society. Estimates of such costs are relevant to evaluation of gun violence reduction programs and may help guide reimbursement policies.

**Objectives** To develop reliable US estimates of the medical costs of treating gunshot injuries and to present national estimates for the sources of payment for treating these injuries.

**Design and Setting** Cost analysis using E-coded discharge data from hospitals in Maryland for 1994-1995 and New York for 1994 and from emergency departments in South Carolina for 1997. Other sources of data included the National Electronic Injury Surveillance System for 1994 incidence of nonfatal gun injuries, the National Spinal Cord Injury Statistical Center database for 1988-1992 estimates of lifetime medical costs of gun injuries, and the 1994 Vital Statistics census for incidence of fatal gun injuries.

**Main Outcome Measures** Estimated national acute-care and follow-up treatment costs and payment sources for gunshot injuries.

**Results** At a mean medical cost per injury of about $17,000, the 134,445 (95% confidence interval [CI], 109,465-159,425) gunshot injuries in the United States in 1994 produced $2.3 billion (95% CI, $2.1 billion-$2.5 billion) in lifetime medical costs (in 1994 dollars, using a 3% real discount rate), of which $1.1 billion (49%) was paid by US taxpayers. Gunshot injuries due to assaults accounted for 74% of total costs.

**Conclusions** Gunshot injury costs represent a substantial burden to the medical care system. Nearly half this cost is borne by US taxpayers.

*JAMA. 1999;282:447-454*

Read the Science News Update for this article
Continue abstracts

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Hold for release:
4 p.m. EDT - Tuesday, Aug. 3, 1999

Contact: Keith Lawrence
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Note to editors: Philip Cook can be reached for additional comment at (919) 613-7360.

## A YEAR'S GUNSHOT INJURIES COST U.S. TAXPAYERS MORE THAN $1 BILLION IN LIFETIME MEDICAL COSTS

DURHAM, N.C. - In 1994, more than 38,000 people in the United States died from gunshots; nearly another 100,000 people were injured. These statistics represent the "enormous human toll of gun violence," and cost U.S. taxpayers more than $1 billion in lifetime medical costs, says a new study that appears in the Aug. 4 issue of *The Journal of the American Medical Association* (JAMA).

The estimated medical costs of treating fatal and non-fatal gunshot injuries in the United States in 1994 was $2.3 billion, of which $1.1 billion was paid for by taxpayers through government programs, the JAMA article states.

The article's authors -- Philip Cook of Duke University, Bruce Lawrence and Ted Miller of the National Public Services Research Institute in Landover, Md., and Jens Ludwig of Georgetown University -- used hospital discharge figures from Maryland and New York, emergency department records from South Carolina and information from a number of other sources, including the National Spinal Cord Injury Statistical Center, to calculate their findings. The researchers say they primarily used 1994 figures for their study because this data was the most up-to-date and comprehensive available.

The researchers calculated that the mean medical cost per injury was about $17,000, of which 49 percent was paid by taxpayers, 18 percent by private insurance and 33 percent by other sources. "While medical costs are a relatively small component of the total burden imposed on society by gun violence, they represent a substantial cost to the medical system," the article states.

Cook, the director of the Terry Sanford Institute of Public Policy at Duke, said in an interview that many people see gun violence as someone else's problem, that it has nothing to do with them or their circumstances. "But if they are taxpayers, they should be concerned about it, if for no other reason than so much of the cost is shared through government programs and insurance. In that respect, we all share in the pain."

The researchers note in their article that this "study presents what we feel are the first nationally representative estimates for the sources of payments for medical costs that are specific to gunshot injuries."

"While measuring medical costs is not as straightforward as counting the number of victims, valid cost estimates are important for at least two reasons," the authors write. "First, such estimates are relevant to evaluating gun violence-reduction programs. Second, reliable estimates for the financial burden that gun violence imposes on the medical care system may help guide reimbursement policies."

To calculate lifetime medical costs, the researchers measured acute-care hospital costs and follow-up charges that included prescriptions, medical supplies (such as crutches), home health care and follow-up physician visits. While the mean medical cost per injury ran about $17,000 for the 134,445 fatal and non-fatal gunshot injuries in 1994, the non-fatal gunshot injuries that required hospitalization resulted in more than $35,000 per case in lifetime medical costs.

The researchers also determined that:

- Gunshot injuries due to assaults accounted for 74 percent of the total medical costs.
- Government programs are the primary payers for 40 percent to 50 percent of hospitalized gunshot injury cases. These same programs are the primary payers for 62.5 percent of spinal injury cases due to gunshots and 88.6 percent of spinal injury cases after initial hospitalization.
- Non-fatal self-inflicted gunshot injuries have higher lifetime costs that unintentional injuries or assaults.
- For non-fatal gunshot injury victims, the majority of medical treatment costs come after the patient has been discharged from the hospital.

"We see our estimates as being the lower bound," Cook said in the interview. "There are some costs we were not able to include but which nonetheless add to the cost, such as the cost of treatment for psychological injuries associated with the shooting. We also were not able to take into full account the follow-up costs for brain injuries."

The research was supported by a grant from the Joyce Foundation in Chicago.

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# News Release

EMBARGO FOR RELEASE: 3 p.m. (CT), Tuesday, August 3, 1999
Media Advisory: To contact Philip J. Cook, Ph.D., call Keith Lawrence at 919/681-8059.

## Gunshot Injuries Impose Financial Burden on U.S. Taxpayers
*Medical costs are substantial burden to society, health care system*

CHICAGO – Medical costs in the U.S. for acute care and follow-up treatment of gunshot injuries in 1994 was $2.3 billion, of which $1.1 billion was paid for by taxpayers via government programs, according to an article in the August 4, 1999 issue of *The Journal of the American Medical Association (JAMA)*, a theme issue on violence and human rights.

Philip J. Cook, Ph.D., from the Sanford Institute of Public Policy, Duke University, Durham, N.C., and colleagues sought to develop reliable estimates of medical costs for treating gunshot injuries and to present national estimates for the sources of payment for treating these injuries in the United States.

The researchers determined that at a mean medical cost per injury of about $17,000, the 134,445 gunshot injuries in the United States in 1994 produced $2.3 billion in lifetime medical costs, of which $1.1 billion (49 percent) was paid by U.S. taxpayers, 18 percent by private insurance, and 33 percent by other sources. Gunshot injuries due to assaults accounted for 74 percent of total costs. The authors estimate lifetime costs of medical treatment per nonfatal hospitalized gunshot injury to be $35,367.

The researchers note that their study is "the first nationally representative estimates for the sources of payment for medical costs that are specific to gunshot injuries."

Using data from multiple sources, the authors found government programs are the primary payers for 40 percent to 50 percent of hospitalized gunshot injury cases. For hospital–admitted survivors, estimates suggest that government is the primary payer in 44 percent of the cases. Government is also the primary payer in a small number of less expensive injuries.

--more--

Jeff Molter, Director
Department of Science News
515 North State Street
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(GUNSHOT INJURIES)

Cook and colleagues write that government is also the primary payer for a greater share of costs of more expensive gunshot injuries. Government programs are the primary payers of acute-costs for 62.5 percent of spinal cord injuries due to gunshots and 88.6 percent of spinal injury cases after initial hospitalization. Private insurance is the primary payer for 18 percent of hospitalized and emergency department-only cases.

"The difference between fatal and nonfatal hospitalized gunshot injury cases highlights the magnitude of follow-up treatment costs," the authors write. "For the nonfatal gunshot injury cases, ... the majority of medical treatment costs come after the patient has been discharged from the hospital."

In estimating costs, the researchers used data from multiple sources. Cost analysis using discharge data came from hospitals in Maryland for 1994-1995 and New York for 1994 and from emergency departments in South Carolina for 1997. Other sources of data included the National Electronic Injury Surveillance System for 1994 incidence of nonfatal gun injuries, the National Spinal Cord Injury Statistical Center database for 1988-1992 estimates of lifetime medical costs of gun injuries, and the 1994 Vital Statistics census for incidence of fatal gun injuries.

"In addition to the enormous human toll of gun violence, the costs of treating these injuries imposes a financial burden on society," note the authors. "While measuring medical costs is not as straightforward as counting the number of victims, valid cost estimates are important for at least two reasons. First, such estimates are relevant to evaluating gun violence-reduction programs. Second, reliable estimates for the financial burden that gun violence imposes on the medical care system may help guide reimbursement policies."

According to the authors, in 1997, gunshots caused 31,636 fatal injuries and approximately 100,000 nonfatal injuries in the United States.

(*JAMA*. 1999;282:447-454)

Editor's Note: This research was supported by a grant from the Joyce Foundation, Chicago.

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**For more information: Contact the AMA's Mary Ann Schultz at 312/464-4465.**
**E-mail: Mary_Ann_Schultz@ama-assn.org www.jama.com**

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EXH: J

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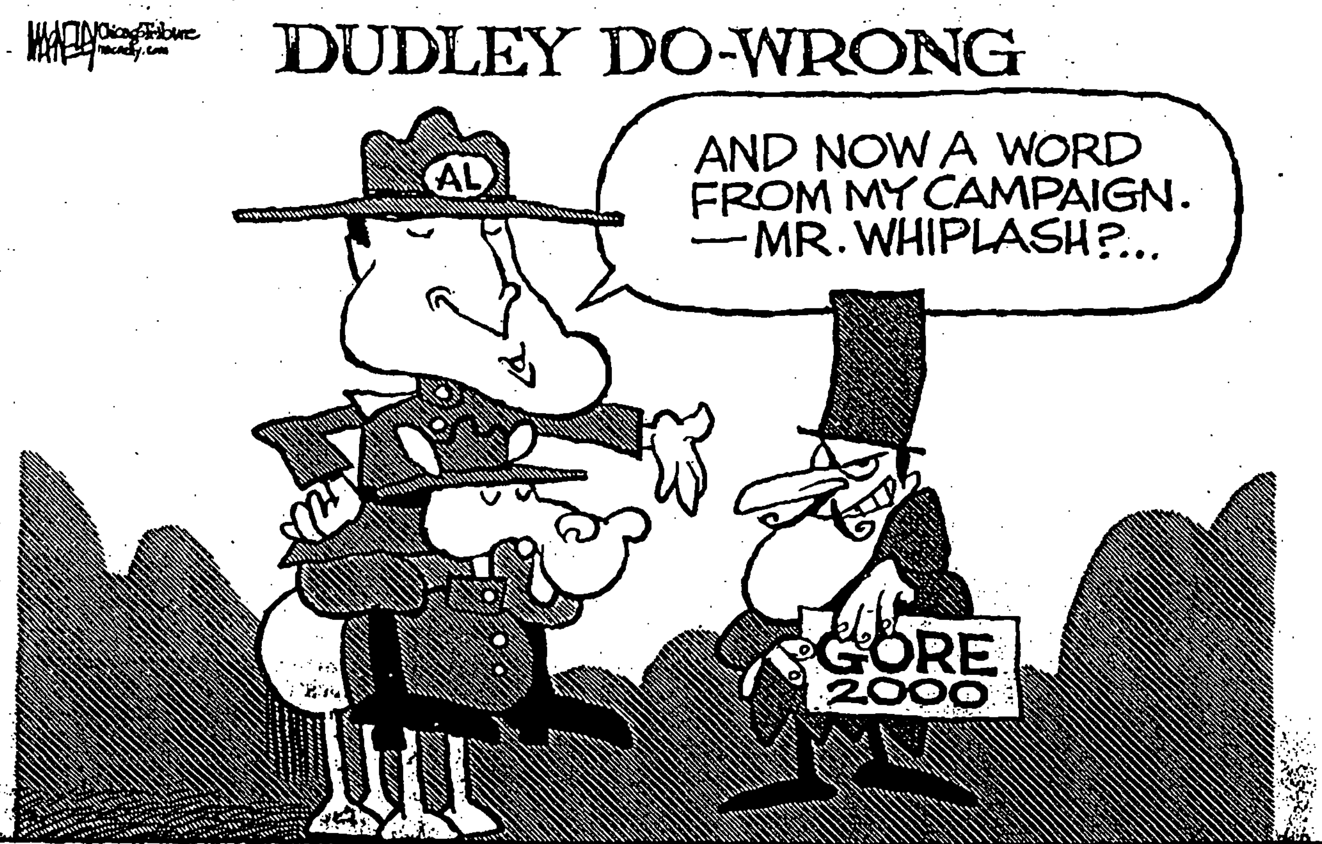
## MacNelly's view




# Atlanta. Skokie. It's about guns

Mark Orrin Barton's murderous rampage in Atlanta underscores the single hard truth behind the epidemic of seemingly random but very lethal violence that stalks America. It also underscores what this epidemic is not.

It is not just about working conditions at the office.

It is not just about teenage alienation, high school cliques or violent video games.

It is not just about hate crimes, anti-Semitism or racial intolerance.

All those situations and motivations, and many more, invariably draw headlines whenever someone goes berserk and blows away a passel of his or her fellow citizens. This time the pundits are focusing on the perils of day trading—the on-line, every-man-a-stockbroker fad in which Mark Barton was absorbed.

Day trading has its pitfalls. So does movie violence and satanism. No doubt social pressures and influences weigh on some of these terrifying cases.

But the unifying factor behind all these bloodbaths is the easy availability throughout these United States of powerful, body-shattering firearms.

No doubt the sharpies at the National Rifle Association will make something of the fact that Barton began his spree at home by bludgeoning his wife and children with a hammer-axe. ("See, you don't need a gun . . .") But this 44-year-old ex-chemist couldn't have slaughtered nine people and wounded 12 others in two adjacent office buildings without his 9 mm semiautomatic and .45-caliber handguns.

Doubtless some perverters of the Second Amendment also will argue that Barton, who later turned a gun on himself, could have been stopped if *more* people carried guns. As if investors at their computer terminals would *have* been ready to return fire. The notion is more than ludicrous. It's dangerous.

When will enough Americans get sufficiently fed up with living and raising children inside this madmen's armory that has become the United States? Only then will voters boot the NRA toadies from their Congress and their state legislatures. And only then will we get strict, sensible controls on the manufacture, sale and possession of handguns and assault weapons.

The House and Senate will soon begin negotiations on a bill that could require background checks at gun shows, trigger locks for guns and limits on imported, high-capacity ammunition. Watch carefully how this turns out.

EXH : K





**Detroit Free Press**
*An Independent Newspaper*

600 W. Fort St.,
Detroit, Michigan 48226
313-222-6400


IN OUR OPINION

# Fight Evil

## *Hate-crime law, gun control would help*

The suspect who surrendered Wednesday to answer for the shootings near Los Angeles is an avowed racist and Jew-hater who, according to the FBI, wanted this to be a wake-up call to America.

Consider it an alarm.

There are evil people out there, capable of trying to slaughter little children in the name of a sick ideology that spits in the face of freedom.

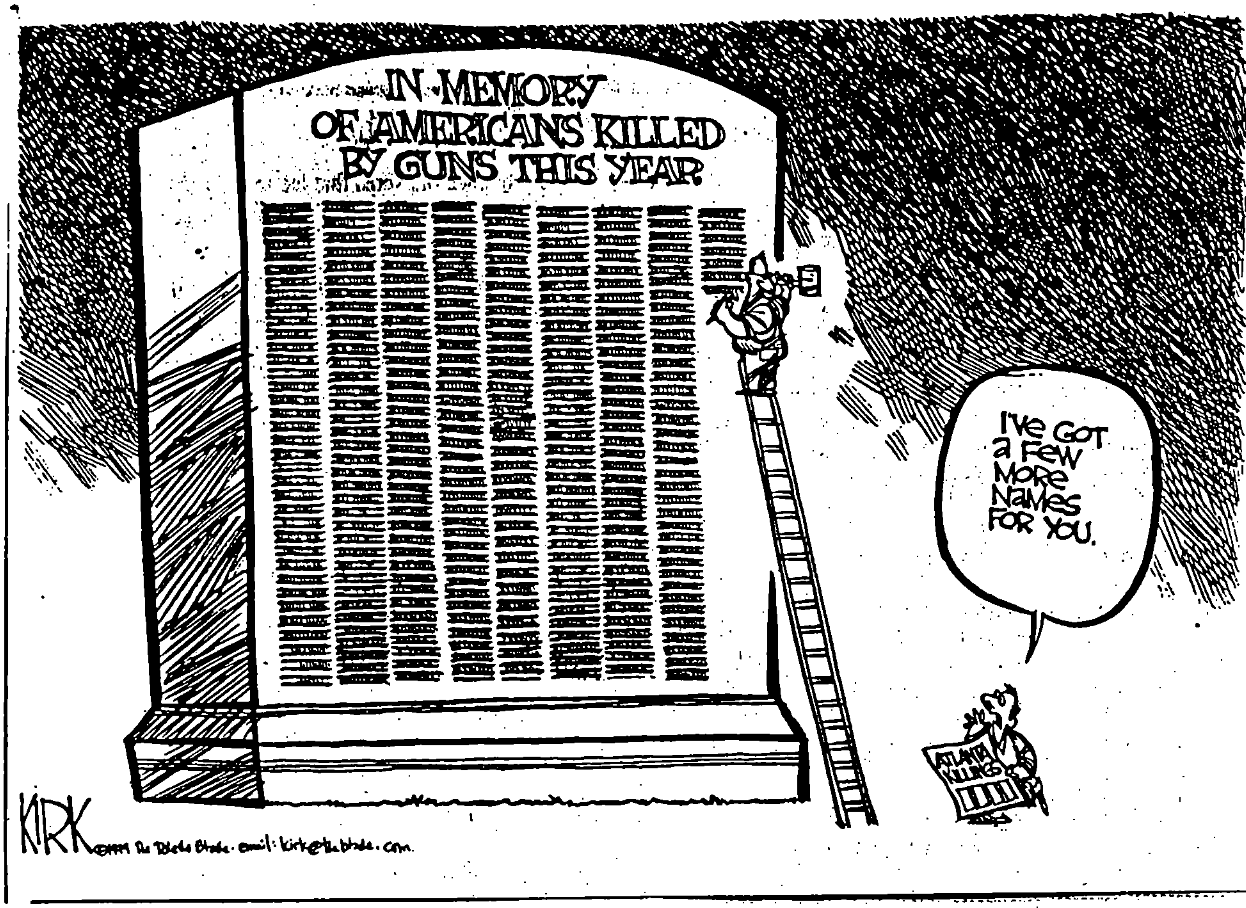
blacks, Jews and Asians in Illinois and Indiana.

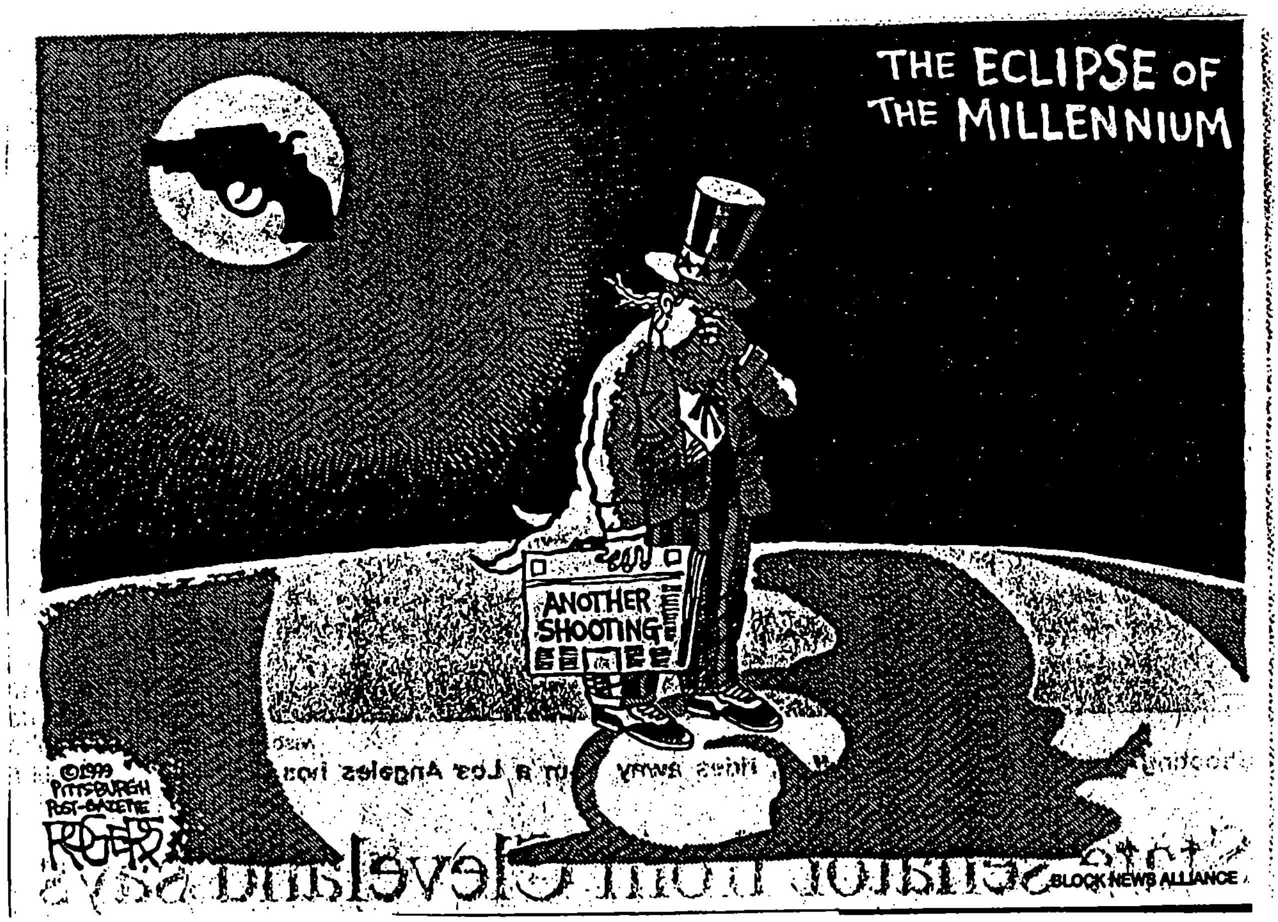
None of them has yet been able to ignite the race or religious wars that they dream of to "purify" America the way Slobodan Milosevic tried to purify the Balkans.

Buford O'Neal Furrow Jr., alleged to be the shooter in the attack on a Jewish community center in Granada Hills, Calif., has a history of membership in neo-Nazi groups.

Until such people act outside the

EXH: L


IN MEMORY
OF AMERICANS KILLED
BY GUNS THIS YEAR
I'VE GOT A FEW MORE NAMES FOR YOU.
ATLANTA KILLINGS
KIRK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SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

| | |
|---|---|
| THE PEOPLE OF THE STATE OF CALIFORNIA, by and through San Francisco City Attorney Louise H. Renne, Berkeley City Attorney Manuela Albuquerque, Sacramento City Attorney Samuel L. Jackson, and San Mateo County Counsel Thomas F. Casey, III; JOE SERNA, JR., Mayor of Sacramento, on behalf of the general public; and the CITY OF BERKELEY, on | Case No.<br><br>**COMPLAINT FOR MAINTAINING A PUBLIC NUISANCE AND FOR UNFAIR, UNLAWFUL** |

behalf of the general public,

Plaintiffs,

v.

ARCADIA MACHINE & TOOL, INC., BRYCO ARMS, INC., DAVIS INDUSTRIES, INC., EXCEL INDUSTRIES, LORCIN ENGINEERING CO., INC., CHINA NORTH INDUSTRIES, PHOENIX ARMS, SUNDANCE INDUSTRIES, INC., BERETTA U.S.A. CORP., PIETRO BERETTA Sp. A., BROWNING ARMS CO., CARL WALTHER GmbH, CHARTER ARMS, INC., COLT'S MANUFACTURING CO., INC., FORJAS TAURAS, S.A., TAURAS INTERNATIONAL MANUFACTURING, INC., GLOCK, INC., GLOCK GmbH, H&R 1871 INC., HECKLER & KOCH, INC., KEL-TEC CNC INDUSTRIES, INC., MKS SUPPLY, NAVEGAR, INC., NORTH AMERICAN ARMS, INC., SIGARMS, INC., SMITH AND WESSON CORP., S.W. DANIELS, INC., STURM RUGER & COMPANY, INC., AMERICAN SHOOTING SPORTS COUNCIL, INC., NATIONAL SHOOTING SPORTS FOUNDATION, INC., SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC., B.L. JENNINGS, INC., ELLET BROTHERS INC., INTERNATIONAL ARMAMENT CORP., RSR WHOLESALE GUNS, INC., SOUTHERN OHIO GUN DISTRIBUTORS, TRADERS SPORTS, INC., and DOES 1-200

Defendants.

**AND DECEPTIVE TRADE PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 AND 17500**

The People of the State of California allege as follows:

## I. NATURE OF THE ACTION

1. This action is brought on behalf of the People of the State of California against major manufacturers and distributors of handguns, and their trade associations. These Defendants knowingly and recklessly market, distribute, promote, design and sell handguns – a dangerous

product that is the primary tool used to commit violent crime -- in a manner that facilitates their use in crime, that fails to incorporate reasonable safety features, that deceives the public about the dangers of possessing a firearm, and that circumvents federal, state and local laws. Defendants' conduct constitutes a pattern of unlawful, unfair and deceptive business acts and practices, and has created a public nuisance. 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.

2. 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. In 1997 alone, there were 1,835 homicides committed with a firearm in California. In addition, firearms caused over 25,000 other serious injuries in California that year. The vast majority of these deaths and injuries are attributable to handguns. Considered in the aggregate, these statistics demonstrate the magnitude of the problem caused by handguns. Moreover, behind each statistic lies a personal tragedy. The details of just a few of these tragedies demonstrate the terrible toll that Defendants' practices have inflicted on the victims of handgun violence and their families:

- On July 1, 1993, Gian Luigi Ferri, armed with two TEC-DC9 9-mm assault weapons manufactured by defendant Navegar and a pistol manufactured by defendant Norinco, conducted a murderous attack on the San Francisco law firm of Pettit & Martin and other occupants of 101 California Street. After California enacted a law that expressly banned Navegar's TEC-9 model, Navegar continued to manufacture the identical model under the name "TEC-DC9." Navegar later claimed that the model labeled "TEC-DC9" was not covered by California's assault weapons ban. Ferri, a California resident, had illegally purchased the TEC-DC9 assault weapons in Nevada. Ferri's shooting spree killed eight, wounded six, and forever changed the lives of countless others, especially those who had lost a spouse and the young children who lost a parent.

- On June 23, 1996, a teenage couple was gunned down while sitting on the grass of Precita Park in San Francisco. The perpetrator of this random shooting was later determined to be incompetent to stand trial, yet he had three handguns in his possession at the time of the murders.
- In June of 1997, a 23-year-old man with an extensive criminal history used a 9-mm semi-automatic pistol manufactured by defendant Browning to kill his mother, his ex-girlfriend and her four-month-old daughter in his mother's San Francisco home.
- In December 1998, an unknown robber shot a 29-year-old San Francisco janitor, as the victim walked home from the grocery store with his family's Christmas turkey. As a result of the shooting, the victim is now paralyzed and unable to support his four children, two of whom are under the age of four.
- On February 9, 1999, a veteran Sacramento Police Officer was gunned down after making a routine traffic stop. The suspect, who was wanted for a parole violation, had previously been convicted of drug and weapons charges and was legally prohibited from possessing a firearm. The suspect was nevertheless able to obtain a 9-mm semiautomatic pistol, manufactured by defendant Glock, which he used to murder the Officer.
- Two recent incidents in Sacramento demonstrate the ease with which youths can gain unauthorized possession of firearms, and the tragic consequences that often result. On February 21, 1999, a group of youths affiliated with a gang committed two separate drive-by shootings, killing one man and wounding two teenagers. The victims were apparently shot simply because they were in the wrong place at the wrong time, wearing the wrong colors. The suspects had obtained their weapons, a 9-mm semiautomatic pistol and a .38 caliber handgun, from one of the youth's home. In the second incident, a woman was critically wounded while standing in the front hallway of her home on March 17, 1999. The victim was helping her two young grandchildren put on their coats, when nine rounds of semiautomatic

fire ripped through her front door. The suspects were on parole from the California Youth Authority at the time of the shooting, and were prohibited from possessing firearms.

- On October 23, 1998, a San Francisco teenager was accidentally shot by his best friend, an eighteen-year-old male, with a Jennings .25 caliber pistol. The two boys were sitting in a car when the victim pulled out a gun to show it to his friend. The eighteen-year-old thought that the pistol was a toy gun because it did not have a trigger guard. When the eighteen-year-old grabbed the gun, he accidentally hit the trigger. The gun fired and the bullet struck the victim in the right side of his chest, seriously injuring him.

3. In order to reduce the endless succession of handgun-related tragedies, Plaintiffs bring this action to abate the public nuisance created by Defendants; to enjoin Defendants' unlawful, unfair and/or deceptive business practices; to obtain restitution and disgorgement of Defendants' wrongfully-obtained monies; and to impose civil penalties.

## II. THE PARTIES

4. This action is brought on behalf of the People of the State of California by San Francisco City Attorney Louise H. Renne, Berkeley City Attorney Manuela Albuquerque, Sacramento City Attorney Samuel L. Jackson, and San Mateo County Counsel Thomas Casey, III, pursuant to California Code of Civil Procedure section 731, California Business and Professions Code section 17204, and/or California Business and Professions Code section 17535. The San Mateo District Attorney's Office has authorized the San Mateo County Counsel's Office to prosecute this action on behalf of the People, pursuant to California Business and Professions Code section 17204.

5. Joining the People as plaintiffs in this action are Joe Serna, Jr., who is the Mayor of Sacramento, and the City of Berkeley, both of whom are suing on behalf of the general public pursuant to California Business and Professions Code sections 17204.

6. Defendants, and each of them, are sued individually as a primary violator and/or 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 awareness of the wrongfulness of such practices and nonetheless rendered substantial assistance or encouragement to the accomplishment of the wrongful practices and was aware of the overall contribution to the common course of wrongful conduct alleged herein.

7. The following Defendants design and/or manufacture firearms that have been wrongfully marketed, distributed, and/or sold in California (hereinafter referred to as the "Defendant Manufacturers"):

i. 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.

ii. 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.

iii. 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.

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

v. 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.

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

vii. 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.

viii. 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.

ix. 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. Beretta U.S.A. is qualified to do business in California. Beretta U.S.A. imports and distributes firearms manufactured by defendant Pietro Beretta Sp. A.

x. 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.

xi. 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.

xii. 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.

xiii. 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.

xiv. 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.

xv. 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.

xvi. 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 manufactures firearms in Florida, imports firearms manufactured by defendant Forjas Tauras.

xvii. 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, and is qualified to do business in California. Glock Inc. imports and distributes firearms manufactured by defendant Glock GmbH.

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

xix. 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.

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

xxi. 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.

xxii. 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.

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

xxiv. 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.

xxv. Defendant Sigarms, Inc. ("Sigarms") is a corporation organized in the State of New Hampshire, with its principal place of business in New Hampshire.

xxvi. 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, and is qualified to do business in California.

xxvii. Defendant S.W. Daniels, Inc., (AKA Cobray Firearms, Inc.) is a corporation organized and existing under the laws of Georgia with its principal place of business in Georgia.

xxviii. 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.

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

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

i. Defendant American Shooting Sports Council, Inc. ("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.

ii. Defendant National Shooting Sports Foundation, Inc. ("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.

iii. Defendant Sporting Arms and Ammunition Manufacturers' Institute, Inc. ("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.

10. 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 among the "Defendant Trade Associations"), which are composed of firearm manufacturers, distributors, and sellers, including some or all of the Defendant Manufacturers.

11. The following Defendants, and each of them, import, distribute and/or market firearms that are or were found within the jurisdictional limits of California, and/or make retail sales of firearms in California (hereinafter referred to as the "Defendant Distributors"):

i. Defendant B.L. Jennings Inc. 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 Inc. distributes guns made by Defendant Bryco in California.

ii. Defendant Ellett Brothers, Inc., 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 firearms nationwide, including in California.

iii. 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 firearms made by several different manufacturers, including defendant Carl Walther GmbH. Interarms distributes its products to at least 46 California dealers.

iv. 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.

v. 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.

vi. Traders Sports, Inc., is a corporation organized and existing under the laws of the State of California with its principal place of business in San Leandro, California. Traders Sports, Inc., distributes firearms in California and is one of the largest retailers of firearms in Northern California.

12. At all times relevant herein, DOES 125-200, inclusive were business entities, the status of which are currently unknown. DOES 125-200 distribute, market and/or sell firearms that are or were found within California (hereinafter referred to as among the "Defendant Distributors").

13. Plaintiff is ignorant of the true names and capacities of Defendants referred to as DOES 1-200. 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 as soon as they are ascertained. All of the above-named Defendants, DOES 1-200, 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 1-200.

## III. JURISDICTION AND VENUE

14. Defendants, and each of them, are subject to the jurisdiction of the Courts of the State of California by virtue of their business dealings and transactions in California, by causing an injurious effect in California through their acts or omissions, and/or by their violation of California Business and Professions Code Sections §17200 and §17500.

15. Venue is proper in this court because the violations and the resulting injuries out of which the causes of action arise occurred in part within the City and County of San Francisco.

## IV. GENERAL ALLEGATIONS

### A. THE NUMBER AND SEVERITY OF FIREARM-RELATED CRIMES ARE A NATIONAL PROBLEM

16. 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 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.

17. Statewide statistics for California reveal similar patterns of firearm violence. In 1997 alone, there were 1,835 homicides committed with a firearm, generally a handgun. 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. The figures for California in each year during the five-year period 1992 through 1997 are similar: For each year, firearms were used in over 70% of the total homicides and handguns were used in over 62% of the total homicides. In addition, firearms are a leading cause of serious injuries. In 1997, there were over 25,000 incidents in California in which a victim suffered serious injuries from a firearm.

18. 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 gun violence affects the tenor and quality of everyday life, even for those who are not direct victims.

19. A substantial percentage of the firearms used to inflict harm and injury on California residents are obtained through an illegitimate secondary market, that caters to buyers who include criminals, minors, gang members and others precluded from lawfully purchasing Defendants' firearms (hereinafter, the "secondary market"). This secondary market is created and promoted by the conduct of Defendants. The existence of the secondary market, and the fact that the secondary market is fed by Defendants' acts and practices, is a matter of common knowledge to Defendants, as is demonstrated by the following sworn statement of Robert Haas, the former Senior VicePresident 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.

20. National surveys demonstrate that minors and convicted criminals have easy access to firearms through the 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 major urban centers 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. The same ATF

study indicated that another 15% of crime guns were seized from persons 18-20 years old, more than from any other three-year age group, adult or minor.

21. 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 an effort to 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 <u>S.H.O.T. Business</u> 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.

22. ATF has also reported that more than 45% of the crime weapons that it traces were illegally possessed by convicted criminals, and that more than 80% of the guns picked up in crime are handguns. Large percentages of these handguns were used in assaults, robberies, homicides, and other violent crimes. ATF tracing data also indicates that as many as 43% of firearms traced to crime in urban centers across America had been bought from retail dealers less than three years earlier, which is a strong indication that the firearm has been directly diverted into the secondary market.

## B. DEFENDANTS' CONDUCT HAS CREATED AN ILLEGITIMATE SECONDARY MARKET OF HANDGUNS TO UNAUTHORIZED USERS

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

24. Defendants know and have known for years that a substantial percentage of the firearms they manufacture, distribute, market and sell are purchased by unauthorized persons, including minors and convicted criminals. Many of the guns illegally sold in this secondary market

are subsequently used in the commission of crime. Defendants knew or should have known that their conduct would facilitate and/or encourage their firearms to fall into the secondary market and to be used by unauthorized persons. Defendants' business practices that create and promote the secondary market include but are not limited to the following:

**1. Oversaturation of the Legitimate Market**

25. 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.

**2. Oversaturation of Weak Gun Control Jurisdictions**

26. Firearms 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 saels 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 guns 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 firearms 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.

**3. Distributing Handguns Without Exercising Adequate Control**

27. Defendants' unrestrained distribution practices maximize their sales without any checks or precautions, 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 profits, they minimize contacts between defendants and their distributors and/or dealers, and prevent any meaningful monitoring of compliance with federal, state and local laws.

28. Defendants do not monitor or supervise their distributors or dealers, except in ways that are aimed at maximizing profits. Some defendants have distribution agreements that provide for the right of termination, and occasionally they have terminated or warned distributors or dealers. However, engaging in a dangerous sales practice -- such as one that would make guns easily available for potential criminal use -- has not been the basis for termination and is not prohibited by the terms of defendants' distributorship agreements. The reasons contemplated for termination are generally limited to the following: not maintaining minimum prices, advertising the price that the distributor pays to the manufacturer, or selling into the wrong market (some distributors are forbidden to sell to law enforcement or to make foreign sales). There is no mention of termination for selling to or facilitating the secondary market.

29. Defendants distribute their firearms without requiring that their dealers be trained or instructed: (a) to detect inappropriate purchasers; (b) to educate purchasers about the safe and proper use and storage of handguns, or to require any training or instruction of the purchasers; or (c) to inquire or investigate the purchasers' level of knowledge or skill or purposes for buying handguns. Defendant Manufacturers do not provide their distributors and dealers 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.

30. 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 their distributors or dealers.

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

32. 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.

**4. Facilitating Straw Purchases and Multiple Sales**

33. 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 into the secondary market through "straw purchases."

34. A "straw purchase" occurs where the purchaser of the firearm 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 firearm under the applicable federal, state and local laws. In some situations, the real purchaser will be present during the sale of the firearm. He or she may select the firearm, 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 firearms within a short period of time. In this situation, a straw purchaser may engage in repeated multiple firearm purchases.

35. Straw purchases account for a substantial percentage of firearms diverted into the secondary 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.

36. Similarly, the level of multiple sales is quite large. 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 firearms. 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 guns purchased in California in 1998 were part of multiple sales.

37. 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.

### 5. Allowing Sales to "Kitchen Table" Dealers

38. "Kitchen table" dealers are firearm dealers who do not sell firearms 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 firearms 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.

39. 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 improper 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.

### 6. Designing Weapons Without Features to Discourage Unauthorized Use

40. Firearms trafficking depends upon the ability of unauthorized users to fire 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 firearms, 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 firearms that do not include a design or feature preventing unauthorized use.

41. Thousands of handguns diverted to crime 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 crime. Defendants are aware of this problem, and the ease with which numbers are obliterated, but have taken no initiative to make their serial numbers tamper-proof. A recent ATF study of 27 major urban centers found, on average, that more than 11% of the guns traced to crime had obliterated serial numbers.

## C. DEFENDANTS HAVE DESIGNED THEIR GUNS TO APPEAL TO CRIMINALS AND HAVE INCREASED PRODUCTION TO MEET ILLEGAL DEMAND

42. 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.

43. 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.

44. The production of cheap handguns was especially prevelant among Defendants Lorcin, Bryco, Davis, and Phoenix. This group of California manufacturers is owned by members of an extended family, 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).

45. 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 firearms used most frequently in crime. A recent study in one state concluded that 9 millimeter handguns are the weapons of choice for criminals, accounting for almost a third of all homicides.

46. Defendants know or should know that they manufacture and market weapons, the design of which stresses concealability, lethality, or other design features, which make these weapons unreasonably 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. Very few such permits have been issued.

**D. DEFENDANTS' CONDUCT IS CALCULATED TO AVOID THE RESTRICTIONS OF LOCAL, STATE AND FEDERAL LAWS**

47. 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 governments have enacted laws to lessen the incidences of gun violence, Defendants have manufactured, designed, distributed, marketed and sold firearms in ways that undermine and frustrate the public policies embodied in federal, state and local law. The conduct and practices of Defendants as set forth herein have permitted and/or are calculated to allow Defendants to avoid the restrictions and/or prohibitions 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); San Francisco Police Code sections 610, 613, 614, and 615 *et seq.* (Regulating the Sale of Firearms); Sacramento City Code sections 28.05.501 and San Mateo County Ordinance Code, Chapter 3.52 *et seq.*

48. 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 and sale of "assault weapons." 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."

49. Despite this statute, certain Defendants have marketed and sold in California firearms substantially similar to or identical to the firearms banned by the statutes. In fact, certain Defendants have made only minor modifications to the banned assault weapons or renamed the assault weapons enumerated in the above-referenced statutes in order to avoid these laws.

50. For example, after the California legislature banned the TEC-9 firearm, defendant Navegar continued to distribute and sell the identical firearm in California under the name "TEC-DC9." Navegar later distributed and sold a firearm under the name "TEC-DC9" that was the same design as the banned TEC-9, with only cosmetic modifications. Navegar's TEC-DC9 is a semiautomatic assault weapon that can accept a 32-round detachable magazine, and can be modified to be fully automatic. It has attachments that facilitate spraying bullets from the hip. The TEC-DC9 also has a coating that provides, according to the manufacturer's brochure, "excellent resistance to fingerprints." These features serve no legitimate sporting, hunting or self-defense purpose and are designed to appeal to criminals.

51. At all relevant times, defendant Navegar has been on notice of the lethal consequences of its practices. Navegar's assault weapons have frequently been used in multiple homicides, including the 101 California Street massacre and the recent high school shootings in Littleton, Colorado. Defendant Navegar's marketing and sales director has been quoted as saying, "I'm kind of flattered [by condemnations of the TEC-9]. It just has 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." Larry Rohter, <u>Pistol Packs Glamour and Reputation as a Menace</u>, New York Times, March 10, 1992, at A1.

52. Despite the ban in Penal Code section 12020.5 against the advertisement of certain firearms, including but not limited to assault weapons, certain Defendants have advertised and continue to advertise such firearms to consumers within the State of California.

53. Additionally, numerous local ordinances prohibit the sale of "junk guns" or "Saturday Night Specials," including but not limited to ordinances adopted by the City and County of San Francisco, San Francisco Police Code sections 610, 613, 614, 615, *et seq.* and Sacramento City Code section 48.02.103. The "Saturday Night Special" ("SNS") ordinances enacted in jurisdictions throughout California were designed to protect the public from poorly made, easily concealable guns. These firearms have been and continue to be used frequently in the commission of crimes. Defendants have continued to manufacture and/or distribute guns covered by SNS ordinances without taking reasonable steps to prevent sales of such guns within jurisdictions banning such sales. Examples of firearms falling within local SNS bans include but are not limited to: Bryco Models 28 and 48; Davis Model P-380, Rimfire Derringers, D-Series and Long-Bore; Navegar Models Intratec Protec-22, Protec-25 and Category 9; Jennings Models J-22 and J-25; Lorcin Models L-22, L-25, LT-25, L-32, L-9MM and L-380; and Phoenix Models Raven 25, HP-22, and HP-25.

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

### 1. Adequate Warning and Safety Features Would Prevent Many Unintentional Shootings

54. Defendants, and each of them, have designed, manufactured, made or sold firearms that are defective because the firearms lack basic safety features and contain inadequate warnings that result in unintentional shootings. Defendants continue to distribute their firearms 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 store their guns in an unsafe manner. Despite this knowledge, Defendants market and promote their firearms in a manner that ignores or understates the risks that such firearms pose to their owners and to other members of the household. 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 also in the irresponsible storage and handling of guns.

55. Defendants' also manufacture, distribute and sell firearms that are defective and/or unreasonably dangerous in that their design lacks safety features or contains inadequate safety features. For example, it was and continues to be reasonably 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 an effective "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.

56. 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 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.

57. Unintentional shootings with Defendants' unsafe firearms often involve adolescents. Adolescents are foreseeably attracted to guns and typically do not understand all of the risks associated with handling a firearm. According to the 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.

58. Defendants have failed to take reasonable steps to guard against such foreseeable unintentional shootings by designing their firearms with basic safety features and/or giving

adequate warnings that would prevent or reduce such unintentional shootings. Defendants were aware of, and/or had available to them, devices, features, warnings, and other measures, which would prevent and/or decrease the dangers of their products. Defendants failed to remedy the deficiencies in their guns, warnings, instructions, promotions and/or advertisements of the firearms. Defendants further failed to adequately warn customers of these dangers, failed to inform distributors, dealers and/or buyers of available devices and measures that could prevent or decrease these dangers, failed to incorporate safety devices and features into their guns and/or discouraged the development and implementation of safety devices and features into their guns. Defendant Trade Associations failed to adopt adequate guidelines or standards relating to the development and inclusion of such features in firearms. 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.

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

59. The unsafe and defective design of Defendants' firearms results in thousands of shootings each year by persons who are not authorized to possess a firearm by the firearm's owner. Such shootings often occur when an adolescent or a criminal improperly obtains possession of a firearm.

60. Adolescent homicides and suicides are usually committed with firearms that the adolescent has taken from his or her home. In the United States, the rate at which youths aged 10-19 have committed suicide with a firearm has long averaged about once every six hours. In California, millions of minors live in homes where firearms are present. Studies have indicated that the odds that potentially suicidal minors will kill themselves double when a gun is kept in the home. 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. A large number of such firearm-related teen suicides occur each year in California.

61. At all pertinent times, it was reasonably foreseeable that Defendants' guns 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 gun should they want one.

62. At all pertinent times, Defendants have also been aware, or should have been aware, that when unauthorized users gained access to Defendants' guns, 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 gun designs, including personalized gun technology that would prevent an unauthorized user from being able to fire the gun. The Defendants further knew that by failing to make and sell firearms with the means to prevent their firing by unauthorized users, it was reasonably foreseeable that guns stolen from private residences, gun stores and other locations could be employed by unauthorized users in violent criminal acts.

63. 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."

64. Defendants' unreasonably dangerous and/or defective products have repeatedly victimized California residents. At the time the Defendants manufactured, distributed, marketed, designed, promoted and/or sold their firearms, Defendants knew or should have known of the unreasonable dangers of their guns, including those described herein. Defendants were also aware of, and/or had available to them, personalized safety features, warnings, and other measures,

which would prevent and/or decrease the dangers of their products. Defendant Manufacturers nevertheless failed to remedy the deficiencies in their guns. Defendant Manufacturers further failed to incorporate personalized safety features into their guns and/or 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 firearms. Defendants knew or should have known that, as a consequence of their actions, California residents would be killed or seriously injured.

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

65. A gun 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 firearms with such safety features.

66. 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.

67. Instead of encouraging the firearms industry 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.

## F. DEFENDANTS' UNFAIR, FALSE, DECEPTIVE AND/OR MISLEADING STATEMENTS

68. For years, and continuing to date, Defendants have knowingly, purposefully and intentionally misled, deceived and confused members of the general public in California regarding the safety of firearms 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 firearms that the ownership and possession of firearms in the home increases one's security. For example, handgun manufacturers have promoted firearms 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, firearms 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 guns in the home.

69. 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 firearms 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, 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.

70. Defendants' advertising and promotion deceptively conveys the message that possession of a firearm and that the enhanced lethality of particular features and 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 firearm 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. Defendants' advertising and promotion is therefore likely to deceive members of the general public.

71. 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.)

72. In California, a substantial number of deaths and injuries have occurred each year because firearms 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 chose 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.

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

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

74. 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 firearms distributed through the illegitimate secondary market cause substantial injury and harm to California residents. Defendants' actions and omissions set forth herein unreasonably facilitate violations of federal, state and local laws, 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. Defendants' conduct has directly and indirectly injured and harmed California residents in the form of loss of life, injury, increased criminal activity involving firearms, law enforcement costs, medical costs and emergency response costs. Defendants' conduct has allowed Defendants to profit from their unfair, unlawful and/or fraudulent business practices thereby contributing to Defendants' overall financial success and vitality at the expense of California and its residents.

## I. FIRST CAUSE OF ACTION

## PUBLIC NUISANCE

## (AGAINST ALL DEFENDANTS AND DOES 1-200)

75. Paragraphs 1 through 74 are repeated and realleged as if set forth herein.

76. The People of the State of California 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.

77. Defendants' ongoing conduct relating to their creation and supply of a crime market for firearms has created and maintained a public nuisance throughout Northern California, as thousands of firearms that Defendants directly or indirectly supply to the illegitimate firearms market are thereafter used and possessed in connection with criminal activity in Northern California. As a result of the continued use of many of these firearms after they enter the State, California residents have been and will continue to be killed and injured by these firearms and California 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.

78. Defendants' conduct, as set forth above, constitutes a public nuisance in the City and County of San Francisco, the County of San Mateo, and the Cities of Berkeley and Sacramento, because it is an unreasonable interference with common rights enjoyed by the general public.

79. Defendants' conduct, as set forth above, is an unreasonable interference with common rights enjoyed by the People of the State of California and by the general public in the City and County of San Francisco, the County of San Mateo, and the Cities of Berkeley and Sacramento, because it significantly interferes with the public's health, safety, peace, comfort and convenience.

80. Defendants' conduct, as set forth above, is an unreasonable interference with common rights enjoyed by the People of the State of California and by the general public in the City and County of San Francisco, the County of San Mateo, and the Cities of Berkeley and Sacramento, 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.

81. Defendants' ongoing conduct produces an ongoing nuisance, as thousands of handguns that Defendants' directly or indirectly supply to the crime market which are thereafter illegally used and possessed in California and in the City and County of San Francisco, the County of San Mateo, and the Cities of Berkeley and Sacramento, 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 City and County of San Francisco, the County of San Mateo, and the Cities of Berkeley and Sacramento 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 People of the State of California, acting through the prosecuting Cities and Counties, have a clearly ascertainable right to abate conduct that perpetuates this nuisance.

82. The presence of illegitimately possessed and used handguns in the City and County of San Francisco, the County of San Mateo, and the Cities of Berkeley and Sacramento, proximately results in significant costs to the public in order to enforce the law, arm the police force and treat the victims of handgun crime. Stemming the flow of handguns into the illegitimate firearms market will help to abate the nuisance, will save lives, prevent injuries and will make California a safer place to live.

## II. SECOND CAUSE OF ACTION

### VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17500 FOR UNFAIR, DECEPTIVE, UNTRUE OR MISLEADING STATEMENTS AND ADVERTISING

### (AGAINST ALL DEFENDANTS AND DOES 1-200)

83. Plaintiff incorporates by reference paragraphs 1 through 82 as though fully set forth herein.

84. Defendants, acting individually and/or in concert, have made unfair, deceptive, untrue or misleading statements and advertisements in connection with the marketing and sale of firearms in violation of California Business and Professions Code §§ 17500 *et seq.* Defendants unfair, deceptive, untrue or misleading statements include, but are not limited to, engaging in a campaign of deception and misrepresentation concerning the dangers of their firearms by disseminating advertisements and other statements which falsely state or imply that ownership of guns will increase home safety and security. Defendants knew or by the exercise of reasonable care should have known that home ownership of guns increases the risk of homicides, suicides and accidental injury or death in the home and that their advertisements and/or statements were untrue and/or misleading. Defendants failed to disclose the true nature of the risks associated with home ownership of guns or to correct their advertisements and/or statements despite their knowledge that they were misleading or wrong.

85. Defendants' unfair and/or deceptive acts or practices in issuing false or misleading statements and/or advertisements are and have been likely to deceive to members of the general public in California.

Wherefore, Plaintiff prays for relief and judgement against the Defendants jointly and severally, as herein set forth.

## III. THIRD CAUSE OF ACTION

## VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS 17200 ET SEQ. FOR UNLAWFUL, UNFAIR OR FRAUDULENT BUSINESS PRACTICES

## (AGAINST ALL DEFENDANTS AND DOES 1-200)

86. Plaintiff incorporates by reference paragraphs 1 through 85 as though fully set forth herein.

87. Defendants, acting individually and/or in concert, have engaged in unlawful, unfair and/or fraudulent business practices in connection with the manufacture, marketing or sale of firearms in violation of Business and Professions Code Section 17200 *et seq.*, including, but not limited to, the following:

a. Defendants have engaged in an unlawful business practice by creating a public nuisance in violation of California Code of Civil Procedure section 731 and California Civil Code section 3480.

b. Defendants have engaged in unlawful business practices by violating California Business and Professions Code section 17500 et seq. and Civil Code section 1700(a)(5), as is set forth in Count I;

c. Certain Defendants have engaged in unlawful business practices by violating or aiding and abetting the violation of the California Roberti-Roos Assault Weapon Control Act of 1989, California Penal Code sections 12275-12290;

d. Certain Defendants have engaged in unlawful business practices by violating or aiding and abetting the violation of California Penal Code section 12020.5, which bans any advertising in California of certain unlawful weapons, including assault weapons;

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

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

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

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

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

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

k. 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 firearms and help to prevent the creation of an illegitimate secondary market;

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

m. 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 firearms in a single transaction;

n. 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 firearms;

o. Defendant Manufacturers and Distributors, and each of them, have distributed firearms to dealers without requiring their dealers to demonstrate compliance with federal, state and local tax, zoning or licensing laws;

p. Defendant Manufacturers and Distributors, and each of them, have distributed firearms to dealers without requiring dealers to maintain accurate records of sales;

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

r. 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;

s. Defendant Manufacturers, and each of them, have designed and sold firearms without incorporating feasible safety features and personalized gun technology which would prevent unintentional shootings and/or unauthorized and/or unintended users from gaining access to the firearms, have discouraged the development and implementation of such features and devices, and have not competed with each other by introducing firearms utilizing such technology;

t. Defendant Manufacturers, and each of them, have designed and sold firearms without incorporating feasible technology that would prevent persons from unlawfully obliterating the serial numbers required by law to be placed on those guns;

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

v. Defendants, and each of them, have over-promoted the purported self-defense and home-protection benefits of their guns in a manner that negates or undercuts any warnings or instructions regarding the safe storage and use of guns;

w. Defendants, and each of them, have manufactured, modified, re-named, marketed, distributed, and sold their firearms in manners that violate or are calculated to evade local, state and federal laws; and

x. Defendants, and each of them, have designed, manufactured and/or marketed their firearms in a manner that increases the demand for firearms by persons who use or possess them illegally.

88. Defendants' acts, conduct and practices in the design, marketing, distribution and/or sales of firearms have been and are unfair, unlawful and/or deceptive acts in violation of public policy and California Business and Professions Code § 17200 *et seq.*

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

1. On the First Cause of Action for public nuisance, for preliminary and permanent injunctive relief, requiring Defendants and their respective successors, agents, servants, officers, directors, employees and all person acting in concert with them to cease and desist from engaging in practices that create a public nuisance;

2. On the Second and Third Causes of Action, for injunctive and declaratory relief pursuant to Business and Professions Code §§ 17203 and 17535:

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., and §§17500 et seq., and

b. Enjoining Defendants and their respective successors, agents, servants, officers, directors, employees and all person acting in concert with them from engaging in conduct in violation of Business and Professions Code §§17200 et seq., and §§17500 et seq.;

3. For pre-judgment and post-judgment interest as provided by law;

4. For civil penalties pursuant to Business and Professions Code §§ 17206, 17206.1, 17207, 17535.5 and 17536;

5. For restitution and/or disgorgement of wrongfully obtained monies pursuant to Business and Professions Code §§ 17203 and 17535;

6. For costs of suit as provided by law;

7. For attorneys' fees as provided by law; and

8. For such further relief as the Court deems equitable and just.

Dated: May 25, 1999

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

CITY OF CHICAGO and COUNTY OF COOK,

Plaintiffs,

v.

BERETTA U.S.A. CORP.; PIETRO BERETTA Sp. A.; BROWNING ARMS CO.; BRYCO ARMS, INC.; COLT'S MFG. CO., INC.; DAVIS INDUSTRIES, INC.; GLOCK, INC.; GLOCK GMBH; HI-POINT FIREARMS; H & R 1871 INC.; INTERNATIONAL ARMAMENT CORP.; CARL WALTHER GMBH; LORCIN ENGINEERING CO., INC.; KEL-TEC CNC INDUSTRIES, INC.; NAVEGAR, INC.; PHOENIX ARMS; RAVEN ARMS, INC.; SMITH & WESSON CORP.; STURM, RUGER AND CO., INC.; SUNDANCE INDUSTRIES, INC.; TAURUS INTERNATIONAL MANUFACTURING, INC.; FORJAS TAURUS, S.A.; B. L. JENNINGS, INC.; FABER BROTHERS, INC.; RILEYS, INC.; ABN SPORTS SUPPLY, INC., a/k/a ASHLAND SHOOTING SUPPLIES, INC.; UNIVERSAL FIREARMS, LTD.; B & H SPORTS, LTD.; BOB'S SPORTS HDQ., INC.; BREIT & JOHNSON SPORTING GOODS, INC.; CHICAGO RIDGE GUN SHOP & RANGE, INC.; JOHN RIGGIO, JR.; ELIZABETH RIGGIO; JIM RIGGIO; GUN WORLD, INC.; MIDWEST SPORTING GOODS CO.; THE SPORTSMAN'S CENTER/ ILLINOIS GUN WORKS, LTD.; SHORE GALLERIES, INC.; THE SPORTS AUTHORITY, Inc. and DONALD R. BELTRAME,

Defendants.

INJUNCTION

NO. 98 CH 015596
Hon. Stephen A. Schiller

FIRST AMENDED COMPLAINT

Plaintiffs the City of Chicago (the "City"), by its attorney, Brian L. Crowe, Corporation Counsel of the City of Chicago, and the County of Cook, Illinois (the "County"), by its attorney, Richard A. Devine, State's Attorney for the County of Cook, hereby complain against defendants as follows:

## NATURE OF THE ACTION

1. This is a civil action for injunctive relief and compensatory and punitive damages against defendants who, by their actions, have knowingly and deliberately, and for their own financial benefit, created a public nuisance in the City of Chicago and the County of Cook, and who, by their actions, have negligently supplied firearms to Chicago residents who they know or have reason to know will illegally use, possess, transfer, or resell the firearms in Chicago. Specifically, defendants knowingly design, manufacture, market, supply and distribute thousands of firearms in order to facilitate their entry into and possession in Chicago, where they are illegal to possess, and where they often are used in the commission of crimes, including, crimes in which residents of Chicago are killed, maimed or terrorized. Defendants know and foresee that their conduct contributes to crime in Chicago and in Cook County, and creates an unreasonable threat to public health and safety. The defendants' conduct undermines the City's efforts to protect the public health, safety and welfare through stringent gun control ordinances which make it illegal to possess most types of guns in the City. The defendants are aware that, despite these stringent restrictions, there is a profitable market for illegal firearms in Chicago. For their own financial benefit, and through their design and marketing efforts, they spur demand for illegal weapons in Chicago; they then distribute massive quantities of these weapons in a manner that makes them

readily available for use in the City, in violation of law. Defendants have created and are responsible for this public nuisance, which the City and the County seek to abate by this action. Moreover, defendants have breached their duty to not sell or supply firearms to Chicago residents who they know or have reason to know will illegally use, possess, transfer, or resell the firearms in Chicago and have thus circumvented the Chicago ordinances governing use or possession of firearms in Chicago. The City seeks to enjoin the defendants from continuing conduct which facilitates the illegal entry of firearms into the City, and, with the County, seeks to recover the costs they have incurred as a result of the possession and use of illegal guns in Chicago and in Cook County that are manufactured, distributed and sold by defendants.

## PARTIES

2. The City is a body politic and corporate organized and existing, under the laws of the State of Illinois and located in Cook County, Illinois.

3. The County is a body politic and corporate, organized and existing under the laws of the State of Illinois, which operates the criminal justice system responsible for prosecuting firearms crimes in the City, and which operates the Cook County Bureau of Health, which is responsible for the treatment of firearms violence in the City.

4. The following defendant manufacturers manufacture, distribute or sell firearms that are found illegally in Chicago on a frequent, continuous and ongoing basis:

a. 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,

and imports firearms 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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, and imports firearms manufactured by defendant Glock GmbH, an Austrian corporation with its principal place of business in Austria.

g. 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. 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 firearms manufactured by defendant Carl Walther GmbH, a German corporation with its principal place of business in Germany.

i. 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 was a debtor under chapter 11 U.S.C. § 101 et. seq. ("Bankruptcy Code") in case # SB96-27640MJ pending in the United States Bankruptcy Court, Central District of California ("Lorcin Bankruptcy"). On November 20, 1998, an order was entered in the Lorcin Bankruptcy confirming Lorcin's Fifth Amended Plan (as modified) ("Lorcin Plan"). Lorcin, as reorganized under the Lorcin Plan, has continued its business and operations in the manner alleged in this complaint. Plaintiffs' claims and remedies were not impaired or discharged by the Lorcin Plan or Lorcin Bankruptcy for various reasons, including the fact that Plaintiffs did not receive good and sufficient notice of the Lorcin Bankruptcy and the proposed confirmation of the Lorcin Plan. In the alternative, if Plaintiffs' claims or remedies have been limited as a result of the confirmation of the Lorcin Plan, then Lorcin's liability is based on and arises from its continued operations and course of conduct following the confirmation of the Lorcin Plan. To the extent necessary Plaintiffs shall obtain a determination from a court of competent jurisdiction that their claims were not affected by the confirmation of the Lorcin Plan.

j. 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.

k. 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.

l. 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.

m. 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.

n. 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.

o. 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, and imports firearms manufactured by defendant Forjas Taurus, S.A., a Brazilian corporation with its principal place of business in Brazil.

p. Defendant Hi-Point Firearms is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Ohio.

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

r. 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.

5. The following defendant distributors, distribute or sell firearms that are found illegally in the City of Chicago on a frequent, continuous and ongoing basis:

a. Defendant B. L. Jennings, Inc., also known as B. L. Jennings Firearms, and formerly known as Jennings Firearms, Inc., is a corporation organized under the laws of the state of Nevada, with its principal place of business in Nevada.

b. Defendant Faber Brothers, Inc. is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in Illinois.

c. Defendant Riley's, Inc. is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business in Indiana.

d. Defendant ABN Sports Supply, Inc., also known as Ashland Shooting Supplies, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Texas.

6. The following defendant dealers sell firearms in the State of Illinois that are used illegally in the City of Chicago on a frequent, continuous and ongoing basis:

a. Defendant Universal Firearms, Ltd., d/b/a Bell's Gun & Sport Shop, is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at 3315 North Mannheim Road, Franklin Park, Illinois.

b. Defendant B&H Sports, Ltd. is a corporation, organized and existing under the laws of the State of Illinois, with a place of business at 9725 Southwest Highway, Oak Lawn, Illinois.

c. Defendant Bob's Sports Hdq., Inc. is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at 8017 West 79th Street, Justice, Illinois.

d. Defendant Breit & Johnson Sporting Goods, Inc. is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at 2724 North Harlem Avenue, Elmwood Park, Illinois.

e. Defendant Chicago Ridge Gun Shop & Range, Inc. is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at 10349 Southwest Highway, Chicago Ridge, Illinois.

f. Chuck's Gun Shop & Pistol Range, also known as DA Inc., is owned by defendants John Riggio, Jr., Elizabeth Riggio, and Jim Riggio, with its principal place of business at 14310 South Indiana, Riverdale, Illinois.

g. Defendant Gun World, Inc. is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at 421 East Irving Park Road, Bensenville, Illinois.

h. Defendant Midwest Sporting Goods Co. is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at 8565 West Plainfield Road, Lyons, Illinois.

i. Defendant The Sportsman's Center/Illinois Gun Works, Ltd. is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at 7229 West Grand Avenue, Elmwood Park, Illinois.

j. Defendant Shore Galleries, Inc. is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at 3318 West Devon Avenue, Lincolnwood, Illinois.

k. Defendant The Sports Authority, Inc. is a corporation, organized and existing under the laws of the State of Delaware, with a place of business at 7720 South Cicero, Burbank, Illinois.

l. Suburban Sporting Goods is a sole proprietorship, owned by defendant Donald R. Beltrame, with its principal place of business at 2036 West North Avenue, Melrose Park, Illinois.

7. Each of these defendants is subject to the jurisdiction of the Illinois courts by virtue of their doing or transacting business in Illinois, and/or their commission of a tortious act in Illinois.

## VENUE

8. Venue is proper in this court because one or more of the defendants resides in Cook County and the transaction or some part of the transaction out of which the cause of action arose occurred in Cook County.

## THE PRESENCE OF ILLEGAL FIREARMS IN THE CITY OF CHICAGO CONSTITUTES A PUBLIC NUISANCE.

9. The City of Chicago, like most major cities in the United States, is faced with high levels of violent crime. Many of the violent crimes that occur in the City of Chicago are committed with firearms that are possessed and used illegally.

10. The widespread availability and use of firearms is a national problem. Nationally, firearms are the instrumentalities most commonly used in homicides. Firearms were used to commit 69% of all homicides in 1995, and were used to commit 68% of all homicides in 1996. They are involved in the deaths of approximately 34,000 persons each year. In 1995, there were 35,957 deaths attributable to firearms. The high level of gun violence has had a particularly drastic impact on young persons. Between 1984 and 1987, the firearm death rate for ages 15-19 increased by 10- 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 firearms. Homicide is the second-leading cause of death for youths aged 15-19.

11. In Chicago, there were 570 homicide victims in 1997 who were killed with firearms, 50 of whom were under the age of 17. In 1996, there were 597 homicide victims who were killed with firearms, 66 of whom were under the age of 17. The number of homicides committed with firearms was as high as 692 in 1994, when 86 of the victims were under the age of 17.

12. In Chicago, during 1997, there were 8,866 robberies, 4,390 aggravated batteries and 3,963 aggravated assaults in which handguns were used. That same year, 147 robberies were committed in Chicago with a firearm other than a handgun.

13. Absent effective enforcement of gun control laws, firearms are readily available to anyone who wishes to use them.

a. A recent survey showed that 17% of adolescents have at one time carried a concealed gun. Approximately 29% of 10th grade boys had at one time carried a concealed gun, and 23% of 7th grade boys had at one time carried a concealed gun.

b. A recent survey showed that 70% of all inmates felt that they could easily obtain a firearm upon their release. Approximately 54% of them said they would obtain a firearm from the illegal street market if they wanted one. The survey showed that 41% of high school students believe that they could easily obtain a gun, and 37% of them would obtain a firearm from the illegal street market, if they wanted one.

c. A recent survey showed that 45% of arrestees obtained their guns in the illegal firearms market.

14. The deaths and injuries and interference with public safety and health caused by firearms include in addition to increased levels of street crime, other widely recognized consequences of easily available guns.

a. The presence of guns in the home is highly dangerous. It is now generally recognized in the field of public health that introducing a gun 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 aggressor. Such uses include intentional shootings (often of a spouse), suicides, and accidental shootings (most often involving children).

b. Statistically significant 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. A suicide is five times more likely; for homes with teenagers, a suicide is ten times more likely.

c. The dangers of guns in the home and the consequences of widespread availability without restraints or limits were long ago, are today, and will continue to be specifically known to defendants. For example, almost 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 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.)

15. In an effort to reduce the level of ready availability of those firearms that are most frequently used in crimes and to protect the public's health, safety and welfare, the City of Chicago has enacted gun control ordinances that are among the strictest of any municipality in the country. Such laws have been shown to substantially reduce the number of homicides, suicides, and accidents by firearms as long as residents of the jurisdiction imposing the restriction cannot legally purchase those firearms elsewhere.

16. The Municipal Code of the City of Chicago ("Municipal Code") places strict requirements and prohibitions on the possession, use and transfer of firearms in Chicago. Various provisions of the Municipal Code concerning the possession, use and transfer of firearms include the following:

a. Prohibitions on carrying firearms on the person or transporting them in a vehicle if not broken down in a non-functioning state. Municipal Code, Secs. 8-20-010 & 015.

b. Requirements that all lawful firearms in the City of Chicago be registered, and prohibitions on the ownership or possession of a registerable firearm by anyone other than the person who holds a valid registration certificate for such firearm. Municipal Code Sec. 8-20-040.

c. Prohibitions on the registration -- and thus the possession -- of a variety of firearms, including (I) sawed-off shotguns, (ii) machine guns, (iii) short barreled rifles, (iv) handguns other than those which were registered prior to March 30, 1982 and which contain load indicator devices and safety mechanisms, such as trigger locks, to hinder their use by unauthorized users, (v) firearm mufflers or silencers, and (vi) assault weapons, as defined in Sec. 8-20-030. Municipal Code, Sec. 8-20-050.

d. Prohibitions on the issuance of a registration certificate to any person who does not possess a valid Illinois Firearm Owner's Identification Card, has been convicted of one or more of certain enumerated crimes, and is not otherwise ineligible to possess a firearm, and requirements concerning information that must be provided in any application for a registration certificate. Municipal Code, Sec. 8-20-060.

e. Requirements that a firearms owner notify the Chicago Police Department immediately if his firearm is lost or stolen, and, if he wishes to sell or transfer the firearm, that he notify the Chicago Police Department no less than 48 hours prior to its sale or transfer. Municipal Code, Sec. 8-20-140(a).

f. Prohibitions on the sale or transfer of firearms within the City of Chicago, except through a licensed weapons dealer as defined in the Municipal Code. Municipal Code, Sec. 8-20-170(a).

g. Prohibitions on selling or giving away any pistol, revolver or other firearm which can be carried or concealed on the person without a license to do so. Municipal Code, Sec. 4-144-010.

h. Prohibitions on the purchase of any deadly weapon (as set forth in Sec. 4-144-010) which can be concealed on the person, without first securing from the superintendent of the police a permit to do so. Municipal Code, Sec. 4-144-070.

17. These ordinances are designed to limit the number of firearms present in the City of Chicago that are not likely to be used for sport, hunting or self-defense, and which serve no practical purpose other than use in the commission of crimes and in other ways that endanger the public health, and to ensure that guns do not fall into the hands of persons who are likely to use or possess them illegally.

18. The State of Illinois prohibits persons not in law enforcement from carrying concealed firearms on their persons. 720 ILCS 5/24-1 (a)(4). Illinois law also prohibits carrying a firearm in a vehicle unless the firearm is inaccessible or broken down in a nonfunctioning state. These laws are intended to protect the public's health, safety and welfare.

19. Despite the City's strict gun control ordinances, there are thousands of illegal firearms in existence in the City of Chicago, and more firearms continue to be brought into and maintained illegally in the City each year.

a. In each of the years 1994-1997, the City of Chicago Police Department recovered an average of approximately 17,000 illegal firearms within the City. These illegal firearms represent only a fraction of the illegal firearms in the City.

b. Many of the illegal firearms recovered, as well as illegal firearms not recovered, have been and continue to be used in the commission of crimes in Chicago, causing deaths and injuries to Chicago's residents, and creating a sense of fear among the City's residents.

c. A proximately 87% of all firearms used in crimes in Chicago are handguns. Handguns are especially attractive to criminals because they can be readily concealed.

d. Firearms that are used illegally in Chicago tend to be recently purchased and are relatively new. Fifty-seven percent of recovered firearms were originally sold within three years of recovery. Elsewhere in the state and nation, a smaller proportion of firearms used in crimes are that new. Firearms used in crimes are very rarely reported stolen prior to their illegal use. Approximately 10.49% of firearms recovered by the Chicago Police Department have been reported stolen.

20. The existence of illegal firearms in the City of Chicago constitutes a public nuisance because it violates ordinances designed to protect the public from a threat to its health, welfare and safety.

21. The existence of readily available firearms in the City of Chicago also constitutes a public nuisance because it creates an unreasonable and significant interference with public health, welfare and safety and the public's ability to be free from disturbance and reasonable apprehension of danger to person and property.

22. Many of the firearms illegally possessed in Chicago are used in the commission of violent crimes. For example, the following firearms originally were purchased in such a fashion as to put the defendant dealers on reasonable notice that the purchaser was not obtaining firearms for his own, lawful use.

a. Bell's Gun & Sport Shop

(i) During the period August 1994 and June 1996, Stanley Malone, who is a resident of Bellwood, Illinois, purchased a total of fourteen pistols from Bell's and from Suburban Sporting, Goods. Stanley Malone purchased six of those fourteen pistols from Bell's. Of those six pistols, Stanley Malone purchased five of them between November 1995 and June 1996: two Lorcin .380 caliber semi-automatic pistols on November 8, 1995, two Lorcin .380 caliber semi-automatic pistols on June 1, 1996, and an Intratec Model AB-10 9mm semi-automatic pistol on November 29, 1995. Stanley Malone purchased the majority of his firearms at the request of gang members, making a profit of about $60 per firearm. On August 5, 1996, Gregory Malone, reportedly a member of the Black P Stone Rangers, a street gang, used one of the Lorcin .380 caliber semi-automatic pistols purchased by Stanley Malone, to shoot and injure both Dahveed Dean and Ites Chapman, both Chicago residents.

b. B&H Sports, Ltd.

(i) On March 18, 1997, James Smith, a Chicago resident, purchased a Smith & Wesson 9mm semi-automatic pistol from B&H; the firearm is one of eight handguns Smith purchased during the period 1995-97. Smith was a member of the New Breed street gang. On February 22, 1998, an internal dispute among members of that gang led to a shootout in a car wash at 4438 West 5th Avenue. Three men were shot -- one fatally. Numerous semi-automatic firearms were used during the shootout, including the Smith & Wesson 9mm pistol that Smith purchased from B&H on March 18, 1997.

(ii) Between August 6, 1994 and February 24, 1995, Thomas Sanders, a resident of Chicago, purchased seven firearms, five of them from B&H, then doing business as The Gunslinger. On March 20, 1996, Steven Walters and Muhammad Gibson used the Bryco Model 48, .380 caliber semi-automatic pistol that Sanders purchased from B&H to rob Angelo Powell at gunpoint. The Bryco used in the armed robbery was recovered, but the other seven firearms that Thomas Sanders purchased have not been recovered.

c. Bob's Sports Hdq., Inc.

(i) On March 18, 1996, L.C. McKinley, a Chicago resident, purchased a Bryco-Jennings .380 caliber semi-automatic pistol from defendant Bob's. On April 20, 1997, it was used by Christopher Faulkner, a Chicago resident and a member of the Black Disciples street gang, to shoot at three Chicago residents whom he believed to be members of a rival gang. Faulkner stated that the gun was a Black Disciples gun which the gang maintained in an alley hiding spot with additional ammunition for use by members.

d. Breit & Johnson Sporting Goods, Inc.

(i) On or about July 19, 1996, defendant Riley's Inc. sold a Taurus Model 85 .38 caliber revolver to Breit & Johnson. On or about February 21, 1998, Robert Sawicki, a Chicago resident, purchased the firearm from Breit & Johnson. On May 19, 1998, Robert Sawicki used the firearm to shoot and kill Juel Marifjeren at the CTA's train stop located at 151 West Congress.

e. Chicago Ridge Gun Shop & Range, Inc.

(i) On November 16, 1996, Victor Caruth, a Chicago resident, purchased a Bryco Arms Model 59 9mm semi-automatic pistol, one of six handguns he purchased in 1996. On December 5, 1996, that same firearm was used to shoot Ernest Jarrett three times in the chest from a passing car. The firearm was then thrown from the car.



f. Chuck's Gun Shop & Range, Inc. and Tile Sports Authority in Burbank

(i) Between August 1997 and July 1998, Ezra Evans, a resident of Chicago, purchased a total of thirteen firearms, seven from Chuck's and six from The Sports authority. He purchased the first nine of those thirteen firearms for a man known as "Little G," whom Evans believed to be a member of the Gangster Disciples street gang, and whom he believed controlled the narcotics traffic in the Chicago Housing Authority building, located at 3835 South Federal. Evans purchased the final four of the thirteen firearms for a man Evans knew as "Kojak," whom he believed to be a member of the Gangster Disciples street gang, and whom he believed controlled the narcotics traffic at the Chicago Housing Authority building located at 3737 South Federal. Kojak paid Evans $150 for those four firearms. On or about August 15, 1998, a 16-year old member of the Gangster Disciples, Michael Tolliver, allegedly shot and fatally wounded Officer Michael Ceriale, a Chicago Police Department officer, with the Smith & Wesson .357 caliber revolver Evans had purchased from Chuck's and given to Little G.

(ii) On August 19, 1996, Renard Johnson, a resident of the Ida B. Welles Chicago Housing Authority Development in Chicago, purchased a Cobray "Full Metal Jacket" 9 mm machine pistol from Chuck's. This firearm is one of three 9mm handguns Johnson purchased in 1996. The Cobray machine pistol Johnson purchased on August 19, 1996, is one of several firearms used by five members of tile Black Disciples on June 12, 1997, as they fired on and injured a group of men while driving through a neighborhood controlled by a rival gang.

g. Illinois Gun Works, Ltd.

(i) On June 16, 1995, Shaundra Oliver purchased a Bryco Arms 9mm semi-automatic pistol from Illinois Gun Works. During the previous seven months, Oliver had purchased 14 firearms -- 10 semi-automatic pistols and 4 revolvers -- from two gun stores. When the Chicago Police Department recovered the Bryco Arms 9mm pistol, they learned from Oliver that she frequently purchased guns for a friend of hers who is a convicted drug dealer.

## DEFENDANT DEALERS' UNREASONABLE CONDUCT CREATES A PUBLIC NUISANCE IN CHICAGO AND IN THE COUNTY OF COOK.

23. Defendant dealers sell firearms even when they know or should know that the firearms will be used or possessed illegally in Chicago.

a. Defendant dealers are required to obtain the residences of anyone who purchases firearms from them.

b. When a firearms dealer knows that a Chicago resident has purchased a handgun, assault weapon or any other firearm that is illegal to use or possess in Chicago, he knows that there is a reasonable likelihood that that purchaser will take the gun back into the City of Chicago, where it is illegal to possess or use that firearm.

c. Defendant dealers sell firearms to Chicago residents even when the purchasers' words and/or behaviors indicate that they intend to possess or use the firearms illegally.

24. Defendant dealers sell firearms to persons whom they know or have reason to believe will illegally transfer or resell those firearms because they are not licensed firearms dealers and hence are not subject to federal, state or local regulation.

a. Defendant dealers make many multiple sales of firearms, in which one person purchases more than one gun at the same time or within a short period of time, that they know or should know are for purposes of transfer or resale.

b. Defendant dealers sell firearms to Chicago residents even when the purchasers' words and/or behavior indicate that they intend to transfer or resell the firearms illegally.

25. Despite their knowledge that Chicago residents purchase guns outside the City of Chicago and then bring them back into the City, and their knowledge both of the harm done in Chicago and of Chicago's strict gun control ordinances, defendant firearms dealers make no meaningful effort to prevent or limit the traffic of firearms into Chicago, but instead choose to profit from such traffic. They do not refuse to sell to Chicago residents and do not require proof that Chicago residents intend to maintain the firearms outside Chicago. They do not notify the Chicago Police Department of sales to residents of Chicago.

26. Frequently, Chicago residents and others will purchase multiple or single firearms at once or within a short period of time, with the intention of providing some or all of them to other Chicago residents who would not themselves be eligible to purchase a firearm under federal, state or local laws. These purchases are known as "straw purchases." Straw purchases are common; only 22% of firearms recovered by the Chicago Police Department are recovered from the original purchaser. Defendant gun dealers consciously fail to take any action to prevent violations of law when Chicago residents 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 those weapons for himself, but instead for purposes of illegal resale. Defendant dealers are aware that these multiple purchasers are 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.

27. A recent investigation by the Chicago Police Department revealed that the defendant gun dealers sell guns to Chicago residents under circumstances where they know or should know that the purchaser will possess the weapons illegally in the City of Chicago, and when they know or should know that the purchaser will use the guns for illegal purposes in the City of Chicago or transfer the guns to others who will likewise possess or use the guns illegally in the City of Chicago or elsewhere. By so acting, the defendant dealers aid and abet violations of Chicago's gun control ordinances.

28. This investigation involved undercover members of the Chicago Police Department and other authorized investigators making firearms purchases from the defendant

dealers. In each case, the undercover officers identified themselves as Chicago residents. In each case, the firearms purchased are illegal to possess in the City of Chicago. In no case did any defendant dealer take any action to prevent a violation of Chicago's gun control ordinance. Some of the specific instances of the conduct by the defendant dealers that intentionally and recklessly facilitates the illegal possession and use of firearms are set forth below.

### A. Bell's Gun & Sport Shop

(i) On September 2, 1998, Officer 1 entered Bell's Gun & Sport Shop to purchase firearms and ammunition. Officer 1 asked a sales clerk about an expensive firearm, and when he balked at its estimated $2,000 price, the sales clerk told him that for the same amount of money he could buy a semi-automatic pistol, put laser sights on it, get a bullet-proof vest, some boxes of ammunition and a Benelli survival shotgun with a pistol grip.

(ii) Officer I then inquired about a Kel-Tec semi-automatic pistol. The sales clerk explained that "pre-fabricated" bullets were of the type that contains gel and small fragments that cause the bullet to explode upon impact, expending all of its energy in the target. The advantage of that type of bullet, he explained, is that it "doesn't go through the target and hit a little girl on the next block, because then you've bought it." Officer 1 purchased those bullets, and the sales clerk then suggested that he share the bullets with some friends so as to split the cost.

(iii) Officer 1 also purchased an Intratec 9mm semi-automatic, telling the clerk he was interested in purchasing a firearm with a larger capacity magazine.

(iv) Officer 1 suggested that the clerk include both guns and the ammunition he was purchasing on the same purchase order, and said he would pick them up together. The sales clerk recommended that he always purchase gun separately from ammunition because "it's nobody's business." Officer 1 agreed to purchase the ammunition separately at that time.

(v) On September 8, 1998, Officer 1 returned to Bell's to pick up the items he had purchased on September 2, and inquired about two similar models of Beretta 25 cal. Semi-automatic pistols. After deciding to purchase the smaller of the two models, which was smaller than his full hand, Officer 1 quietly asked the sales clerk to recommend a "throw-away" 9mm or .380 caliber firearm. The sales clerk told him that one should not buy a "throw-away" gun from a gun store. Instead, he said, one should buy one from a second party, such as a friend, so that if it is recovered and ATF questions the friend from whom you bought it, then the friend can call and let you know that you will soon be approached by ATF. The sales clerk said that it is even better to buy the gun with cash from someone who does not have a license. In that case, you write a certified letter addressed to yourself in which you document things about the person from whom you purchased the gun; if you need to go to court, then your lawyer will bring you to court with your wife and kids and open the letter in order to prove that you bought the gun in good faith. Otherwise, he said, if something happens and you need to pin the blame on someone else, then you go home and burn the certified letter.

(vi) Officer 1 then left Bell's with the weapons he had purchased from Bell's on September 2.

(vii) On September 15, 1998, Officer 1 returned to Bell's to retrieve the firearm he had purchased on September 8. At that time, he informed the same sales clerk that he wanted to purchase four or five more guns. The sales clerk said that he was reluctant to sell Officer 1 any more guns for a while because purchasing more than one handgun at one time necessitates submitting forms to ATF and the Illinois State Police. He said that the FBI will start being notified in November, and that he does not believe the FBI when they say they will not do anything with the information. The sales clerk suggested that Officer 1 not buy any more guns until October 1, at which time he should buy a rifle or a shotgun at the same time that he buys a handgun, thereby obviating the need for a multiple purchase form. The sales clerk went on to say:

> I don't care about the shitheads. I let them buy as many guns at a time as they want and then when the forms get sent out they eventually get caught. But I look at you like me so I'm telling you how to stay out of trouble. Don't buy any more guns until after October 1st, and buy them all before the end of November.

(viii) Officer 1 did not purchase any additional guns that day.

(ix) On September 2, 1998, Officers 2 and 3 entered Bell's. Officer 2 asked a sales clerk if he could buy a Tec-9. The sales clerk said that he could get Tec-9's and have them available by September 5. Officer 2 asked the sales clerk to obtain two Tec -9's for him.

(x) Officer 2 then asked to see a Smith & Wesson semi-automatic pistol. After the sales clerk handed Officer 2 the pistol, Officer 2 handed the pistol to Officer 3, who dry-fired it and then said to Officer 2 that he wanted that pistol. Officer 2 then added the pistol to his own purchase order.

(xi) On September 8, 1998, Officers 2 and 3 returned to Bell's to retrieve the three guns they had ordered on September 2. After bringing the three guns to the counter, the same sales clerk who had sold them the guns on September 2 examined Officer 2's FOID card. Officer 2 then began to browse around the range area. While he was browsing, Officer 3 attempted to hand the sales clerk $600. The sales clerk asked Officer 3 if he had a FOID card; Officer 3 responded that he did not have one. The sales clerk told him that he could not take money from Officer 3 because ATF "would be all over us. They are in here all the time trying to trick us." When Officer 2 returned to the counter, the sales clerk asked him for the balance due. In the sales clerk's presence, Officer 3 handed $600 to Officer 2; Officer 2 added $24 and then handed all the money to the sales clerk to complete the transaction.

(xii) Officer 3 then.carried and maintained control of all three weapons while Officer 2 continued to browse around the store.

(xii) Officer 2 then told the sales clerk that he was interested in purchasing Intratec 22's. Officer 2 asked Officer 3 if he wanted one for himself. Officer 3 said that he did want one. The sales clerk wrote up a purchase order for two Intratec 22's.

(xiv) On September 11, 1998, Officer 2 returned to Bell's and retrieved the two weapons he had purchased on September 8.

(xv) On November 2, 1998, Officers 2 and 7 picked up a Smith & Wesson Model 442 revolver and a Smith & Wesson Model C59 9mm they had ordered on October 6.

(xvi) On September 14, 1998, Officers 4 and 5 entered Bell's to purchase firearms. Officer 5 asked a sales clerk about purchasing Ruger 9mm semi-automatic pistols. Officer 5 inquired about the price differences for pistols with different color finishes, and asked if he could get a discount if he bought two of the pistols. When Officer 5 said he would purchase two of the pistols, the sales clerk requested that he produce his FOID card. Instead of Officer 5 showing a FOID card, Officer 4 showed her FOID card and driver's license. Officer 5 told Officer 4 to give the sales clerk $200 for his deposit on the two pistols.

(xvii) On September 29, 1998, Officers 4 and 5 went to Bell's to pick up the previously ordered firearms. When they arrived they were told by the sales clerk that the store's FFL license had not been reinstated, so he could not complete the purchase.

(xviii) On October 6, 1998, Officer 4 returned to Bell's after learning from the ATF that the store's license still had not been reactivated. When she arrived the sales clerk told her that the license had been reinstated and that he could sell her the guns. She stated that her "old man" (Officer 5) wanted to buy more guns and that they would be back the next day to get more. The clerk again said that it would not be a problem. She paid the balance and left with the two pistols she had ordered on September 14.

(xix) On October 27, 1998, Officers 4 and 5 returned to Bell's to purchase more firearms. Officer 5 stated that he wanted to purchase three Lorcin L-9 9mm semi-automatic pistols and three Lorcin L-380 .380 caliber semi-automatic pistols, The sales clerk prepared the purchase order using Officer 4's FOID card. Officer 5 stated that because the sales clerk would not give him a discount on the firearms, Officer 5 would have to "mark them up" on his end.

(xx) On November 6, 1998, Officer 4 picked up from Bell's the six firearms she had ordered on October 27.

**B. <u>B&H Sports. Ltd</u>.**

(i) On August 10, 1998, Officer 6 entered B&H Sports, Ltd. ("B&H") and expressed an interest to the sales clerk in buying two 9mm handguns. While writing up the purchase order for two handguns for Officer 6, the sales clerk asked Officer 6 what he did for a living. Officer 6 responded that he hung out on the street. The sales clerk asked what occupation he should list for Officer 6 on the forms. Officer 6 told the sales clerk to write that he was in "sales."

(ii) While the sales clerk was still filling Out the forms for Officer 6, Officer 6 told the sales clerk that he had lost his 9mm gun on Saturday. The sales clerk asked if Officer 6 had been caught with it. Officer 6 responded that he had not been caught with it; rather he had run and he thought the police had gotten it. The sales clerk responded that as long as you did not get caught with it you have nothing to worry about. Officer 6 told the sales clerk that the police are stupid, and that it would take forever for them to figure out who he was.

(iii) While the sales clerk was still writing up the forms, Officer 6 related that he believed he had figured out who had "ratted me out," and that he had to "settle up with him." After the sales clerk told Officer 6 to return in three days to pick up the guns, Officer 6 told the sales clerk to save some "ammo" because he would need it. The sales clerk responded that they had plenty of ammo.

(iv) On August 14, 1998, Officer 6 returned to B&H with Officer 2. The same sales clerk with whom Officer 6 had dealt on August 10 told Officer 6 that the two handguns he had ordered were not the same color, as Officer 6 had requested. Officer 6 said that if the guns were different colors, then they would not be as impressive when he "draw[s] down on them." Officer 6 rejected the two mismatched handguns, and instead purchased four Lorcin .380 semi-automatic pistols. In writing up the purchase order, the sales clerk back-dated the form to reflect an August 10 purchase date.

(v) Officer 6 also inquired about an Olympic Arms Model OA-96 .223 caliber pistol with laser sights and a 30-round high capacity clip. In discussing the use of the laser sight, Officer 6 asked whether if he put the "dot" on someone's stomach the bullet would hit him in the chest. The sales clerk responded that it would.

(vi) The sales clerk asked Officer 6 if he was purchasing the guns for himself. Officer 6 responded that since he was paying for them it was for him to determine what to do with them.

(vii) Officer 2 said he needed something for his "spot" (a street term for drug sale location), and that he needed a size that females can hide easily. Officer 2 told Officer 6 that he needed the guns for that night in "the Green." Officer 6 offered to rent the four Lorcins to Officer 2 for four hours for $200. Officer 2 counteroffered to rent the four Lorcins for the price of the Olympia machine pistol Officer 6 had ordered. Officer 6 then told the sales clerk that he would get $100 from Officer 2 to complete the deal on the rental.

(viii) Officer 6 got $100 from Officer 2 and gave it to the salesclerk.

(ix) Officer 2 told the sales clerk that he wanted to buy a machine gun with a laser like the Olympia Arms weapon that Officer 6 had just purchased. The sales clerk responded that he could put money down then and pick it up in three days. Officer 2 said that he needed the guns immediately because he had "business to tend to," and the police had gotten one of his shotguns the night before in Cabrini Green. Officer 2 added that he should get a shotgun, but he wanted the machine gun and the laser. The sales clerk told Officer 2 that he could put a laser on a shotgun for him, but that he had to remember that shotguns fire high, so if anyone comes at him, he should "just go down." Officer 2 declined the offer because he "can take care of more business with a machine gun."

(ix) Officer 2 gave the sales clerk a $100 deposit.

(xi) On August 19, 1998, Officer 2 returned to B&H with Officer 3. Officer 2 told the same sales clerk with whom he had dealt on August 14, that Officer 6 owed him money and was likely on the run. Officer 2 stated that Officer 6 had to be dealt with before he left town, and said he needed to "get a Tec for his ass." Officer 3 agreed that they had to "take care of business today." The sales clerk recommended an Intratec 9mm assault weapon that could fire 100 rounds per load, telling them, "You made a good choice; this will take care of business."

(xii) The sales clerk then added the Intratec 9mm assault weapon Officer 2 had just selected to the purchase order he had created on August 14.

(xiii) Officer 2 left B&H with the weapons they had purchased.

(xiv) On August 24, 1998, Officer 2 returned to B&H and purchased three Intratec 9mm AB- 10's a Cobray 9mm M- 11, and a laser for the Cobray from the same sales clerk.

(xv) On September 1, 1998, Officer 2 returned to B&H to pick up the weapons he had ordered on August 24. During the course of that same conversation, Officer 2 inquired as to a Model Thunder 5 .410/45 caliber revolver. The sales clerk told him that the gun was powerful enough to shoot through a car door or any other door with ease. Officer 2 purchased that firearm, along, with two other firearms.

(xvi) The sales clerk told Officer 2 that while he did not have any problem with Officer 2 buying as many guns as he did, the City of Chicago did. He said that Officer 2 had to be careful because ATF knows when you buy so many firearms at one time. The sales clerk said that Officer 2 should not keep the guns at his home address (in Chicago). He said that if ATF or the Chicago Police Department show up at his house, he should tell them that his guns are at a relative's house in the suburbs. For his part, the sales clerk said that he would tell ATF or the Chicago Police Department that Officer 2 is a collector.

(xvii) Officer 2 left B&H with the four firearms he had ordered on August 24.

(xviii) On September 9, Officers 2 and 3 ordered two additional firearms from B&H. During the course of the transaction, Officer 3 told the sales clerk that he could not get a FOID card for a variety of reasons. Nonetheless, the sales clerk allowed Officer 3 to examine a firearm on display. Officer 3 stated that he wanted the firearm. Officer 3, who did not have a FOID card, gave the sales clerk $350 as a deposit for the two additional firearms.

(xix) On September 14, 1998, Officers 2 and 3 returned to B&H to retrieve the two weapons they had ordered on September 9. Officer 3, who told the sales clerk that he still did not have a FOID card, said that he wanted a Hi-Point 9mm semi-automatic rifle with a laser reddot scope. The sales clerk added the Hi-Point to the September 9 purchase order. When paying for the balance owed on the three firearms, Officer 2 told Officer 3 that Officer 3 had to Give Officer 2 the money for the Hi-Point, since the gun was for him anyway. Officer 3 gave Officer 2 the money, which Officer 2 then gave to the sales clerk.

(xx) On September 17, 1998, Officers 2 and 3 entered B&H. After telling the sales clerk that he still did not have an FOID card, Officer 3 asked about an AK-47; the clerk handed it to Officer 2, who cocked and dry fired the gun. The clerk then started to hand him another similar gun. Officer 2 told the clerk to give it to Officer 3. The clerk refused to hand it to Officer 3, but instead told Officer 2 to give it to him. In the clerk's presence, Officer 2 gave Officer 3 the weapon. Then they switched weapons and dry fired them. When told of the prices, Officer 2 said "I ain't got the loot (money) for that right now. After I make a few stops, no problem. I'll be up in here buying damn near everything."

(xxi) The officers then looked at Smith & Wesson pistols. The clerk explained that these weapons were suitable to carry in your pocket or waistband. Officer 2 asked Officer 3 in the presence of the clerk if he wanted the gun. Officer 3 responded that he wanted it.

(xxii) Officer 2 then asked to see a .40 caliber semi-automatic pistol. Officer 2 gave it to Officer 3 who stated that he wanted that one, not the smaller Smith & Wesson. The clerk began making up a receipt for the three guns. Officer 2 stated to Officer 3 "[y]ours is $393, give me $300." The clerk twice asked Officer 2 if he was borrowing the money from Officer 3. Officer 2 got a phone call on a cell phone, just as the store got a call. While Officer 2 was on the phone, Officer 3 give the sales clerk the cash for the deposit. Officer 2 then returned to the counter, giving Officer 3 the phone, and signing and dating the store copy receipt.

(xxiii) Officers 2 and 3 entered B&H Sports on September 21, 1998, to pick up guns they had ordered on September 17, 1998. Officer 2 told a sales clerk that he had not purchased those guns from him because the clerk was not available on September 17, and he had needed to get the guns by September 21, 1998. The clerk said that he understood that Officer 2 was "a businessman."

(xxiv) While Officer 2 was filling out the Form 4473, he observed a female with an FOID card and a male browsing and talking to a different sales clerk. The male whispered in the female's ear, and shortly thereafter the female asked to see a .357 revolver. The male handled the gun and then shook his head. The female handed the gun back to the clerk. The male then whispered in her ear again, and she asked if they carried Glocks. The clerk handed a Glock 9mm semi-automatic pistol to the female. The male held out two fingers, and she stated that she wanted two of them. Officer 2 observed that the woman buying the guns was a Chicago resident. She also ordered a taser.

(xxv) Officer 2 entered B&H Sports on September 28, 1998, and told the clerk that he was waiting for Officer 3. Officer 2 stated that he did not think Officer 3 had mailed in his application for a FOID card. The clerk then asked about Officer 2's weekend. Officer 2 stated that he'd had a big loss that weekend and needed to replace some guns. The clerk then asked whether Officer 2 thought it was the cops who got the missing guns.

(xxvi) Officer 2 examined several Glocks. When Officer 2 started to leave, the sales clerk told him to tell Officer 3 that he had some "good stuff in I know he'd want," and that Officer 2 should bring Officer 3 when he picks up the Glocks.

(xxvii) On November 4, 1998, Officers 2 and 7 entered B&H in order to purchase more firearms. Officer 2 informed the sales clerk that Officer 3, had been arrested in Minnesota. Officers 2 and 7 then purchased two Glocks, one Armalite Model AR-180 .223 caliber rifle, and one Cobray Model M- 11 9mm rifle.

(xxviii) On November 9, 1998, Officers 2 and 3 returned to B&H to pick up the firearms ordered on November 4. Officer 2 asked the sales clerk whether Officer 3 could apply for a FOID card in Illinois even though he was just "locked up" in Minnesota. The sales clerk replied that he could not do so. Officer 2 told Officer 3 that he and Officer 7 needed to get FOID cards so that Officer 2 did not need to continue purchasing all the firearms, given the time he spends in Minnesota. Officer 3 then asked to see the firearms which Officer 7 had picked out on November 4. Officer 3 paid the balance of the money owing on the four firearms. Officer 2 told

Officer 3 to take the Armalite and the Cobray, and said that he himself would first drop off the Glocks. Officers 2 and 3 then exited B&H separately with the two pairs of firearms.

(xxix) On September 1, 1998, Officer 1 ordered three firearms from B&H. During the Course of the transaction, a sales clerk warned Officer 1 that no handguns should be visible when he answers his door, and that he should not keep all of his handguns in one place. He told Officer 1 that Chicago is tough on people with handguns. The sales clerk also told Officer 1 that he could buy as many guns as he wanted at the same time.

(xxx) On September 14, 1998, Officer 1 returned to B&H to retrieve a revolver he had ordered on September 9, and inquired about a Savage Model 516, .308 Winchester caliber bolt action pistol. At that time, an on-duty uniformed Cook County Sheriff entered the store and asked Officer 1 about his need for the Savage Model 516. The Sheriff said that the gun looked like a sawed-off shotgun. The sales clerk said that since it was manufactured that way, as opposed to sawed off after manufacture, it was legal. The sales clerk then instructed another sales clerk to distract the Sheriff and get him away from Officer 1. When Officer 1 told the sales clerk that he wanted to take the Savage Model 516 that day, rather than wait 72 hours, the sales clerk revised the September 9 purchase order so as to add the Savage Model 516.

**C. <u>Bob's Sports Hdq., Inc</u>.**

(i) On October 29, 1998, Officers 2 and 7 entered Bob's to purchase firearms. Officer 2 ordered a Cobray .380 caliber semi-automatic pistol, and then asked Officer 7 if he wanted to purchase one as well. Officer 7 said he wanted a Bryco .380 caliber semi-automatic pistol to replace the one he unfortunately no longer had. The sales clerk then wrote up the purchase order for the two firearms using only Officer 2's name and FOID card.

(ii) On November 5, 1998, Officer 2 picked up the two weapons he had purchased from Bob's on October 29.

### D. Breit & Johnson Sporting Goods, Inc.

(i) On August 17, 1998, Officer 4 purchased a Hi-Point Model C 9mm semi-automatic pistol and a Jennings Model J-25 semi-automatic pistol from Breit & Johnson Sporting Goods. She picked them up on September 3.

(ii) On August 21, 1998, Officer 2 purchased two Ruger 9mm semi-automatic pistols from Breit & Johnson Sporting Goods. During the transaction, Officer 2 examined the guns by putting them inside his waistband and telling the sales clerk that they can be concealed under his shirt. Officer 2 picked up the two Rugers on September 3.

(iii) On October 8, 1998, Officers 2 and 3 entered Breit & Johnson to purchase firearms. Officer 3 expressed an interest in purchasing small semi-automatic pistols. When he told the sales clerk that he did not have a FOID card, the sales clerk said that while the sales clerk could not hand him a firearm to examine, he could hand it to Officer 2, who could in turn hand it to Officer 3. In this way, Officer 3 examined different firearms. They purchased two .380 caliber pistols.

(iv) On November 5, 1998, Officer 2 picked up from Breit & Johnson the two firearms he had ordered on October 8. The sales clerk suggested that Officer 2 put the firearms in the trunk of his car in case he was stopped by the police.

### E. Chicago Ridge Gun Shop & Range, Inc.

(i) On August 10, 1998, Officer 4 ordered a Taurus Model PT-25, .25 caliber semi-automatic pistol from Chicago Ridge. Officer 4 told a sales clerk that she wanted a small, inexpensive semi-automatic pistol that she could easily conceal in a purse or on her person.

(ii) On August 14, 1998, Officer 4 returned to Chicago Ridge with Officer 5. While picking up the Taurus she had ordered on August 10, Officer 5 asked to examine a Lorcin 9mm. When Officer 5 told the sales clerk that he did not have a FOID card, the sales clerk said he could not examine the gun. The sales clerk said that Officer 4 instead could examine it. Eventually the sales clerk did allow Officer 5 to handle the gun. Officer 5 asked questions about the gun, and asked if he could see a better quality gun. Officers 4 and 5 both examined a Helwan 9mm, and agreed to buy it. Officer 5 then said that he wanted a Ruger .45 caliber handgun. Officer 4 put down the deposit on the guns, and Officer 5 then hugged her and thanked her for the present. Officer 5 then carried away the Taurus that Officer 4 had ordered on August 10.

(iii) On August 24, 1998, Officer 4 returned to Chicago Ridge to retrieve the two weapons she and Officer 5 had ordered on August 14.

(iv) On August 19, 1998, Officers 2 and 3 entered Chicago Ridge to purchase firearms. Officer 2 told the sales clerk that he needed something cheap that would get the job done. Officer 2 examined a Lorcin .380 caliber pistol, putting it in his pocket and in his waistband. He told Officer 3 that no one would be able to tell that they were carrying those weapons. Officer 2 handed it to Officer 3, who dry-fired it. Officer 2 asked for two of that model in black, but was told that they only had one in black. Officer 2 then asked to see a Phoenix .25 caliber pistol. After the sales clerk gave it to him, Officer 2 gave it to Officer 3, who dry-fired it and stated that it could get the job done. Officer 2 told the sales clerk that they would purchase both firearms.

(v) On August 24, 1998, Officer 2 returned to Chicago Ridge to retrieve the firearms he had ordered on August 19. During this transaction, Officer 2 asked about purchasing an additional two Intratec 9mm semi-automatic pistols. Officer 2 asked if he could convert the two semi-automatic pistols into automatics. The sales clerk said that it was possible, but he would not discuss it because converting them to automatic involved what he said would be automatic jail time. Officer 2 then requested and received a discount on the purchase of the two Intratec 9mm semi-automatic pistols.

(vi) On August 10, 1998, Officer 1 ordered a Lorcin 9mm pistol. He picked up the firearm on September 1.

### F. Chuck's Gun Shop & Pistol Range

(i) On August 14, 1998, Officers 4 and 5 entered Chuck's in order to retrieve a Bryco-Jennings Model J-38 .380 caliber semi-automatic pistol which Officer 4 had purchased on August 10. During this transaction, Officer 5 stated that he wished to purchase two handguns, even though he did not have a FOID card. A sales clerk told him that he could not purchase the guns without a FOID card, but that he could apply for one. Officer 5 stated that he could not apply for one. Officer 4 then offered to buy them for him. Another sales clerk told her that she could not sell Officer 4 the guns because it would be a "straw purchase," that could get her in trouble with the law. After speaking to the manager, the sales clerk said that while Officer 4 could not buy the two guns that day, because they were really for Officer 5, she could come back the next day and buy them. Officer 4 left with the Bryco-Jennings pistol.

(ii) On August 19, 1998, Officer 4 returned to Chuck's to order the two handguns she and Officer 5 had examined on August 14. The sales clerk gave her an ATF Form 4473, and asked her if she was the actual buyer of the gun. Officer 4 said she was the actual buyer. The sales clerk agreed to sell her the two handguns. The salesclerk also told Officer 4 that if she waited five days to pick up the guns, then she did not have to contact ATF about tile purchase. Officer 4 said she would wait five days.

(iii) On September 1, 1998, Officer 4 returned to Chuck's to pick up tile two guns she had purchased on August 19. The sales clerk told her that if she waited a week to pick up each gun, then they would not need to notify ATF; otherwise, ATF would come to your home to see your guns, especially if you live in the City of Chicago. Officer 4 left with the Accu-Tek 9mm handgun she had previously ordered, and also ordered a Rossi Model 677, .357 caliber revolver. The sales clerk did not check Officer 4's FOID card in connection with this new purchase.

(iv) On September 9, 1998, Officer 4 returned to Chuck's to pick up the two handguns she had ordered previously. After the sales clerk advised her that she would have to contact ATF if she picked up both handguns, Officer 4 left with only the Lorcin semi -automatic pistol. Officer 4 immediately reentered Chuck's with Officer 5. Officer 5 said that he wanted to get another gun. After he decided to purchase a Taurus Model M445 revolver, the sales clerk asked Officer 4 for her FOID card. The purchase order was written in Officer 4's name.

(v) On September 21, 1998, Officer 4 picked up previously purchased firearms. The store clerks all greeted her by name.

(vi) On August 19, 1998, Officer 2 ordered two handguns from Chuck's. Officer 2 told the sales clerk that he wanted a gun that was cheap and concealable. The sales clerk recommended that Officer 2 purchase a holster so that he could carry the guns inside his pants and under his shirt. Officer 2 declined to purchase the holster because he found that he could conceal them in his pockets. The sales clerk told Officer 2 that if lie picked up both guns at the same time, they would have to contact ATF, but that if he picked up one gun in three days and the other in one week, then they would not have to contact ATF. Officer 2 said he would pick them up separately.

(vii) On August 24, 1998, Officer 2 returned to Chuck's to retrieve the two handguns he had ordered on August 19. He was told again by a different sales clerk that if he picked up the guns at different times, then they would not have to contact ATF. Officer 2 left Chuck's with a Davis Model P380 .380 caliber pistol.

(viii) On September 1, 1998, Officer 2 returned to Chuck's to pick up a handgun he had previously ordered. During the course of that transaction, Officer 2 told a sales clerk that he wanted to buy both a Smith & Wesson Model 65 .357 caliber revolver and an Intratec Model AB-10 9mm semi-automatic pistol. The sales clerk told another clerk to give Officer 2 a discount because he is a good customer.

(ix) On September 9, 1998, Officer 2 returned to Chuck's to pick up one of the weapons he had previously purchased. While there, Officer 2 ordered three additional handguns -- two semi-automatic pistols and a .357 revolver.

(x) On September 14, 1998, Officer 2 returned to Chuck's and picked up three handguns he had ordered on September 9.

(xi) On September 15, 1998, Officer 2 returned to Chuck's and ordered two Smith & Wesson .357 caliber revolvers and one AK-47 semi-automatic rifle.

(xii) On September 9, 1998, Officer 1 ordered two handguns at Chuck's. While filling out the paperwork, the sales clerk asked Officer 1 where he lived. The sales clerk said that because Officer 1 lived in Chicago, he should pick LIP the guns separately.

(xiii) On September 17, 1998, Officer 1 told a sales clerk at Chuck's that he would like to see some rifles. Officer 1 asked to see a number of different assault-type rifles, and compared their features, design, magazine capacity, and caliber. The clerk stated that while the store had several AK-47's after the ban, they sold quickly, and they did not have any AK47's in stock. Officer 1 asked if they could get one, and the clerk said if he gave him his name, he could order one for him.

(xiv) Officer 1 then looked at a Smith & Wesson 9mm semi-automatic pistol and asked about magazine capacity. Officer 1 declined an offer of ammunition stating he liked to buy ammunition separately from guns. Officer 1 then ordered a Ruger, Mini-14 Ranch Rifle with a 30 round magazine.

(xv) The sales clerk asked Officer 1 where he lived. Officer 1 responded that he lived in Chicago. The clerk offered to write the rifle up on a separate purchase order so that he can register the rifle, but that he cannot register the handgun. Officer 1 responded that she should just write them up together.

(xvi) On September 22, 1998, Officer 1 returned to Chuck's and picked up two of the firearms previously picked out.

(xvii) On October 6, 1998, Officer 1 returned to Chuck's and picked up another firearm he had previously ordered.

### G. <u>Gun World</u>

(i) On October 27, 1998, Officers 2 and 7 entered Gun World in order to purchase firearms. Both officers asked questions about and expressed interest in various firearms. They eventually ordered four semi-automatic pistols and one semi-automatic rifle. Officer 7 informed the sales clerk that he did not have an FOID card. The sales clerk said that if they picked up all the firearms at one time, then he would have to notify ATF, and if someone else gets caught with the firearms, then ATF will want to talk to Officer 2 and to Gun World. Officer 2 stated that he was not concerned because the guns would be kept by Officers 7 and 3. The sales clerk asked whether Officer 2 was buying the firearms for himself; when Officer 2 responded by asking what difference it made, the sales clerk said that it mattered because he could not sell them to him unless he noted on the ATF Form 4473 that he was purchasing the firearms for himself. The sales clerk went on to say that Officer 2 could do whatever he wanted with the firearms, but that the sales clerk at least had to explain these procedures to him. Officer 7 told Officer 2 to place a deposit of $1,000 for the firearms.

(ii) On October 27, 1998, Officer 1 entered Gun World for the purpose of purchasing firearms. Officer 1 stated that he needed to buy several firearms as gifts. He purchased six North American Arms .22 derringers, an Intratec 9mm semi-automatic pistol, and a Winchester shotgun.

(iii) On October 29, 1998, Officer 1 entered Gun World and purchased from a Gun World sales clerk a drum magazine for an AK-47, with a 75-round capacity. He ordered an H & K Model 91, .308 caliber semi-automatic rifle, with flash suppressor, bayonet and bayonet lug, a scope and an extendable stock.

(iv) On October 30, 1998, Officer 1 picked Lip the firearms lie had ordered oil October 27.

(v) On November 3, 1998, Officer 1 told the sales clerk at Gun World that lie no longer wished to purchase the H&K Model 91 he had ordered on October 29. Instead, he applied the deposit he had placed on that firearm to the purchase of an H&R Model R-99 revolver, a North American Arms Model Guardian semi-automatic pistol and a Kel-Tec Model P-11 9mm semi-automatic pistol, all of which he took with him that day.

(vi) On October 27, 1998, Officers 4 and 5 entered Gun World to purchase firearms. Officer 5 told the sales clerk that he wanted to purchase an inexpensive, concealable 9mm firearm. After Officer 5 decided to buy a Kel-Tec P-40, .40 caliber semi-automatic pistol, Officer 4 presented her FOID card, and the sales clerk put Officer 4's name and FOID number on the purchase order.

(vii) On November 3, 1998, Officers 4 and 5 returned to Gun World to pick up the firearms they had ordered on October 27. Officer 5 presented the receipt, examined the purchased firearms and paid the balance of the purchase price. Officer 4 presented her FOID card for the purchase.

**H. <u>Midwest Sporting Goods</u>**

(i) On September 30, 1998, Officer 1 purchased from Midwest Sporting Goods one Professional Ordnance Model Carbine- 15, .223 caliber semi-automatic pistol, and one Encom Model America Mark IV, 45 ACP semi-automatic pistol.

(ii) On October 16, 1998, Officer 1 entered Midwest Sporting Goods in Lyons, Illinois, to purchase firearms. Officer 1 purchased a Taurus 9mm pistol and a Taurus .25 caliber pistol. Officer 1 also purchased an Uzi Carbine .9mm, as well as a 10 1/8 inch Uzi pistol barrel. The Uzi had an Acupoint scope mounted on it and a folding stock, and it was capable of accepting a flash suppressor. The sales clerk said that since they could not legally deliver the Uzi to him in Cook County, they would have to write up the purchase order on the forms of the Midwest Sporting Goods' Downers Grove store, and he Would have to pick up the firearm at the Downers Grove store. The sales clerk used a blank purchase order with the Downers Grove masthead, and he called the Downers Grove store and asked them to call in his FOID number. When Officer 1 said that he wanted to purchase a pistol barrel for the Uzi, the sales clerk told him that since it was illegal to put the pistol barrel on the Uzi, he should write up the pistol barrel as a separate purchase from Midwest's Lyons store (the one he was in at the time) rather than the Downers Grove store from which he was technically buying the Uzi. The sales clerk also advised Officer 1 that he should have all of the purchases written up on separate orders so as to avoid ATF scrutiny. He went on to state that they offer that suggestion for good customers. In contrast, he said, he did not offer the same advice to Officer 2, "that black guy" who "seemed suspicious to me."

(iii) On October 19, 1998, Officer 1 picked up the Uzi from Midwest Sporting Goods' Downers Grove store. A store employee advised Officer 1 to put the Uzi in his trunk, because he would be arrested if caught with it in Cook County.

(iv) On October 23, 1998, Officer 1 picked up the Taurus 9mm semi-automatic pistol he had ordered on October 16.

(v) On October 24, 1998, Officer 1 attended a gun auction at Midwest Sporting Goods. At the auction he purchased the following: a Colt Model AR15A2, .223 caliber semi-automatic rifle, with a 16 inch barrel, equipped with a flash suppressor, a "Shorty" telescoping stock, and a bayonet lug (he also purchased a Model M8A1 bayonet with scabbard); a Norinco Model NMH91, semi-automatic rifle, equipped with a bipod and three 30-round magazines; an RG Model 24, .22 caliber revolver; and a double action .38 caliber revolver.

(vi) On October 26, 1998, Officer 1 picked up the Colt, the Norinco and the bayonet he had purchased at the auction on October 24.

(vii) On October 27, 1998, Officer 1 picked up the Taurus .25 caliber semi-automatic pistol he had ordered on October 16.

(viii) On November 5, 1998, Officer 1 picked up from Midwest two revolvers he had purchased at the auction on October 24.

(ix) On October 16, 1998, Officer 2 entered Midwest Sporting Goods to purchase firearms. Officer 2 purchased a Beretta Model 95OBS .25 caliber semi-automatic pistol, a Smith & Wesson Model 642 revolver, and a Smith & Wesson Model 457 .45 caliber semi-automatic pistol. He told the sales clerk that he was purchasing the Beretta for one of his "ladies," and the sales clerk assured him that it was small enough for her small hands. During the course of this transaction, Officer 2 observed two strangers clearly making a straw purchase, with the person for whom the firearm was being sold even saying to his straw purchaser in the store that he would give him $ 100 for the purchase.

(x) On October 27, 1998, Officers 2 and 7 picked up from Midwest Sporting Goods the three firearms previously ordered on October 16.

(xi) On September 30, 1998, Officer 4 entered Midwest Sporting Goods to purchase firearms. She informed the sales clerk that she was looking for a firearm that was concealable, yet powerful. The sales clerk told her that it was illegal to carry a handgun Chicago, and that even though they are supposed to tell Chicagoans that it is illegal, 90% of the people who purchase guns in his store are from Chicago. The sales clerk told Officer 4 that the questions on the ATF Form 4473 were stupid, but that she had to answer them anyway. The sales clerk then recommended to her that she have separate purchase orders for each of the two firearms and pick them up separately so that the store did not need not inform ATF of a multiple purchase.

(xii) On October 27, 1998, Officers 4 and 5 picked up a Smith & Wesson Chief s Special. .45 caliber semi-automatic pistol from Midwest Sporting Goods, which was ordered on October 7. The purchase order had been written up in Officer 4's name, using her FOID card. The sales clerk showed the firearm to Officer 5, rather than Officer 4, and Officer paid the balance of the purchase price.

### I. <u>The Sportsman's Center/Illinois Gun Works, Ltd.</u>

(i) On August 11, 1998, Officer 4 entered The Sportsman's Center and ordered a Phoenix Arms .22 caliber semi-automatic pistol. Officer 4 told the sales clerk that she liked the gun's safety feature because she did not want the gun to fire while in her purse. Officer 4 and the sales clerk discussed that Officer 4 lived on Chicago's south side. When she said she would be interested in purchasing more guns later, he told her that she should call if she wanted more guns, and he would check to see if they were in stock.

(ii) On August 17, 1998, Officer 4 returned to The Sportsman's Center to pick up the handgun she had previously ordered. She also purchased an additional four firearms.

(iii) On September 2, 1998, Officer 4 returned to The Sportsman Center and picked up the four guns she had previously ordered. She was not asked to show her FOID card. Officer 4 then asked if she could purchase a Tec-9. The sales clerk told her that while it was illegal to sell them in Elmwood Park, he did have two available, and he sold her one of them.

(iv) On September 8, 1998, Officer 4 returned to The Sportsman Center and picked up the Tec-9 she had ordered on September 2. She told him she was interested in purchasing the second Tec-9, and he said he would call her about it as soon as he was able to find the paperwork. He continued: "That damn county doesn't want me to [sell the Tec-9], but they can't control what this area or me decides to do. They're trying, but they can't stop us." Officer 4 left with the Tec-9. She was not asked to show her FOID card.

(v) On October 28, 1998, Officers 4 and 5 entered The Sportsman's's Center to purchase firearms. Officer 5 asked tile sales clerk questions about and examined certain firearms. Officer 5 placed one of the firearms in his waistband and in his pocket, and he asked whether it was visible. Officer 5 negotiated the price of the two pistols he had selected, and he gave to the sales clerk money for the deposit. The sales clerk wrote the purchase order using Officer 4's FOID card.

(vi) On November 3, 1998, Officers 4 and 5 returned to The Sportsman's Center to pick up the guns they had ordered on October 28. Officer 5 handed the receipt to the sales clerk, and the sales clerk explained to Officer 5 how to store the firearm using the bag provided. Officer 4 filled out the Form 4473.

(vii) On August 21, 1998, Officer 2 purchased three handguns at The Sportsman's Center. He first examined a Smith & Wesson 9mm semi-automatic handgun, putting it in his waistband. He ordered that gun, and then told the sales clerk that he wanted to buy two smaller handguns for "my females," who did not have FOID cards. He ordered two additional Beretta .22 caliber semi-automatic pistols.

(viii) On September 2, 1998, Officer 2 returned to The Sportsman's Center with Officers 3 and 7 to pick up the three semi-automatic pistols Officer 2 had ordered on August 2 1. Officer 2 then handed Officer 7 one of the guns, telling him it was for him. Officer 3 then took another of the guns, saying it appeared that one was for him. Officer 7 placed the gun in his pocket before leaving the store. The sales clerk then told a fellow store employee that the three officers were crazy gang-bangers. He was told not to worry about it.

(ix) On October 28, 1998, Officers 2 and 7 entered The Sportsman's Center to pick up firearms previously ordered and to purchase additional firearms. Officer 2 stated that he wished to pick up a firearm that Officer 3 had already paid for, but that he had left his receipt at home. The sales clerk asked for Officer 2's FOID card, and, using his card, retrieved the firearm and gave it to Officer 2. Officer 7 said he wished to purchase two Phoenix Arms, Raven Model .25 caliber semi-automatic pistols. After Officer 7 told the sales clerk that he did not have an FOID card, the sales clerk used Officer 2's FOID card to make the sale. Officer 7 paid the deposit on the firearms.

(x) On November 3, 1998, Officers 2 and 7 picked up the two firearms they had ordered on October 28. Officer 7 handed the sales clerk the receipt, and the sales clerk showed to Officer 7 the firearms they were picking up. Officer 7 asked to examine a Mossberg shot-gun. The sales clerk said he could not handle it because he does not have a FOID card, but that the sales clerk could show it to him. Officer 7 said he was going to get it, but he needed to see it first. Officer 7 said he wanted to purchase the Mossberg Model 500 12-gauge shotgun and a

Davis Model P380 .380 caliber semi-automatic pistol. The sales clerk wrote up a purchase order using Officer 2's FOID card. During the course of this transaction, Officer 2 went to a tavern next door, where the part-owner of The Sportsman's Center worked. Officer 2 told the partowner that he was upset that the sales clerk had refused to allow Officer 7 to handle the Mossberg shotgun, which he and Officer 7 were planning to "run [] to Minnesota with the ones we pickin' up now." The part-owner explained that the sales clerk was actually a part-owner also, and that if the officers came back the next day, then he would take care of it.

(xi) On November 6, 1998, Officer 2 picked up the two firearms he had ordered from The Sportsman's Center on November 3. In handing Officer 2 the two firearms, the sales clerk asked if Officer 2 wanted to put the Davis pistol in the same box as the Mossberg, shotgun, or whether he wanted to just put it in his pocket. Officer 2 put the Davis in his pocket and walked out with the Mossberg.

(xii) On September 8, 1998, Officer 1 returned to The Sportsman's Center and picked up a Phoenix Arms .25 caliber semi-automatic pistol he had ordered on September 2.

**J. Shore Galleries. Inc.**

(i) On August 12, 1998, Officer 6 entered Shore Galleries and ordered a Taurus 9mm pistol. Officer 6 picked up the weapon on August 18.

(ii) On August 12, 1998, Officer 1 purchased a Kel-Tec 9mm semi-automatic pistol and a belt clip attachment from Shore Galleries. During the course of the transaction, the sales clerk demonstrated to Officer 1 how he could conceal the pistol inside his waistband and draw the gun quickly. Officer 1 picked up the Kel-Tec pistol on August 25.

(iii) On August 21, 1998, Officer 2 ordered two Glock 19 9mm pistols from Shore Galleries. He picked them up on September 3.

### K. The Sports Authority

(i) On September 4, 1998, Officers 2 and 3 purchased two Smith & Wesson Model 910 9mm semi-automatic pistols from The Sports Authority in Burbank. During the transaction, the two officers made it clear that Officer 2, who had a FOID card, was purchasing one -gun for himself and one for Officer 3, who did not have a FOID card. While the sales clerk did not allow Officer 3 to handle any guns, he did not hesitate to sell both guns to Officer 2, even though he knew one was being purchased for Officer 3. In fact, Officer 3 provided money to Officer 2 representing his share of the price for his weapon. That same day, Officer 1 purchased two Smith & Wesson revolvers from The Sports Authority.

(ii) On September 10, 1998, Officers 1 and 2 picked up the two guns they each had ordered in September 4.

### L. Suburban Sporting Goods

(i) On September 3, 1998, Officer 4 purchased a Jennings 9mm semi-automatic pistol from Suburban Sporting Goods.

(ii) On September 8, 1998, Officer 4 returned to Suburban Sporting Goods and picked up the pistol she had purchased on September 3. The sales clerk who gave her the gun did not ask for her FOID card or driver's license.

(iii) On September 9, 1998, Officers 4 and 5 ordered an Intratec .25 caliber semi-automatic pistol from Suburban Sporting Goods. During the course of the transaction, the two officers made it clear that the weapon was being purchased for Officer 5. However, Officer 4 presented her FOID card to place the order, and the sales clerk did not ask for Officer 5's FOID card.

(iv) On September 14, 1998, Officers 4 and 5 returned to Suburban Sporting Goods and picked up the Intratec pistol they had ordered on September 9. At that time, the sales clerk asked Officer 5 if he was interested in purchasing anything else. Officer 5 examined an Intratec Model AB-10 9mm semi-automatic pistol and a Norinco Model T54 9mm semi-automatic pistol. After placing the Norinco in his waistband and under his shirt, Officer 5 ordered both guns. Officer 5 left the store with the Intratec .25 caliber pistol they had previously ordered. The sales clerk did not ask to see either officer's FOID card or driver's license.

(v) On November 2, 1998, Officers 4 and 5 entered Suburban Sporting Goods in order to purchase firearms. Officer 5 asked questions about and examined several firearms. He ordered two Bryco .38 caliber semi-automatic pistols, one Lorcin 9mm semi-automatic pistol and one Norinco 9mm semi-automatic pistol. Officer 5 gave the sales clerk the money for the deposit. However, the sales clerk wrote up the purchase order using Officer 4's FOID card.

(vi) On November 6, 1998, Officer 4 picked up the four firearms she had ordered on November 2. The sales clerk at that time did not ask to see her FOID card.

(vii) On September 15, 1998, Officer 1 purchased a Davis Industries, Model P380, .380 caliber semi-automatic pistol from Suburban Sporting Goods. During this transaction, Officer 1 looked at several pistols, examining the serial numbers and asking the sales clerk whether they could withstand "a little metal work." He informed the sales clerk that the Davis Industries pistol was one with which he could work.

(viii) On September 21, 1998, Officer 1 entered Suburban Sporting Goods to pick up the Davis Industries .380 caliber semi-automatic pistol.

(ix) The sales clerk told Officer 1 that he had not yet found him a Tec-9. When Officer 1 returned to police head quarters, he called the store and asked the clerk to put a "hold" on the Uzi .45 caliber, semi-automatic pistol and the Auto Ordnance, Thompson Deluxe Model 1927 Al .45 caliber rifle, which he had seen earlier.

(x) On September 22, 1998, Officer 1 returned to Suburban Sporting Goods, and asked to see the Uzi pistol and the Thompson rifle. Officer 1 stated he was hoping he could buy them from the former owner, because he wanted them as soon as possible. The clerk said he could have them on September 25.

(xi) Later that night, Officer 1 called the store and asked the clerk to include the High Standard Shotgun in the order. The clerk said he would add it to the sales receipt on September 25.

(xii) On September 29, 1998, the sales clerk added the High Standard shotgun to the receipt and to the house copy. Officer 1 filled out the Form 4473, and paid the balance for the guns. The sales clerk told Officer 1 that he was still looking for a Tec-9.

(xiii) On October 30, 1998, Officer 1 entered Suburban Sporting Goods with a Tec-9 he had purchased from Gun World. He purchased a flash suppressor for the Tec-9, and the sales clerk installed it onto the end of the Tec-9s barrel. Officer 1 also purchased a Choate pistol grip for a Winchester shotgun, which he brought into the store from his car. The sales clerk installed the pistol grip onto the shotgun.

(xiv) On September 30, 1998, Officer 2 entered Suburban Sporting Goods, and told the sales clerk that he was "looking for a little street protection for [him]self." Officer 2 was shown a .357 magnum revolver, a Beretta 9MM, and a .38 caliber Smith & Wesson. The sales clerk commented that the Smith & Wesson would fit in his pocket. Officer 2 said he would be back in a few days with a partner who needed an FOID card.

(xv) On October 1, 1998, Officers 2 and 9 went to Suburban Sporting Goods to purchase firearms. Initially, they ordered three Intratec Model AB-10 9mm semi-automatic pistols. Through their conversation, Officers 2 and 9 made it clear that they were purchasing one firearm each for them and one for their friend (Officer 3), who was not present. The purchase order was written up based only on Officer 2's FOID card. The officers left the store, but immediately returned and Officer 2 purchased an Uzi .45 caliber semi-automatic rifle.

(xvi) On October 6, 1998, Officer 2 went to Suburban Sporting Goods and picked up the three guns he ordered on September 30.

(xvii) On October 19, 1998, Officers 2 and 9 purchased four firearms at Suburban Sporting Goods under circumstances clearly indicating that Officer 2 was purchasing one firearm for Officer 9 and one firearm for Officer 3, who was not present.

(xviii) On November 2, 1998, Officers 2 and 7 returned to Suburban Sporting Goods and picked up three Intratec Model AB-10 9mm semi-automatic pistols and an Uzi Model Carbine .45 caliber rifle ordered on October 19.

(xix) On November 2, 1998, Officers 2 and 7 picked up firearms previously purchased at Suburban Sporting Goods, and ordered two additional Phoenix Arms Model Raven .25 caliber semi-automatic pistols. It was Officer 7 who stated that he wanted to purchase those firearms, and when the sales clerk asked Officer 7 for his FOID card, Officer 7 instructed Officer 2 to present his FOID card. The order was placed using Officer 2's FOID card.

(xx) On November 6, 1998, Officer 2 picked up the two Phoenix Model Ravens he had ordered on November 2.

29. The undercover investigation's results are confirmed by the frequent and ongoing use of firearms sold by each of the defendant dealers in crimes occurring in the City of Chicago. The Chicago Police Department routinely traces firearms that it recovers in the City of Chicago that have been used in the commission of a crime. This trace data has been placed on a database and is monitored by the Chicago Police Department. It discloses that firearms sold by each of the defendant dealers are regularly recovered and found to have been used illegally in the City of Chicago on a continuous, on-going and frequent basis.

30. The defendant dealers' practices have caused a large underground market for illegal firearms to flourish in the City of Chicago. Chicago residents can easily obtain illegal firearms through this market in contravention of law. The market is supplied by means such as straw purchases, multiple sales and other purchases from firearms dealers of firearms that are illegal in Chicago.

31. The defendant gun dealers know that many of the firearms they sell are used or possessed illegally, and put into the underground market, where they will be obtained by persons who will use or possess their firearms illegally.

32. The defendant gun dealers' actions and omissions in selling firearms to Chicago residents that are illegal in the City of Chicago unreasonably facilitate violations of City

ordinances, and contribute to physical harm, fear and inconvenience to Chicago residents, and are injurious to the public health and safety of Chicago residents.

**GUN MANUFACTURERS AND DISTRIBUTORS ENGAGE IN CONDUCT THAT UNREASONABLY CREATES A NUISANCE IN CHICAGO AND IN COOK COUNTY.**

33. All of the defendant manufacturers produce firearms that are regularly recovered by the Chicago Police Department because they have been possessed and illegally used in the City of Chicago:

(a) In the period from January 1, 1994 through June 30, 1998, at least 3933 firearms marketed by defendant Lorcin were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(b) In the period from January 1, 1994 through June 30, 1998, at least 3745 firearms marketed by defendant Colt were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(c) In the period from January 1, 1994 through June 30, 1998, at least 4482 Firearms marketed by defendant Bryco were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(d) In the period from January 1, 1994 through June 30, 1998, at least 3561 firearms marketed by defendant Smith & Wesson were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(e) In the period from January 1, 1994 through June 30, 1998, at least 3435 firearms marketed by defendant Taurus were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(f) In the period from January 1, 1994 through June 30, 1998, at least 3125 Firearms marketed by defendant Davis were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(g) In the period from January 1, 1994 through June 30, 1998, at least 2387 firearms marketed by defendant Sturm Ruger were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(h) In the period from January 1, 1994 through June 30, 1998, at least 2246 firearms marketed by defendant H&R were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(i) In the period from January 1, 1994 through June 30, 1998, at least 2012 firearms marketed by defendant Beretta were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(j) In the period from January 1, 1994 through June 30, 1998, at least 1775 firearms marketed by defendant Raven were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(k) In the period January 1, 1994 through June 30, 1998, at least 1993 firearms marketed by defendant Interarms were recovered by the Chicago Police

Department and found to have been possessed and used illegally in the City of Chicago.

(l) In the period from January 1, 1994 through June 30, 1998, at least 1081 firearms marketed by defendant Intratec were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(m) In the period from January 1, 1994 through June 30, 1998, at least 1032 firearms marketed by defendant Hi-Point were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(n) In the period from January 1, 1994 through June 30, 1998, at least 834 firearms marketed by defendant Phoenix were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(o) In the period from January 1, 1994 through June 30, 1998, at least 722 Firearms marketed by defendant Glock were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(p) In the period from January 1, 1994 through June 30, 1998, at least 671 firearms marketed by defendant Browning were recovered by the Chicago Police Department and found to have been possessed and used illegally in the City of Chicago.

(q) In the period from January 1, 1994 through June 30, 1998, at least 41 firearms marketed by defendant Kel-Tec were recovered by the Chicago Police



Department and found to have been possessed and used illegally In the City of Chicago.

(r) In the period between January 1, 1994 and June 30, 1998 at least 432 firearms marketed by defendant Sundance were recovered by the Chicago Police Department and found to have been used illegally.

34. The tracing information in the possession of the Chicago Police Department indicates that firearms distributed by each of the defendant distributors are regularly recovered and found to have been possessed and used illegally in the city of Chicago on a continuous, ongoing and frequent basis.

**A. Defendant Gun Manufacturers And Distributors Knowingly Exploit The Market For Illegal Weapons.**

35. Defendant manufacturers and distributors knowingly oversupply or "saturate the market" with their products in areas where gun control laws are less restrictive, knowing that persons will illegally bring them into the jurisdictions where they are illegal and then possess or illegally resell them. The defendant manufacturers and distributors ship many more firearms to these jurisdictions than their residents demand for their own use or that are shipped to comparable jurisdictions not near jurisdictions with strong gun control laws. In this way, the defendant gun manufacturers and distributors maximize their profits while disclaiming any knowledge of or responsibility for where their products end up or how they are used. In particular, the defendant gun manufacturers and distributors knowingly oversupply or saturate the market with their guns in the areas surrounding Chicago which have less restrictive gun control laws, knowing and foreseeing that many of these guns will be purchased by Chicagoans

who will take them back into Chicago, where they will possess them illegally. Defendant manufacturers and distributors know or should know that those guns are often used to injure or kill Chicago residents, or are otherwise used in the commission of crimes.

36. The defendant gun manufacturers and distributors know or should know that a substantial number of the guns they manufacture and distribute are possessed and used illegally in the City of Chicago. The existence of an underground market for guns has been documented in the public record for a number of years. It is common knowledge in the firearms industry, and defendant manufacturers and distributors are specifically aware, that these firearms make their way into Chicago, either by way of a "primary purchase" from a licensed dealer or a "secondary" acquisition, where the person who purchased the gun from a licensed dealer then transfers it to someone else without recording the transaction. After the secondary acquisition, the firearm can be transferred again and again in unrecorded transactions.

37. Firearms manufactured and marketed by defendant manufacturers and distributors end up in areas including Chicago where they are not permitted by law. These defendants have knowledge of and have themselves created and maintained this market structure knowing and intending this result. The defendant manufacturers and distributors know and foresee that thousands of their products are possessed illegally in the City of Chicago, many of which are used in the commission of crimes.

38. The fact that these guns end up in the City of Chicago is not accidental. The defendant manufacturers and distributors know that there is a significant market for firearms in higher crime areas such as the City of Chicago, where these guns are likely to be used for criminal purposes, and they know that they can augment their profits by supplying these markets

for illegal firearms. They also know the harm that is caused by the existence and use of these firearms in Chicago.

39. A disproportionate share of the firearms that are used in Chicago illegally are relatively new guns which are recovered from persons other than those who have purchased them, and which have not been reported stolen. This reflects a strong connection between the primary market for firearms and the illegal use of firearms.

40. The defendant gun manufacturers and distributors distribute substantial quantities of their firearms through low-end retailers such as pawn shops and gun stores that are known to be frequented by criminals and gang members. Selling their products through these retailers ensures that their guns are readily available to meet the demand of those who want them for criminal purposes.

41. The defendant gun manufacturers and distributors should know and foresee that many of the firearms they sell end up in the underground market in Chicago, where they will be obtained by persons who will use and possess them illegally.

### B. Defendant Manufacturers And Distributors Do Not Discourage Dealers From Selling Their Firearms Irresponsibly.

42. The defendant gun manufacturers are on notice that they sell potentially dangerous instrumentalities that 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 products to the public. Defendant distributors also fail to supervise, regulate or impose standards on the gun dealers to which they supply firearms, despite

knowing and foreseeing that those dealers will sell those firearms to persons who will possess them illegally and/or use them in the commission of crimes.

43. The defendant manufacturers and distributors know that there is an absence of meaningful regulations of dealers and the ease with which almost anyone can become a federally licensed firearms dealer ("FFL").

a. Under 18 U.S.C. Sec. 921, an application for a license *shall* be approved if the following conditions are met:

    i. applicant is at least 21 years old,

    ii. applicant has not willfully violated any provision of that chapter or regulation issued pursuant to that chapter,

    iii. applicant has not willfully failed to disclose any material information required or made any false statement in connection with the application,

    iv. applicant has a premises from which he has or will conduct business subject to the license, and

    v. applicant is not under indictment and has not been convicted of certain crimes, is not a fugitive from justice, does not unlawfully use and is not addicted to certain drugs, and has not been adjudicated as mentally defective or been committed to a mental institution.

In other words, if one is over 20 years old, is not a criminal, does not use illegal drugs and is not mentally defective, he is entitled to be a federally licensed firearms dealer. <u>See also</u> 27 C.F.R. Sec. 178.47.

b. There are approximately 75,000 federally licensed firearms dealers in the United States.

44. The defendant gun manufacturers and distributors fail to supervise, regulate or set standards for dealers' conduct, instead relying on the mere fact that the dealers are licensed by the federal government.

45. The defendant firearms manufacturers and distributors fail to train distributors and dealers adequately and to encourage them to act lawfully and responsibly.

46. The defendant manufacturers and distributors choose not to supervise, regulate or standardize the distributors and dealers because such a practice would limit sales of their products to a significant illegal market, and thereby reduce their sales.

47. Robert Hass, 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 firearms. The company and the industry are also aware that the black market in firearms 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 firearms 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 firearms 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. firearms manufacturers and wholesale distributors and none of them, to my knowledge, take additional steps, beyond determining the possession of a federal firearms license, to investigate, screen or supervise the wholesale distributors and retail outlets that sell their products to insure that their products are distributed responsibly.

48. The defendant gun manufacturers and distributors' failure to supervise, regulate, impose standards or otherwise concern themselves with the distributors and dealers' conduct facilitates the creation of an illegal secondary market.

### C. Defendant Manufacturers Design And Market Their Firearms To Stimulate Demand For Illegal Firearms By Persons Who Will Use Or Possess Them Illegally.

49. Defendant manufacturers design and advertise their guns to appeal to the significant market for illegal firearms, including to those who wish to use them for criminal purposes. The defendant manufacturers and distributors know or should know that they market in Illinois and elsewhere firearms designed to be unreasonably attractive for criminal uses. In particular, defendants market in Illinois and elsewhere weapons the design of which stresses concealability, the ability to fire many rounds from a single clip, or other features which make these weapons unreasonably attractive to criminals. In particular:

a. Defendant Intratec markets in Illinois and elsewhere the TEC-DC9, which is a compact, lightweight, semi-automatic assault weapon. The TEC-DC9 can accept a large-capacity, 32-round detachable magazine, and can be readily modified to be fully automatic. The TEC-DC9 is fitted with a sling swivel which allows a shoulder strap to be attached to the weapon, enhancing mobility and the ability to spray bullets from the hip. The TEC-DC9 is also manufactured with Tec-Kote, a finish that provides, as advertised, "resistance to fingerprints." Intratec slightly modified the TEC-DC9 by eliminating the external threading aspect of the barrel, and now markets it as the Intratec-AB 10. These weapons are designed to appeal to those who wish to use firearms for criminal purposes. Intratec has advertised its 9mm TEC-9 as an "assault-type pistol" that "deliver[s] more gutsy performance and reliability than any other gun on the market." The Intratec advertisement also promotes "Tec-Kote," a finish it applies to its firearms that provides a natural lubricity to increase bullet velocities and has "excellent resistance to fingerprints." These features of Tec-Kote serve no legitimate sport or hunting purpose and are designed to appeal to criminals who wish to be better armed than other criminals or law enforcement officers and who do not wish to have their fingerprints lifted from their weapons. Defendant Intratec considers the reputation of weapons such as the TEC-9 as being preferred by criminals to be a marketing advantage. Intratec's marketing and sales director has been quoted as saying the following:

> "I'm kind of flattered [by condemnations of the TEC-9]. It just has 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."

Larry Rohter, Pistol Packs Glamour and Reputation As A Menace, New York Times, March 10, 1992, at A I. At least 130 TEC-DC9's and at least 270 AB-10's were recovered in Chicago between January 1994 and June 1998.

b. Defendant Beretta markets in Illinois and elsewhere the Model 950 BS, which is a 25 ACP single-action semi-automatic pistol. It has a 2.5 inch barrel length and an overall length of 4.7 inches, a height of 3.4 inches and a weight of 9.9 ounces, making it small, light and very concealable. It has a 6-round magazine capacity, and it costs approximately $200. This model also is available in a .22 caliber version, which has an 8-round magazine capacity. At least 490 of these firearms were recovered in Chicago between January 1994 and June 1998.

c. Defendant Browning markets in Illinois and elsewhere the Hi-Power model, a 9mm semi-automatic pistol which has a ten bullet magazine capacity, yet has a barrel length of only 4.75 inches, an overall length of 7.75 inches, is only 1 3/8 inch wide and only 5 inches in height. This powerful handgun still is small enough to be kept concealed inside a waistband and under a shirt. At least 118 of these firearms were recovered in Chicago between January 1994 and June 1998. Browning also markets in Illinois and elsewhere a Boa 380 Model, which is a .380 caliber semi-automatic pistol which accepts a 13-round magazine. With an overall length of 6.75 inches, a barrel under 4 inches in length, 4.75 inches in height, and a weight of only 23 ounces, it is a small and concealable firearm.

d. Defendant Bryco markets in Illinois and elsewhere the Jennings Model 48, which is a .380 caliber semi-automatic pistol. It has a 7-round magazine capacity, and costs approximately $100. It has a 4 inch barrel, and a 6.7 inch overall length. It has a combat-style trigger guard, which enables the user to more easily employ a second hand in firing the weapon, which contributes to steadier and more accurate firing. At least 875 of these firearms were recovered in Chicago between January 1994 and June 1998. Bryco's .380 caliber Bryco Model 38 is a semi-automatic pistol, has a six-round magazine capacity, and costs about $100. It has a 2.8 inch barrel length and a 5.3 inch overall length. It weighs 16 ounces, making it even more concealable than the Model 48. At least 542 of these firearms were recovered in Chicago between January 1994 and June 1998.

e. Defendant Colt markets in Illinois and elsewhere the Mustang .380 Pocketlite, a small semi-automatic 380 ACP pistol. This firearm has a barrel length of only 2.75 inches, and an overall length of 5.5 inches, and it weighs only 18.5 ounces, making it easily concealable, and, as its name suggests, it fits easily in a pocket. The Mustang Pocketlite is part of Colt's Model-380 series of five .380 caliber pistols, which are compact, lightweight and yet high-powered. At least 98 firearms of the Mustang series were recovered in Chicago between January 1994 and June 1998.

f. Defendant Davis markets in Illinois and elsewhere the Model P-380, which is an .380 caliber semi-automatic pistol. This firearm has only a 2.8 inch barrel length, a 5.4 inch overall length, and it is only 4 inches in height. It has a five-round magazine capacity. The somewhat smaller magazine size makes this firearm even more concealable. This firearm retails for approximately $98. At least 334 of these firearms were recovered in Chicago between January 1994 and June 1998.

g. Defendant Glock markets in Illinois and elsewhere the Model 17, which is a 9mm semi-automatic pistol. The firearm, which has a polymer frame, has a barrel length of 4.5 inches and an overall length of 7.32 inches. It weighs only 22 ounces without a magazine. It has a ten round magazine capacity, but can accept up to a 30-round magazine. At least 245 of these firearms were recovered in Chicago between January 1994 and June 1998. Glock also markets in Illinois and elsewhere the Model 26, a 9mm semi-automatic pistol with a 3.5 inch barrel and a total weight of only 22 ounces. This firearm accepts a 10-round magazine.

h. Defendant H&R markets in Illinois and elsewhere the Model 732 revolver. This firearm is a .32 S&W caliber revolver which accepts six rounds and has only a 2.5 inch barrel, making it concealable. At least 578 of these firearms were recovered in Chicago between January 1994 and June 1998.

i. Defendant Hi-Point markets in Illinois and elsewhere the Model CF-380. This firearm is a 380 ACP semi-automatic pistol with a barrel length of only 3.5 inches, and yet has a capacity of 8 shots. It has a retail price of about $100. At least 939 of these firearms were recovered in Chicago between January 1994 and June 1998.

j. Defendant Interarms markets in Illinois and elsewhere various firearms from companies including Rossi, Star and Walther. It markets the Firestar M40, a .40 S&W caliber semi-automatic pistol, which has a barrel length of only 3.39 inches, an overall length of only 6.5 inches, and has a 6-round capacity. It markets the Rossi Model 68, a .38 spl caliber revolver with either a 2 or 3 inch barrel length, and an overall length of either 6.5 or 7.5 inches. The smaller options make this small-frame firearm even more concealable. In fact, it is advertised as "designed for maximum carrying comfort." It markets the Walther TPH, a .22 lr caliber semi-automatic pistol, which has only a 2.3 inch barrel length and an overall length of less than 5.5 inches, and weighs only 14 ounces. It has a capacity of six rounds. Its size and weight make it extremely concealable; in fact, it is advertised as being "[c]onsidered the ultimate hideaway, undercover, backup gun available anywhere."

k. Defendant Lorcin markets in Illinois and elsewhere the Model L-25, a .25 caliber semi-automatic pistol. It has a seven-round magazine capacity and is similar in size to the Davis .25 and the Phoenix Raven, making it a small and concealable weapon. It costs less than one hundred dollars. At least 1040 of these firearms were recovered in Chicago between January 1994 and June 1998. Lorcin also markets in Illinois and elsewhere the Model L-380, a .380 caliber semi-automatic pistol with a magazine capacity of seven. It has a barrel length of 3.5 inches, a combat-style trigger guard, and it sells for approximately $150. At least 2216 of these firearms were recovered in Chicago between January 1994 and June 1998.

l. Defendant Phoenix markets in Illinois and elsewhere the Model Raven, a .25 caliber semi-automatic pistol. It has an approximately 2.5 inch barrel length and an overall length of 4.75 inches. It weighs 15 ounces and has a 6-round magazine capacity, making it small and concealable. It is a hammerless pistol, meaning that it is easier to withdraw from a pocket for quick firing, without risking snagging on clothing. It costs less than $ 100. At least 704 of these firearms were recovered in Chicago between January 1994 and June 1998.

m. Defendant Raven markets in Illinois and elsewhere the Model MP-25. This .25 caliber semi-automatic pistol has a barrel length of under 2.5 inches, an overall length of 4.75 inches and weighs only 15 ounces, making it extremely concealable. It accepts a 6-round magazine. At least 1185 of these firearms were recovered in Chicago between January 1994 and June 1998.

n. Defendant Smith & Wesson markets in Illinois and elsewhere the Model 36, which is a .38 caliber small frame revolver with only a 2 inch barrel and a 6 5/16 inch overall length, and weighs only 19.5 ounces. It has a 5-round capacity. It is small and concealable. It is single and double-action. Double-action means the trigger pull itself cocks the hammer and rotates the cylinder, obviating the need for cocking before firing. At least 498 of these firearms were recovered in Chicago between January 1994 and June 1998.

o. Defendant Sturm Ruger markets in Illinois and elsewhere the Model P89. This firearm is a 9mm semi-automatic pistol with a 10 round magazine capacity. It has a 4.5 inch barrel and an overall length of under 8 inches and a 5.5 inch height. It also has a combat-style trigger guard. At least 48 of these firearms were recovered in Chicago between January 1994 and June 1998. Sturm Ruger also markets in Illinois and elsewhere the Ruger Mini-14 Ranch Rifle, which is a .223 Rem. caliber semi-automatic rifle with an 18.5 inch barrel.

p. Defendant Sundance markets in Illinois and elsewhere the Model A-25 and the Model Boa, clones of the Raven MP-25. Both of these models are .25 caliber semi-automatic pistols with a 2.47 inch barrel length, a 4.8 inch overall length, and they accept a 7-round magazine. At least 203 of the Model A-25 and at least 152 of the Model Boa were recovered in Chicago between January 1994 and June 1998.

q. Defendant Taurus markets in Illinois and elsewhere the Model PT-92AF. This firearm is a 9mm semi-automatic pistol, with a 4.92 inch barrel and an overall length of 8.54 inches. The firearm has double action, which eliminates tile need for manual cocking and makes the firearm easier to shoot rapidly. It also has a large magazine capacity of 10 rounds. At least 200 of these firearms were recovered in Chicago between January 1994 and June 1998. The Model 82 is a .38 caliber revolver double-action, with a medium frame and a six-shot capacity. It comes in either a 3 inch or 4 inch barrel. At least 674 of these firearms were recovered in Chicago between January 1994 and June 1998.

r. Defendant Kel-Tec markets in Illinois and elsewhere the Kel-Tec Sub 9 as a semi-automatic rifle chambered for the 9mm Lugar cartridge. It has a barrel length of 16.1 inches. By changing the grip assembly and bolt stop, the Sub 9 will accept must double high capacity magazines. By rotating the barrel upwards and back, the Sub 9 can instantly be reduced to a size of 7x16 inches. The reapplication of the barrel to the shooting position can be achieved in less than one second. According to Kel-Tec's own description, the Sub 9 "will deliver much higher muzzle energy and penetrating than the relatively short barreled pistol. Further, the Sub 9 has greatly extended range compared to a handgun or shotgun."

50. Defendant manufacturers' marketing strategy includes supplying firearms to those who desire them for criminal purposes. They recognize the existence of a significant criminal market for guns, and they design and advertise their guns to stimulate demand in and appeal to that market.

51. Defendant manufacturers distribute their firearms in such a manner as to provide access to their firearms by persons who live in areas where there exist strict gun control laws, by persons who would not qualify to purchase firearms from a reputable dealer, and by others who desire to use firearms for criminal purposes. These distribution methods include using dealers located in or around high crime areas where there is a greater demand for firearms, using dealers who will sell their firearms to persons whom they know or reasonably should know will use or possess them illegally, and saturating the market just outside areas where there are strict gun control laws.

52. Defendant manufacturers and distributors' marketing strategy intentionally and recklessly causes thousands of illegal firearms to end up in Chicago. The existence of these illegal firearms in Chicago facilitates the violation of City ordinances, and contributes to physical harm, fear and inconvenience to Chicago residents, and is injurious to the public health and safety of Chicago residents. Through this course of conduct, defendant manufacturers and distributers knowingly aid and abet defendant dealers in distributing firearms that defendants know or should know will be used or possessed illegally in the City of Chicago.

## COUNT ONE: PUBLIC NUISANCE

53. Plaintiffs incorporate, by reference and reallege herein Paragraphs 1 to 52.

54. The residents of Chicago and Cook County have a common right to be free from conduct that creates an unreasonable jeopardy to the public's health, welfare and safety, and to be free from conduct that creates a disturbance and reasonable apprehension of danger to person and property.

55. Defendants intentionally and recklessly design, market, distribute and sell firearms to persons whom defendants should know will bring those firearms into Chicago, causing thousands of firearms to be possessed and used in Chicago illegally, which results in a higher level of crime, death and injuries to Chicago citizens, and a higher level of fear, discomfort and inconvenience to the residents of Chicago. Their conduct thereby causes a significant and unreasonable interference with the public health, safety, welfare, peace, comfort and convenience, and ability to be free from disturbance and reasonable apprehension of danger to person and property.

56. Defendants' conduct in designing, marketing, distributing., and selling firearms to Chicago residents or to persons whom defendants know will use them illegally in Chicago causes thousands of illegal firearms to be possessed and used in Chicago.

57. Defendants' conduct in designing, marketing, distributing and selling firearms to Chicago residents or to persons whom defendants know will cause those firearms to end up in Chicago is of a continuing nature.

58. Defendants' on-going conduct produces an on-going nuisance, as thousands of firearms which they cause to be illegally used and possessed in Chicago 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, residents of Chicago will continue to be killed and injured by those 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.

59. The defendants know that their conduct will have an on-going detrimental effect Upon the public's health, safety and welfare, and the public's ability to be free from disturbance and reasonable apprehension of danger to person and property.

60. Defendants' conduct in designing, marketing, distributing and selling firearms to Chicago residents or to persons -whom defendants know or reasonably should know will cause those firearms to end up in Chicago constitutes a significant and unreasonable interference with public health, safety and welfare and the public's ability to be free from disturbance and reasonable apprehension of danger to person and property.

61. Defendants know or should know that their conduct causes an unreasonable invasion of the public right to health, safety and welfare and the public's ability to be free from disturbance and reasonable apprehension of danger to person and property.

62. Defendants owe a duty of care to the City of Chicago and its residents and the County of Cook to exercise reasonable care to prevent their firearms from ending up in the hands of persons who use and possess them illegally in the City of Chicago in light of the direct, foreseeable and serious consequences of their actions:

a. Defendants' conduct in designing, marketing, distributing and selling firearms to Chicago residents or to persons whom defendants know or reasonably should know will cause those firearms to be possessed and used in Chicago creates a strong likelihood that these illegal firearms will cause deaths and injuries to Chicago residents and otherwise significantly and unreasonably interfere with public health, safety and welfare, and with the public's right to be free from disturbance and reasonable apprehension of danger to person and property.

b. It is reasonably foreseeable to the defendants that their conduct will Cause deaths and injuries to Chicago residents and otherwise significantly and unreasonably interfere with public health, safety and welfare, with the public's right to be free from disturbance and reasonable apprehension of danger to person and property, and with the City of Chicago's ability to enforce its gun control ordinances.

c. The burden on the defendants of taking measures to stem the flow of illegal weapons into Chicago is not undue. The only burden on defendants would be the loss of sales to those likely to use or possess the weapons illegally.

d. The prevalence of illegal firearms in the City of Chicago not only causes deaths and injuries, it also creates a palpable climate of fear among Chicago residents, particularly in certain areas where guns are even more prevalent and where they tend to be used more frequently. The defendants' conduct undermines the City's efforts to limit the number and types of firearms in the City, and makes it easier for criminals to arm themselves, constituting a dangerous threat to the public. Stemming the flow of illegal guns into the City by avoiding sales to persons who are likely to bring them into Chicago illegally will help to alleviate this problem; it will save lives and prevent injuries, and it will make the City of Chicago and County of Cook a safer place to live.

63. The defendants' conduct is the direct and proximate cause of deaths and injuries to Chicago residents and a significant and unreasonable interference with public safety and health and the public's right to be free from disturbance and reasonable apprehension of danger to person and property.

64. The defendants' conduct, if unabated, will continue to threaten the health, safety and welfare of the City's residents, creating an atmosphere of fear that tears at tile residents' sense of well-being and security. The City and the County have a clearly ascertainable right to abate conduct that perpetuates this harm.

65. The presence of illegal firearms in the City of Chicago proximately results in deaths and injuries to Chicago residents and significant increased costs to the City and County in order to enforce the law and to treat the victims of firearms crime. In particular, the City and the County, in response to defendants' conduct, must dedicate additional personnel, resources, time and money to provide emergency medical services and health care to additional victims of firearms violence; trace the additional firearms recovered in the City of Chicago; investigate and prosecute those who have possessed or used firearms illegally, as a direct result of defendant's conduct; fund the criminal justice system in which such prosecutions take place; detain and imprison those who have used firearms unlawfully; and, through its law enforcement officers, attempt to maintain the peace and protect the health, safety and welfare of their residents. The defendants' conduct proximately results in the need to provide these additional services, at an increased cost to the City and County.

66. Monetary damages will not adequately compensate the City and the County for the harm that they will continue to suffer if the defendants' conduct continues. Therefore, the City and the County have an inadequate remedy at law. Moreover, the harm that the City and its residents and the County will continue to suffer in the absence of an injunction is irreparable.

67. The defendants' conduct is outrageous, and is committed with a reckless and wanton indifference to the rights and safety of others.

## COUNT TWO: NEGLIGENT ENTRUSTMENT

68. Plaintiffs incorporate by reference and reallege herein Paragraphs 1 to 52, and 62.

69. Defendant dealers, distributors, and manufacturers know or have reason to know that most firearms are illegal to use or possess in Chicago under most circumstances.

70. Defendants also know or have reason to know that firearms that they manufacture, distribute or sell will be brought into the City of Chicago or will be transferred to persons who will bring them into Chicago and use them there illegally.

71. Defendant dealers have a duty not to supply firearms to persons whom they know or have reason to believe will illegally use, possess, transfer, or resell the firearms in Chicago, or otherwise use them in Chicago in a manner creating an unreasonable risk of harm to others. Defendant manufacturers and distributors have a duty not to supply firearms to such persons through sales made by defendant dealers.

72. Defendant dealers, distributors, and manufacturers have breached this duty and circumvented applicable laws governing the use and possession of firearms in Chicago by selling and supplying firearms to Chicago residents whom they know or have reason to believe will illegally use, possess, transfer, or resell the firearms in Chicago, or otherwise use them in a manner creating an unreasonable risk of harm to others.

73. The defendant dealers', distributors', and manufacturers' negligent entrustment of firearms to persons whom they know or should know will possess or use them illegally in Chicago is the direct and proximate cause of deaths and injuries to Chicago residents and of increased costs to the City of Chicago and Cook County, which, in response to defendants' conduct, must dedicate additional personnel, resources, time and money to provide emergency

medical services and health care to additional victims of firearms violence; trace the additional firearms recovered in the City of Chicago; investigate and prosecute those who have possessed or used firearms illegally, as a direct result of defendants' conduct; fund the criminal justice system in which such prosecutions take place; detain and imprison those who have used firearms unlawfully; and, through its law enforcement officers, attempt to maintain the peace and protect the health, safety and welfare of their residents. The defendants' conduct proximately results in the need to provide these additional services, at an increased cost to the City and the County.

74. The defendants' conduct is outrageous, and is committed with a reckless and wanton indifference to the rights and safety of others.

WHEREFORE, the City of Chicago and the County of Cook hereby request trial by jury and that this Court adjudge and decree that defendants are liable for creating a public nuisance, enter judgment for the City of Chicago and the County of Cook, Illinois and against defendants, and award the City of Chicago and the County of Cook the following:

1. Allocated monetary damages attributable to each defendant to compensate the City of Chicago for the costs that it bears as a result of the public nuisance, in amount to exceed $358.1 million. The damages the City of Chicago seeks are comprised of the following to include the years 1994-98. These costs include:

   a. Chicago Police Department's program costs (excluding Office of Emergency Communications) attributable to gun violations, approximately $75,700,260 for 1997;

b. Chicago Police Department's Office of Emergency Communicatins costs, approximately $1,282,047 for 1997,

c. Chicago Fire Department's Emergency Medical Services costs, approximately $605,461 for 1997; and

d. City of Chicago Law Department's costs of prosecuting, violations of City's gun control ordinances, approximately $526,773 for 1997.

2. Monetary damages to compensate the County of Cook, Illinois for the costs that it bears as a result of the defendants' conduct, in an amount to exceed $75,000,000. The damages that the County of Cook, Illinois seeks are comprised of the following elements:

a. The Cook County Bureau of Health's costs to treat victims of firearms violence in Cook County from 1994-98 - in excess of $50,000,000; and

b. Cook County's costs to prosecute and defend the criminal use of a firearm from 1994-98 - in excess of $S25,000,000.

3. Punitive damages against each defendant in a sufficient amount to punish and deter conduct that intentionally and recklessly endangers the people of Chicago.

4. The following permanent injunctive relief to abate the public nuisance caused by the defendants:

a. Prohibit the sale to Chicago residents of firearms that are illegal in the City of Chicago, unless the purchaser can prove that he has a legal place to maintain the firearm outside the City of Chicago;

b. Prohibit the sale of firearms to Chicago residents under circumstances that put the dealer on notice that the firearms will not be used for tile purchaser's personal use or otherwise will not be used for legal purposes;

c. Prohibit defendant dealers from selling any firearm to an individual who has purchased a firearm within the previous thirty (30) days;

d. Require firearms manufacturers and distributors to systematically monitor the sales of dealers through which they distribute their firearms to ensure that they are being sold legally and responsibly, and to terminate shipments of firearms to dealers who do not enforce standards and practices that prevent sales to persons whom the dealer knows or should know will not use them lawfully and responsibly;

e. Require firearms manufacturers and distributors to provide adequate training to the firearms dealers through which they distribute their firearms to ensure the dealers' compliance with federal, state and local laws;

f. Require firearms manufacturers, distributors and dealers to cease shipments to dealers in proximity to Chicago of firearms that by their design are unreasonably attractive to criminals;

g. Require defendant manufacturers and distributors to participate in a court ordered study of lawful demand for firearms and to cease sales in excess of lawful demand;

h. Require defendant manufacturers to market personalized firearms that can only be used by the lawful purchaser;

i. Authorize the City of Chicago to monitor on an on-going basis the dealers' compliance with the injunction order and with federal, state and municipal laws.

Respectfully submitted,

By: ______________________________
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