COURT OF COMMON PLEAS HAMILTON COUNTY, OHIO CIVIL DIVISION

CITY OF CINCINNATI	:
City Hall	:
801 Plum Street	:
Cincinnati, Ohio 45202	:
	: Case No
Plaintiff,	:
	:
v.	:
	:
BERETTA U.S.A. CORP.	:
c/o Mr. Billy Padgett,	:
Registered Agent	:
11878 Dellvale Place	:
Riverside, California 92505	:
	:
BRYCO ARMS, INC.	:
c/o Mr. Gary B. Genske,	:
Registered Agent	:
12960 Central Avenue	:
Chino, California 91710	:
	:
COLT'S MANUFACTURING	:
CO., INC.	:
c/o The Prentice-Hall Corporation	:
System, Registered Agent	:
1013 Centre Road	:
Wilmington, Delaware 19805	: COMPLAINT
- 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1	: <u>(WITH JURY DEMAND)</u>
DAVIS INDUSTRIES	:
c/o Mr. James Davis,	:
Registered Agent	:
15150 Sierra Bonita Lane	:
Chino, California 91710	:
	:
FABRICA D'ARMI PIETRO	:
BERETTA Sp.A.	:
c/o Dr. Ugo Gussalli-Beretta	:
Via Pietro Beretta	<u>:</u>
18-25063 Gardone Val Trompia	: :
Brescia, Italy	: :

FORJAS TAURUS, S.A. c/o Luis Fernando Costa Estimates Avenue of the Fort 511 Porto Alegra City Quarter Vila Ipiranga State Rs CEP 91360-000 Brazil	: : : : : : : : : : : : : : : : : : : :
H & R 1871, INC. c/o Mr. John Kilcoyne, Registered Agent 4 E. Kendall Street Worcester, Massachusetts 01695	:
B.L. JENNINGS, INC. c/o Mr. Bruce L. Jennings, Registered Agent Post Office Box 1605 1285 Hiddenwoods Drive Zephyr Cove, Nevada 89448	: : : : : : : : : : : : : : : : : : : :
MKS SUPPLY, INC., d/b/a HI-POINT FIREARMS c/o Thomas Deeb, Registered Agent 4251 Flowers Road Mansfield, Ohio 44903	:
LORCIN ENGINEERING CO., INC. c/o Paracorp Incorporated, Registered Agent 640 Bercut Drive, Suite A Sacramento, California 95814	: : : : : : : : : : : : : : : : : : : :
NORTH AMERICAN ARMS, INC. c/o CT Corporation System, Registered Agent 50 W. Broadway, 8th Floor Salt Lake City, Utah 84101-2006	:
PHOENIX ARMS c/o Mr. David Barzeau, Registered Agent 1420 S. Archibald Avenue Chino, California 91710	:

RAVEN ARMS, INC. c/o Mr. David Barzeau, Registered Agent 1300 Bixby Drive City of Industry, California 91745 **SMITH & WESSON CORP.** c/o The Corporation Trust Company, Registered Agent 1209 Orange Street Wilmington, Delaware 19801 STURM & RUGER CO., INC. c/o The Corporation Trust Company, Registered Agent 1209 Orange Street Wilmington, Delaware 19801 TAURUS INTERNATIONAL MANUFACTURING, INC. c/o Coprolite Corporation, Registered Agent 1400-A Amerifirst Building One SE Third Avenue Miami, Florida 33131 AMERICAN SHOOTING SPORTS COALITION, INC. c/o Mr. Richard Feldman, Registered Agent 1845 The Exchange, Suite 150 Atlanta, Georgia 30339 NATIONAL SHOOTING SPORTS FOUNDATION, INC. c/o Richard Rose, Esq., Registered Agent Cummings & Lockwood 10 Stamford Forum Stamford, Connecticut 06902 and

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SPORTING ARMS AND
AMMUNITION MANUFACTURER'S

INSTITUTE, INC.

c/o Richard Rose, Esq.,
Registered Agent

Registered Agent : Cummings & Lockwood :

10 Stamford Forum :

Stamford, Connecticut 06902

Defendants.

Now comes the plaintiff, the City of Cincinnati, and for its complaint against defendants states as follows.

NATURE OF THE ACTION

This is a civil action for injunctive relief, compensatory damages and punitive damages against defendants who, by their actions, have knowingly and deliberately, and for their own financial benefit, designed and marketed handguns in a manner that foreseeably injures the City of Cincinnati and its residents.

For years, the defendant gun manufacturers and their agents have had the ability to design guns that would prevent many tragic shootings, which result in death and injury to innocent persons – including children. Among other feasible design alternatives, gun manufacturers have been able to utilize various types of available technology to make guns that authorized persons could fire, but unauthorized or unintended users could not. Such self-locking devices would "personalize" guns and prevent firearm injuries and deaths that will continue to occur in Cincinnati when children and other unauthorized or unintended users gain access to guns.

Gun manufacturers and their agents have refused to implement these and other features to make their dangerous weapons more safe, or to prevent foreseeable injuries and deaths suffered by the residents of the City of Cincinnati. Instead, gun manufacturers and distributors design, manufacture, assemble, distribute, promote, market and sell

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handguns without adequate mechanisms and warnings to prevent unintentional shootings and shootings by unauthorized or unintended users.

Defendants have likewise deceived, misled and confused the City of Cincinnati and its residents regarding the safety of guns. In marketing their product, gun manufacturers and other defendants promote the fallacy that the use of guns will increase home safety and security, without mentioning the fact that guns actually increase the risk and incidence of homicides, suicide and intentional and unintentional injuries to gun owners, their families and friends. The defendants also over-promote the purported self-defense and home protection benefits of their guns, in a manner that undercuts any warnings or instructions regarding safe storage of guns, and which results not only in irresponsible people possessing guns, but in the irresponsible storage and handling of guns as well.

Moreover, defendant gun manufacturers, distributors, dealers and their agents have, for years, recklessly and knowingly engaged in conduct that promotes and sustains an illegal gun market, which arms juveniles, convicted felons and other unauthorized or illegal users with lethal weapons. Defendants have, for example, marketed and distributed their guns without sufficient controls. Such conduct fuels crime in the City of Cincinnati and elsewhere.

Such conduct facilitated the deaths of fourteen-year-old Jerome Bush, who shot himself in the head with a .22 caliber revolver, and his girlfriend, sixteen-year-old Shonda Ritenour, who shot herself with a .38 caliber revolver that her mother had purchased after a recent burglary. It enabled Daniel T. Williams, who had a criminal history, to ambush and shoot Cincinnati Police Officer Kathleen Conway four times in her lower abdomen and thigh, before Officer Conway shot him to death with her service revolver. It armed Alonzo Davenport, who shot and killed Police Officer Daniel Pope and Specialist Ronald Jeter with a stolen .38 caliber revolver, before turning the revolver on himself. And it put his father's .22

caliber revolver in the hands of Jason Syme who, at the culmination of an afternoon filled with gunplay, shot and killed his fourteen-year-old friend, Jeffrey Schulte.

As a result of such reckless conduct by defendants, the City of Cincinnati has and continues to suffer irreparable harm, and to incur financial damages, including significant expenses for additional police protection, overtime, emergency services, pension benefits, health care, social services and other necessary facilities and services. In addition, the City of Cincinnati has sustained a loss of investment, economic development and tax revenue due to lost productivity – all associated with the defective design, and negligent manufacture, assembly, marketing, distribution, promotion and sale of guns.

PARTIES, JURISDICTION AND VENUE

[PLAINTIFF]

1. Plaintiff, the City of Cincinnati ["Cincinnati] is a municipal corporation organized under the law of the State of Ohio, and acting pursuant to the Charter of the City of Cincinnati, through its City Solicitor. Cincinnati brings this action on behalf of itself and its residents to obtain monetary, injunctive and other equitable relief.

[DEFENDANTS – MANUFACTURERS]

- 2. The following defendants manufacture, distribute and/or sell firearms that are found in and around Cincinnati [the "Defendant Manufacturers"].
- 3. Defendant, Beretta U.S.A. Corp. is a corporation organized under the laws of the State of Maryland, with its principal place of business in Maryland, that designs, manufactures, advertises, imports and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 4. Defendant Bryco Arms, Inc. is a corporation organized under the laws of the State of Nevada, with its principal place of business in California, that designs,

manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.

- 5. Defendant Colt's Manufacturing Co. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Connecticut, that designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 6. Defendant Davis Industries is a corporation organized under the laws of the State of California, with its principal place of business in California, that designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 7. Defendant Fabrica D'Armi Pietro Beretta Sp.A. is a corporation organized and existing under the laws of Italy, with its principal place of business in Italy, that designs, manufacturers, advertises and/or sells firearms to Beretta U.S.A., Inc., that can be fired by unauthorized or unintended users in Cincinnati.
- 8. Defendant Forjas Taurus, S.A., is a Brazilian corporation with its principal place of business in Brazil, that designs, manufacturers, advertises and/or sells firearm parts and firearms to Taurus International Manufacturing, Inc., that can be fired by unauthorized or unintended users in Cincinnati.
- 9. Defendant H & R 1871, Inc. is a corporation organized under the laws of the State of Massachusetts, with its principal place of business in Massachusetts, that designs, manufactures, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 10. Defendant B.L. Jennings, Inc. is a corporation organized under the laws of the State of Nevada, with its principal place of business in Nevada, that designs,

manufactures, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.

- 11. Defendant Lorcin Engineering Co., Inc. is a corporation organized under the laws of the State of California, with its principal place of business in California, that designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 12. Defendant MKS Supply, Inc., d/b/a Hi-Point Firearms ["Hi-Point"], is a corporation organized under the laws of the State of Ohio, with its principal place of business in Ohio, that designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 13. Defendant North American Arms is a corporation organized under the laws of the State of Utah, with its principal place of business in Utah, that designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 14. Defendant Phoenix Arms is a corporation organized under the laws of the State of California, with its principal place of business in California, that designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 15. Defendant Raven Arms, Inc. is a corporation organized under the laws of the State of California, with its principal place of business in California, that designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 16. Defendant, Smith & Wesson Corp. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Massachusetts, that

designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.

- 17. Defendant, Sturm & Ruger Co. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Connecticut, that designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.
- 18. Defendant Taurus International Manufacturing, Inc. is a corporation organized under the laws of the State of Florida, with its principal place of business in Florida, that designs, manufacturers, advertises and/or sells firearms that can be fired by unauthorized or unintended users in Cincinnati.

[DEFENDANTS – TRADE ASSOCIATIONS]

- 19. The following defendants are industry trade associations ["Defendant Trade Associations"], which are composed of firearms manufacturers and sellers, including some or all of the Defendant Manufacturers.
- 20. Defendant American Shooting Sports Coalition, Inc. ["ASSC"] is a tax-exempt business league under Section 501(c)(6) of the Internal Revenue Code, organized under the laws of the State of Georgia, with its principal office in Georgia. ASSC is an industry trade association composed of handgun manufacturers and sellers, including some or all of the Defendant Manufacturers.
- 21. Defendant National Shooting Sports Foundation, Inc. ["NSSF"] is a tax-exempt business league under Section 501(c)(6) of the Internal Revenue Code, organized under the laws of the State of Connecticut, with its principal office in Connecticut. NSSF is an industry trade association composed of handgun manufacturers and sellers, including some or all of the Defendant Manufacturers.

22. Defendant Sporting Arms and Ammunition Manufacturer's Institute, Inc. ["SAAMI"] is a tax-exempt business league under Section 501(c)(6) of the Internal Revenue Code, organized under the laws of the State of Connecticut, with its principal office in Connecticut. SAAMI is an industry trade association composed of handgun manufacturers and sellers, including some or all of the Defendant Manufacturers.

JURISDICTION

23. Each defendant is subject to the jurisdiction of the Ohio courts by virtue of their doing or transacting business in Ohio, by causing an injurious effect in Ohio through an act or omission elsewhere, and/or by their commission of a tortious act in Ohio.

VENUE

24. Venue is proper in this Court pursuant to Ohio Rule of Civil Procedure 3. Defendant, Hi-Point is organized and domiciled in the State of Ohio. The actions of Hi-Point, and the other defendants, that give rise to Cincinnati's claims for relief took place in Hamilton County, Ohio. Defendants have marketed, advertised and supplied guns in Hamilton County, Ohio, and continue to market, advertise and supply guns in Hamilton County, Ohio. Defendants have and continue to receive substantial revenue, income and profits from the sale of guns in Hamilton County, Ohio. Further, the damages suffered by plaintiff, that give rise to its cause of action, occurred in Hamilton County, Ohio.

FACTUAL ALLEGATIONS

[DESIGN, MANUFACTURE AND SALE OF UNSAFE FIREARMS]

25. For many years, the City of Cincinnati and its residents have suffered harm and incurred significant costs and expenses associated with the manufacture, marketing, promotion and sale of firearms that are defective and unreasonably dangerous under the laws of the State of Ohio.

- 26. In addition to other defective and unreasonably dangerous design features, lack of safety features and inadequate warnings described herein, defendants' firearms are unreasonably dangerous because they can be and are fired by unauthorized users including, but not limited to, children, criminals, mentally unstable persons and others who put themselves and others at risk when they possess such a firearm.
- 27. This action is brought under the laws of the State of Ohio for injunctive relief, to recover damages, and for such other relief that is appropriate, for the harm unjustly, intentionally and wrongfully done and continuing to be done to Cincinnati and its residents by the various defendants. These defendants have been and continue to be unjustly enriched at the expense of Cincinnati and its residents.
- 28. The defendants are companies and organizations who manufacture, distribute, promote, market, sell and/or instruct in the use of firearms that are sold: without the means to prevent their being fired by unauthorized users; without adequate warnings that would prevent such shootings by alerting users of the risks of guns and the importance of the proper storage of guns; and without other available safety features and warnings that would prevent unintentional shootings and shooting by unauthorized users.
- 29. The actions by these defendants have caused Cincinnati to incur substantial costs and expenses in order to provide necessary services including, but not limited to, medical, police, court, corrections and emergency services. All of these costs are borne by Cincinnati as a result of the defendants' wrongful conduct. Further, Cincinnati has also lost substantial tax revenues due to lost worker productivity, lost tourism, and reduced property values.
- 30. At all relevant times, it has been feasible for defendants to manufacture, market, promote and/or sell firearms that prevent unintentional shootings and shootings by unauthorized users. Such firearms would incorporate safety devices intended to

prevent unauthorized users from firing the guns when they take possession of them.

Nonetheless, defendants have failed to incorporate such devices into their firearms.

- 31. Defendants' guns are defective and unreasonably dangerous in that, among other things, they enable any person who gains access to them including children to fire them. They also do not adequately prevent shootings when the user is unaware that a round is in the chamber. Defendants' guns are additionally distributed without adequate warnings and instructions as to their risks, and as to proper storage and use. In fact, defendants' firearms are marketed and promoted in a manner that not only suggests that they do not pose such risks to users and their households, but that suggests, promotes and encourages unsafe storage practices.
- 32. At all relevant times, it was reasonably foreseeable that, without the aid of additional design features and/or warning devices, defendants' guns would be used in tragic, preventable shootings including shootings by unauthorized users. Many of these shootings are unintentional, often by children who do not fully understand or appreciate how to properly handle a gun, or understand the risks associated with a gun.
- 33. With regard to semi-automatic firearms it was likewise reasonably foreseeable that users, including adolescents, would mistakenly believe that a semi-automatic gun would not fire if the ammunition magazine was removed. It was also reasonably foreseeable that users of semi-automatic guns would not understand or appreciate that an undetectable round of ammunition may be housed in the firing chamber of the gun, even though the detectable ammunition magazine had been removed or unloaded. Consequently, it was reasonably foreseeable that this hazardous design feature would result in preventable, unintentional shootings given defendants' designs.
- 34. Defendants were, at all relevant times, aware of these inherent and unreasonable dangers in the design of their firearms.

- 35. The design of defendants' guns, which enable any person who gains possession of such guns to fire them, and which do not make users aware that a round of ammunition is housed in the firing chamber, results in thousands of unintentional shooting deaths and non-fatal injuries every year.
- 36. The General Accounting Office ["GAO"] estimated that each year, 23% of the 1,400 to 1,500 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 230 to 345 deaths nationwide each year. For each of these deaths, there are countless other unintentional shooting injuries that are not fatal. A number of these unintentional shootings occur in Cincinnati.
- 37. Numerous deaths caused by an undetected round of ammunition in the firing chamber occur as a result of the accidental shooting of one person by an unintended user of a gun. Such accidents often involve adolescents. According to the GAO, approximately 35% of all unintentional shooting deaths involve users of guns who are between the ages of 13 and 16 adolescents who are naturally attracted to accessible guns, and who notoriously discount the risks associated with handling a firearm. A number of these unintentional shootings occur in Cincinnati.
- 38. The design of defendants' guns, which enable any person who gains possession of the guns to fire them, also results in thousands of adolescent suicides. Studies indicate that the odds that potentially suicidal adolescents will kill themselves double when a gun is kept in the home. Moreover, one youth between the ages of 10 and 19 commits suicide approximately every six hours. Guns are the method used in 85% of male teen suicides, and 47% of female teen suicides. Among 15 to 19 year olds, firearm-related suicides have been estimated to account for 81% of the increase in the overall suicide rate from 1980 to 1992.

- 39. The design of defendants' guns, which enable any person who gains possession of the guns to fire them, also results in thousands of homicides by unauthorized users, including juveniles. Many of these homicide victims are themselves children and teenagers. These perpetrators often gain access to guns in their homes or through theft.
- 40. At all relevant times, its was reasonably foreseeable that defendants' guns would fall into the hands of unintended users. The Federal Centers for Disease Control and Prevention estimate that 1.2 million elementary-aged, latch-key children have access to guns in their homes. There are guns in approximately one-half the homes in this country. One survey reports that 30% of gun-owners who have children in the home keep their guns loaded. Another survey reports that 36% of gun owners with children in the home keep their guns unlocked. In one survey, nearly 60% of children between the ages of 10 and 19 responded that they can acquire a gun should they want one. The same survey reports that 15% of children between the ages of 10 and 19 reported that they had carried a gun on their person in the past 30 days. Therefore, it is reasonably foreseeable that, when unintended users gain access to guns, those guns are loaded or the user can obtain ammunition.
- 41. It is reasonably foreseeable that, when unintended users gain access to guns, tragic preventable shootings will result. It is also reasonably foreseeable that many of these shootings will be unintentional, and many will involve children both as victims and shooters. It is also reasonably foreseeable that many of these shootings will involve suicides by children and adolescents. Lastly, it is reasonably foreseeable that many of these shootings will involve homicides by juveniles.
- 42. At the time defendants manufactured, distributed, promoted and/or sold these guns, defendants knew or should have known of the unreasonable dangers of their guns, including those described in the preceding paragraphs. Defendants were also aware of,

and had available to them, safety devices, warnings and other measures that would prevent and/or decrease these dangers.

- 43. Defendants failed to remedy these deficiencies in their guns, warnings, instructions, promotions and advertising. Defendants also failed to adequately warn customers of these dangers, failed to inform customers and distributors of available devices and measures that could prevent or decrease these dangers, and failed to incorporate these life-saving devices into their guns.
- 44. Residents of Cincinnati including its children are continually put at risk and victimized by defendants' unreasonably dangerous products. Year after year, Cincinnati children are grievously injured or killed because defendants' guns are sold without the means to prevent their use by unauthorized users, without adequate warnings that would prevent such shootings (*i.e.*, alerting users of the risks of guns and of the importance of proper gun storage), and without other safety features that would prevent shootings by unauthorized users. For example:
 - On July 8, 1997, while showing off a loaded .38 caliber revolver in front of two female friends in his family's garage, seventeen-year-old Geramy Lilly pointed the gun to his head and fired a bullet into the right side.
 - On July 23, 1997, fourteen-year-old Jerome Bush shot himself in the head with a .22 caliber revolver.
 - Twenty-two days later, on August 15, 1997, Jerome Bush's girlfriend, sixteen-year-old Shonda Ritenour shot herself with a .38 caliber revolver that her mother had purchased after a recent burglary.
 - On July 8, 1996 at the culmination of an afternoon filled with gunplay, and after he had already held the gun to a twelve-year-old boy's head and pulled the trigger without the gun firing fourteen-year-old Jason Syme

fired a fully loaded .22 caliber revolver, that he had taken without permission from his father, at and killed fourteen-year-old Jeffrey Schulte.

45. In the last five years – 1993 through 1998 – forty children under the age of eighteen died of gunshot wounds in the Greater Cincinnati area.

46. Additionally,

- In February, 1998, Cincinnati Police Officer Kathleen Conway was ambushed and shot four times in her lower abdomen and thigh with a Smith & Wesson .357 magnum.
- Shortly before midnight on December 5, 1997, Alonzo Davenport shot and killed Police Officer Daniel Pope and Specialist Ronald Jeter during a domestic violence call with a stolen .38 caliber revolver.
- On October 27, 1997, shortly after midnight, five juveniles entered the College Hill Dairy Mart, held a gun to the clerk, Khalid Siddique's head and demanded that he open a cash register. Mr. Siddique was shot opening the register.
- On March 11, 1996, fourteen-year-old Marcel Gordon was killed when he and his nineteenyear-old brother, Antonio Gordon, where playing with their stepfather's .38 caliber handgun and the gun accidentally fired.
- 47. These tragedies demonstrate that the residents of Cincinnati are under a continuing threat of injury and death, particularly to children, from defendants' unreasonably dangerous products.
- 48. At all relevant times, defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that their products could be sold and/or made with the means to prevent their firing by unauthorized users. Defendants knew or should have known that their warnings and instructions were inadequate to alert

owners and foreseeable users of the risks posed by their guns, and that the advertising used to promote those products was likely to cause many owners to store their guns unlocked and/or loaded.

- 49. The defendants further knew that, by failing to sell and/or make their 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.
- 50. Furthermore, defendants purposefully and intentionally engaged in these activities knowing full well that Cincinnati residents and police officers would foreseeably fall victim to death or serious injuries caused by the actions of unauthorized users of guns. As a consequence, it was also reasonably foreseeable that Cincinnati would be forced to bear substantial expenses as a result of these acts.
- 51. At all relevant times, the defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that Cincinnati, in its role of providing protection and care for its citizens, would provide or pay for additional police protection, emergency services, pension benefits, health care and other necessary services due to the threat posed by the use of defendants' products. In addition, defendants knew or should have known that Cincinnati would be harmed as a result of the injuries to certain of its residents and police officers caused by the defendants' products, as well as by the loss of substantial tax revenue.
- 52. At all relevant times, defendants who account for most of the handguns sold to the general public have acted in concert, tacitly agreed, colluded, cooperated, and adhered to industry standards and customs with respect to, among other things:

- A. their failure to develop and implement the means to prevent their guns from being fired by unauthorized users;
- B. discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- C. their failure to develop and implement other safety features; and
- D. their failure to issue adequate warnings alerting users of the risks of guns and to the importance of proper storage of guns.

[FALSE AND MISLEADING ADVERTISING AND STATEMENTS]

- 53. For years, defendants have knowingly, purposefully and intentionally misled, deceived and confused the residents of Cincinnati regarding the safety of handguns.
- 54. Defendants misled, deceived and confused residents by claiming through advertising and promotion of their firearms that the ownership and possession of firearms in the home increases protection of one's home and person, without mentioning that studies and statistics show that firearms in the home actually increase the risk of harm to firearm owners and their families. Indeed, studies have indicated that:
 - A. one out of three handguns is kept loaded and unlocked in the home;
 - B. guns kept in the home for self-protection are 22 times more likely to kill or injure someone known by their owners, than to kill or injure an intruder;
 - C. the risk of homicide is three times greater with guns in the home;
 - D. the risk of suicide is five times greater with guns in the home;
 - E. a gun is used for protection in fewer than two percent of home invasion crimes when someone is home:

- F. for every time a gun in the home was used in a self-defense or legally justifiable shooting, there were four unintentional shootings, seven criminal assaults or homicides, and eleven attempted or completed suicides; and
- G. in 60% of fatal accidents involving a firearm, the weapon was located in or near the home.
- 55. The defendants have known, or should know, of the dangers of guns in the home and what the consequences of widespread availability without restraints or limits were long ago. For example, more than 30 years ago, in 1968, a staff report of the U.S. Commission on the Causes and Prevention of Violence, entitled "Handguns and Violence in American Life," 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).

- 56. Defendants knew or should have known these statistics, but ignored and belittled them in an effort to promote their handguns as "insurance" for the home.
- 57. Defendants, through their advertisements, have also misled, deceived and confused people by suggesting, encouraging and promoting unsafe storage and/or placement of handguns. Defendants' conduct also over-promotes the efficacy and utility of handguns for self-defense and home protection purposes, in a manner which undercuts any warnings or instructions provided regarding safe storage and handling.

[NEGLIGENT MARKETING AND DISTRIBUTION]

- 58. Cincinnati, like most major cities in the United States, is faced with significant levels of violent crime. Many of the violent crimes that occur in Cincinnati are committed with firearms that are possessed and used illegally.
- 59. The widespread availability and misuse of firearms by juveniles, felons, and other unauthorized users is a national problem. 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 35,000 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 1985 and 1994, the firearm death rate for juveniles increased by 104%. From 1987 to 1989, the rate of increase more than doubled, to between 23 and 25%. In 1990, 82% of all homicides of persons between the ages of 15 and 19 were committed with handguns. Homicide is the second leading cause of death for youth aged 15 to 19.
- 60. In Cincinnati, there were 25 homicide victims in 1998, 10 of whom were killed with firearms, and at least one of whom was under the age of 18. In 1997, there were 39 homicide victims, 15 of whom were killed with firearms, and one of whom was under the age of 18. The number of homicides committed with firearms was as high as 27 in 1995, when six of the victims were under the age of 18. For each firearm homicide victim, there are approximately three persons who are hospitalized with firearm injuries.
- 61. During 1998 alone, there were 273 robberies and 116 assaults in Cincinnati, in which firearms were used. During 1998, the Cincinnati Police recovered 856 firearms, 669 of which were handguns, and 388 of which were semi-automatics.
- 62. This staggering toll of gun violence is fueled by the ready availability of firearms to unauthorized and illegal users through an illegal firearms market. 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 recent survey showed that 70% of all prisoners felt that they could easily obtain a firearm upon their release. Approximately 54% of the prisoners 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. Another survey showed that 45% of arrestees obtained their guns in the illegal firearms market.

- of guns picked up in crime in major urban centers throughout the United States have been possessed by children under age 18. Moreover, in one study there were more crime guns seized from persons aged 18 to 20 than from any other three-year age group, adult or juvenile. Large percentages of these guns have been used in assaults, robberies, homicides and other violent crimes. More than 80% of the firearms seized in crime are handguns.
- 64. For many years, defendants have knowingly participated in a national firearms market and should have expected that their production, marketing, and/or distribution of firearms would have consequences throughout the United States, including Cincinnati and the State of Ohio.
- 65. For many years, defendants have knowingly and recklessly produced, marketed, and/or distributed firearms in a manner which fostered and enabled the unlawful market in firearms.
- 66. For many years, defendants have distributed their firearms in an unregulated and unsupervised manner in order to increase their sales of firearms, without adequate supervision or regulation.

- 67. For many years, defendants have acted in concert, and/or have tacitly agreed, colluded, or cooperated with respect to their failure or refusal reasonably to supervise, oversee, or control the retail firearms dealers and others who distribute their firearms.
 - 68. For many years, there has been an unlawful market in firearms.
- 69. For many years, defendants knew or should have known that their distribution practices were unreasonably unsafe.
- 70. For many years, defendants knew or should have known that they were producing and selling substantially more firearms than could be justified by the legitimate gun market, and that a substantial portion of their guns would end up in the hands of criminals and other irresponsible persons.
- 71. At all relevant times, defendants knew or should have known of the existence of the unlawful market in firearms. A substantial percentage of defendants' guns end up in the hands of unauthorized and irresponsible persons including children under the age of 21 and convicted felons and are then used to injure or kill residents of Cincinnati.
- 72. At all relevant times, defendants knew or should have known that unauthorized and irresponsible persons including children under the age of 21 and convicted felons were acquiring firearms through the unlawful firearms market, and that those firearms would then be used to injure or kill residents of Cincinnati.
- 73. At all relevant times, defendants knew or should have known that their firearms were being distributed and supplied to the unlawful firearms market. Moreover, defendants knew or should have known that a substantial percentage of their guns travel quickly from their hands into the hands of unauthorized and irresponsible persons including children under the age of 21 and convicted felons who then use them to subject Cincinnati and its residents to violence and crime. For example, reports have indicated that

more than 40% of firearms traced to crime in urban centers across America have been used in crime less than three years after first being bought at retail sale, which is a strong indication that the firearm has been illegally trafficked.

- 74. At all relevant times, defendants knew or should have known that their firearms were being purchased, acquired and otherwise obtained in the unlawful firearms market by irresponsible persons. Defendant Manufacturers have been on notice for many years that the firearms they sell are frequently used in crimes, but they make no meaningful efforts to supervise, regulate or impose standards on the distribution practices of either the distributors or the dealers who channel their handguns to the public.
- 75. Defendant Manufacturers have or reasonably should have known that there is an absence of meaningful regulations of firearm dealers, and are aware of the ease with which persons can become a federally licensed firearms dealer ["FFL"]. Defendant manufacturers fail to supervise, regulate or set standards for dealers' conduct, but instead rely upon the mere fact that dealers are licensed by the federal and state governments. Defendant Manufacturers also fail to require that dealers to be adequately trained, or to encourage them to act lawfully and responsibly. Defendant Manufacturers choose not to supervise, regulate or standardize dealers in ways which would decrease the risk of guns ending up in criminal hands, because such a practice would limit and/or eliminate sales of their handguns to a significant illegal market and thereby reduce their sales.
- 76. Robert Haas, former Senior Vice-President of Marketing and Sales for defendant Smith & Wesson, described gun manufacturers' failure to promote responsible practices by distributors and dealers as follows:

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 investigate, screen or supervise the wholesale distributors and retail outlets that investigate, screen or supervise the wholesale distributors and retail outlets that sell their products to insure that their products are distributed responsibly.

- 77. The conduct of defendants, their agents, servants and employees individually and jointly is negligent, reckless, willful and wanton in, among other ways:
 - A. distributing and promoting firearms without adequate supervision and/or control;
 - B. distributing, promoting, advertising, and marketing firearms in such a way that it was reasonably foreseeable that they would be acquired by unauthorized and irresponsible persons, including children and felons;
 - C. failing or refusing to implement reasonable controls, standards and mechanisms to regulate the distribution of firearms;
 - D. advertising, promoting, and recommending the sale and use of firearms with knowledge that they would be acquired by unauthorized and irresponsible persons, including children incapable of appreciating the dangers of firearms;
 - E. causing, permitting, and allowing firearms to be promoted, marketed, distributed, and disseminated to unauthorized and

- irresponsible persons, including young people incapable of appreciating the dangers and hazards of these products;
- F. failing or refusing to interview, screen, and investigate the background and business practices of the distributors and retail sellers of their handguns; and
- G. failing or refusing to take reasonable efforts to ensure that their dangerous and hazardous firearms were not acquired by unauthorized and irresponsible persons, including children under age 21 and convicted felons.
- 78. As a result of the foregoing, persons under the age of 21, criminals and others unlawfully acquired, possessed and used firearms in numerous crimes committed in Cincinnati. Residents of Cincinnati and others have obtained and continue to be able to obtain firearms through this "black market."
- 79. The flow of defendants' firearms into the unlawful market, and into the hands of unauthorized and irresponsible persons including children under the age of 21 and convicted felons has occurred in numerous ways, all of which defendants knew or should have known of and could have controlled and prevented. For example:
 - A. For many years, defendants have sold thousands of guns which have been obtained by unauthorized and irresponsible persons including children under the age of 21 and convicted felons - by a method of diversion called "straw purchasing," wherein the purchaser buys the gun for a person who is not qualified to purchase the firearm under federal and state regulations, such as a juvenile or convicted felon. Indeed, in one recent law enforcement study, more than one-half of the firearms subject to firearm trafficking investigations had been acquired as part of a Many crime guns are straw purchase. retrieved from someone other than the original retail purchaser. Many of these straw purchases have occurred under circumstances which have indicated or should have indicated

to the firearm seller that a "straw purchase" was being made. As a result, unauthorized and irresponsible persons – including children under the age of 21 and convicted felons – have obtained thousands of guns from these sources, some of which thereafter have been used or will be used to injure Cincinnati and its residents.

- B. For many years, defendants have sold thousands of guns which have been obtained by unauthorized and irresponsible persons including children under the age of 21 and convicted felons – as part of multiple sales, wherein the purchaser buys a more than one gun at a time or over a short period of time with the intention of later selling or transferring the gun to a person who is not qualified to purchase firearms under federal and state regulations, such as a juvenile or convicted felon. Many of the multiple sales have occurred under circumstances which have indicated or should have indicated to the firearm seller that the firearms being purchased were destined for the unlawful As a result, unauthorized and irresponsible persons - including children under the age of 21 and convicted felons have obtained thousands of guns from these sources, some of which thereafter have been used or will be used to injure Cincinnati and its residents.
- C. For many years, defendants have sold thousands of guns to "kitchen table" dealers (i.e., FFL's who do not sell firearms from a retail store). Many of these firearms dealers, although federally licensed, are corrupt and have sold firearms without completing background checks on purchasers complying with other reporting requirements. As a result, unauthorized and irresponsible persons - including children under the age of 21 and convicted felons - have obtained thousands of guns from these sources, some of which thereafter have been used or will be used to injure Cincinnati and its residents. Despite this sordid record, defendants have continued to provide a steady source of

- firearms to these "kitchen table" dealers without attempting to control, monitor or supervise their sales practices.
- D. For many years, thousands of firearms have obtained bv unauthorized irresponsible persons - including children under the age of 21 and convicted felons after having been stolen from retail dealers and other FFL's who have failed to provide adequate security of their premises. Defendants, in turn, have failed to ensure that persons distributing its dangerous products have implemented adequate security to prevent these foreseeable thefts. One recent law enforcement study found that 25% of the in illegal firearm trafficking firearms investigations in the West had been stolen from FFL's. As a result, unauthorized and irresponsible persons - including children under the age of 21 and convicted felons have obtained thousands of guns from these sources, some of which thereafter have been used or will be used to injure Cincinnati and its residents.
- 80. The examples listed above are just some of the ways in which, due to defendants' failure to implement reasonable controls over the marketing and distribution of its dangerous products, their products have fallen into the hands of unauthorized and irresponsible persons including children under the age of 21 and convicted felons and which thereafter have been used or will be used to injure Cincinnati and its residents.
- 81. Defendants know, or should know, that many of the firearms they sell will eventually make their way into the illegal market, where they will be obtained by persons who will use such firearms illegally, causing Cincinnati and its residents harm. Defendants' action and omissions set forth above unreasonably facilitate violations of federal and state laws, contribute to physical harm, fear and inconvenience to Cincinnati residents, and are injurious to the public health and safety of Cincinnati residents.

- 82. An investigation by the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms has revealed that defendants have sold guns under similar circumstances where they knew or should have known that the purchaser will use the handguns for illegal purposes in Cincinnati, or illegally transfer or sell handguns to others who will likewise possess or use the guns illegally in Cincinnati. By so acting, dealers aid and abet violations of federal and state law.
- 83. All the Defendant Manufacturers produce firearms that have been and continue to be recovered by the Cincinnati Police Department either from juveniles, in connection with a crime, or in connection with an unintentional shooting.
- 84. As a result of defendants' irresponsible practices, a large proportion of crime guns recovered from juveniles, adult felons and other unauthorized users are quite new and most likely deliberately and illegally trafficked. Moreover, in one law enforcement study, in more than two-thirds of the firearms trafficking investigations, improperly transferred firearms were known to have been subsequently involved in additional crimes.

FIRST CAUSE OF ACTION [STRICT PRODUCT LIABILITY – DEFECTIVE CONDITION/ UNREASONABLY DANGEROUS]

(Defendant Manufacturers)

- 85. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 86. Defendant Manufacturers are "manufacturers" as that terms is defined in Ohio Revised Code Section 2307.71(I).
- 87. The guns manufactured and/or supplied by Defendant Manufacturers were defective in design or formulation in that, at the time they left the Defendant Manufacturers' control, they were unreasonably dangerous to the purchasers thereof.

- 88. The guns manufactured and/or supplied by Defendant Manufacturers were defective in design or formulation in that, at the time they left the Defendant Manufacturers' control, the foreseeable risks to the purchasers exceeded the benefits associated with their design or formulation.
- 89. The guns manufactured and/or supplied by Defendant Manufacturers were defective in design or formulation in that they were more dangerous than an ordinary consumer purchaser would expect when used in their intended or reasonably foreseeable manner.
- 90. The guns manufactured and/or supplied by Defendant Manufacturers were defective in design or formulation in that a reasonably prudent manufacturer or distributor, being fully aware of the risks posed, would not have placed the product on the market.
- 91. The guns manufactured and/or supplied by Defendant Manufacturers were defective in that they did not conform to the representations of Defendant Manufacturers that the guns, when distributed by defendants, were safe for use by purchasers.
- 92. Defendant Manufacturers failed to employ alternative designs, which: were readily available; would prevent the weapons from being fired by unauthorized users; would alert users that a round was in the chamber of the weapon; would prevent the weapon from being fired when the ammunition magazine was removed; and would have reduced, if not prevented, many of the City's damages.
- 93. As a direct and proximate result of the defective condition of the guns manufactured and/or supplied by Defendant Manufacturers, plaintiff has suffered actual injury and damages including, but not limited to, significant expenses for police, emergency, health, prosecution, corrections and other services.

SECOND CAUSE OF ACTION [STRICT PRODUCT LIABILITY – FAILURE TO WARN]

(Defendant Manufacturers)

- 94. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 95. Defendant Manufacturers are "manufacturers" as that term is defined in Ohio Revised Code Section 2307.71(I).
- 96. The guns manufactured and/or supplied by Defendant Manufacturers were defective and unreasonably dangerous due to inadequate warning or instruction at the time of marketing in that, at the time they left the Defendant Manufacturers' control, defendants knew or should have known that their guns were unreasonably dangerous in the hands of reasonably foreseeable users, including households with children, and defendants failed to provide adequate warnings or instructions as to the risks of handguns.
- 97. Specifically, and among other things, Defendant Manufacturers failed to adequately warn or instruct owners: of the risks that minors and other unauthorized users could gain access to handguns; how to properly store handguns; that a round might be hidden in the firing chamber of a gun; and that their guns could be fired even with the ammunition magazine removed.
- 98. The guns manufactured and/or supplied by Defendant Manufacturers were defective and unreasonably dangerous due to inadequate post-marketing warnings or instructions such that, at the time they left the Defendant Manufacturers' control, defendants knew or should have known the risk involved with the use of their guns, and failed to exercise reasonable care to provide adequate warnings or instruction to the users of the guns.
- 99. As a direct and proximate result of the defective and unreasonably dangerous condition of the guns manufactured and/or supplied by Defendant Manufacturers, and

defendants' failure to adequately warn, plaintiff has suffered actual injury and damages including, but not limited to, significant expenses for police, emergency, health, corrections, prosecution and other services.

THIRD CAUSE OF ACTION [NEGLIGENCE]

(All Defendants)

- 100. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 101. Defendants had a duty to exercise ordinary and/or reasonable care in designing, manufacturing, marketing, advertising, promoting, distributing, supplying and/or selling their guns into the stream of commerce, including a duty to exercise care to assure that the products were safe for their intended and foreseeable use by consumers.
- 102. Defendants failed to exercise ordinary care in designing, manufacturing, marketing, advertising, promoting, distributing, supplying and/or selling their guns.
- 103. Despite the fact that defendants knew or should have known that their firearms posed a serious risk of harm to consumers, defendants continued to advertise and sell their firearms to consumers in the City of Cincinnati and the State of Ohio, without exercising reasonable care.
- 104. As a direct and proximate result of defendants' negligence, plaintiff has suffered actual injury and damages including, but not limited to, significant expenses for police, emergency, health, corrections and other services.

FOURTH CAUSE OF ACTION [NEGLIGENCE/FAILURE TO WARN]

(All Defendants)

- 105. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 106. Defendants negligently failed in their duty to exercise ordinary and/or reasonable care to provide a full and adequate warning to consumers of the risks that defendants knew or should have known existed from guns.
- 107. Defendants negligently failed in their duty to exercise ordinary and/or reasonable care to provide post-marketing warnings to consumers of the risks that defendants knew or should have known existed from guns.
- 108. As a direct and proximate result of defendants' negligence and failure to warn, plaintiff has suffered actual injury and damages including, but not limited to, significant expenses for police, emergency, health, corrections and other services.

FIFTH CAUSE OF ACTION [UNFAIR AND DECEPTIVE ADVERTISING PRACTICES]

(Defendant Manufacturers)

- 109. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 110. Defendant Manufacturers are "persons" or "suppliers" engaged in the business of effecting or soliciting "consumer transactions" in the State of Ohio within the meaning of the Ohio Consumer Sales Practices Act, Ohio Revised Code Sections 1345.01, et seq.
- 111. Defendant Manufacturers, acting individually or in concert, have engaged in unfair, deceptive and unconscionable acts or practices, in connection with a consumer transaction, by:

- A. advertising, marketing, distributing and selling their handguns in a manner that is likely to and does cause harm to young children in the City of Cincinnati;
- B. marketing, distributing and selling their handguns in a manner that is likely to and does contribute to homicides, suicides and accidental deaths in the City of Cincinnati; and
- C. engaging in a campaign of misrepresentation and misinformation concerning the dangers of their handguns by creating advertisements which falsely state that home ownership of guns will increase home safety and security while knowing, or having reason to know, that home ownership of guns actually increases the risk of homicides, suicides and accidental injury or death in the home.
- 112. Defendants' deceptive representations and actions in advertising and/or marketing have been and are material, false and likely to mislead consumers about the dangers of guns and, therefore, constitute unfair, deceptive and conscionable acts or practices in violation of Ohio Revised Code Sections 1345.02 and 1345.03.
- 113. As a result of defendants' unfair, deceptive and unconscionable acts or practices in advertising and/or marketing, the ability of numerous consumers to obtain or evaluate information material to their decision about the purchase of handguns in Cincinnati has been limited.
- 114. As result of defendants' unfair and/or deceptive acts or practices in advertising and/or marketing, numerous residents of Cincinnati have suffered and will, in the future, suffer ascertainable losses, including adverse consequences such as death or serious bodily injury, which have resulted and continue to result in substantial costs to Cincinnati.
- 115. As a result of defendants' unfair and/or deceptive acts or practices in advertising and/or marketing, they have reaped millions of dollars in ill-gotten profits and

gains in Cincinnati, which they otherwise would not have received, and which they should be required to disgorge and repay.

116. As a result of defendants' unfair and/or deceptive acts or practices in advertising and/or marketing, children and adolescents, felons, mentally unstable individuals, and those otherwise unauthorized or unqualified to carry handguns and use them in a safe manner have had easy access to and have begun to use, continue to use, and have been encouraged to use defendants' handguns, and defendants have enhanced and facilitated their opportunity to do so.

SIXTH CAUSE OF ACTION [PUBLIC NUISANCE]

(All Defendants)

- 117. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 118. The residents of Cincinnati 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.
- 119. Defendants intentionally and recklessly market, distribute and sell handguns that defendants know, or reasonably should know, will be obtained by persons with criminal purposes, causing hundreds of handguns to be possessed and used in Cincinnati illegally, resulting in an elevated level of crime, death and injuries to Cincinnati residents, and a higher level of fear, discomfort and inconvenience to the residents of Cincinnati.
- 120. Defendants cause 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 or property.

- 121. Defendants' conduct in marketing, distributing and selling handguns to persons whom defendants know, or reasonably should know, will cause those handguns to end up being possessed and/or used illegally in Cincinnati is of a continuing nature.
- 122. A handgun possessed or used illegally in Cincinnati and the State of Ohio is a public nuisance, subject to seizure and destruction under state statutes.
- 123. Defendants' ongoing conduct produces an ongoing nuisance, as hundreds of handguns that they allow and/or cause to be illegally used and possessed in Cincinnati will remain in the hands of persons who will continue to use and possess them illegally for many years.
- 124. As a result of the continued use and possession of many of these handguns, residents of Cincinnati 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.
- 125. Defendants know, or reasonably should know, that their conduct will have an ongoing detrimental effect upon the public health, safety and welfare, and the public's ability to be free from disturbance and reasonable apprehension of danger to person and property.
- 126. Defendants know, or reasonably 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.
- 127. Defendants' conduct in marketing, distributing and selling handguns to persons whom defendants know, or reasonably should know, will cause those handguns to end up in the hands of irresponsible persons and persons with criminal purposes, creates a strong likelihood that these handguns will cause deaths and injuries to Cincinnati 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.

- 128. It is, or should be, reasonably foreseeable to defendants that their conduct will cause deaths and injuries to Cincinnati residents, and will 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.
- 129. The prevalence and availability of handguns in the hands of irresponsible persons and persons with criminal purposes in Cincinnati not only causes deaths and injuries, but also creates a palpable climate of fear among Cincinnati residents, particularly in certain areas, such as Over-the-Rhine, where handguns are even more prevalent and where they tend to be used more frequently.
- 130. Defendants' conduct makes it easier for criminals to arm themselves, constituting a dangerous threat to the public.
- 131. The presence of illegal handguns in Cincinnati proximately results in significant costs to the City in order to enforce the law, arm its police force and treat the victims of handgun crime.
- 132. Stemming the flow of handguns into the illegal handgun market will help to alleviate this problem, will save lives, prevent injuries and will make Cincinnati a safer place to live.
- 133. Defendants' conduct is a direct and proximate cause of deaths and injuries to Cincinnati residents, and a significant and unreasonable interference 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.

134. Defendants' conduct constitutes a public nuisance and, if unabated, will continue to threaten the health, safety and welfare of the City's residents, creating an atmosphere of fear that tears at the residents' sense of well-being and security. Cincinnati has a clearly ascertainable right to abate conduct that perpetuates this nuisance.

SEVENTH CAUSE OF ACTION [FRAUD/FRAUDULENT CONCEALMENT]

(All Defendants)

- 135. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 136. At all times during the manufacture, marketing, promotion, distribution and sale of their guns, Defendant Manufacturers and Defendant Trade Associations jointly, in concert and/or individually, pursuant to a common plan, design or scheme, made false and fraudulent representations, and omitted and failed to state material facts to Cincinnati residents including, but not limited to, the safety of their products (as described above), and omitted, concealed and failed to disclose relevant information that a reasonable person would find material to making an informed decision regarding the risks associated with the design and manufacture of defendants' guns and the ownership of such guns.
- 137. When defendants made the foregoing misrepresentations and omissions, they concealed and suppressed material facts, and when making such misrepresentation and omissions, did so with the intent to defraud, deceive and mislead consumers with the intent to induce Cincinnati residents to purchase defendants' guns.
- 138. At all times relevant hereto, defendants concealed from Cincinnati residents the true facts including, but not limited to, the unreasonable risks associated with handguns.

- 139. In reliance upon the false and fraudulent representations and omissions of material facts by defendants, Cincinnati residents were induced to and did purchase defendants' guns.
- 140. Cincinnati residents justifiably relied upon defendants' misrepresentations, omissions and concealments because said misrepresentations, omissions and concealments were made by individuals and entities who were in the position to know and had the duty to disclose true facts.
- 141. The foregoing conduct by defendants was malicious, fraudulent and oppressive towards consumers, and defendants acted with willful and wanton and/or conscious and reckless disregard for the safety of Cincinnati residents.
- 142. As a direct and proximate result of defendants' fraud and concealment, Cincinnati residents have been wrongly subjected to unreasonable risk of personal injury, death and property loss, and Cincinnati has been wrongly subjected to bearing the costs associated with such injury, death and loss.

EIGHTH CAUSE OF ACTION [NEGLIGENT MISREPRESENTATION]

(All Defendants)

- 143. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 144. Defendant Manufacturers and Defendant Trade Associations negligently and carelessly made the foregoing misrepresentations and omissions without a reasonable basis therefor.
- 145. Defendants jointly, in concert and/or individually, pursuant to a common plan, design or scheme, negligently and carelessly concealed from consumers that there was no reasonable basis for making said misrepresentations.

- 146. When defendants made the foregoing misrepresentations, they knew or should have known them to be false.
- 147. In reliance upon the foregoing misrepresentations by the defendants, consumers were induced to and did subject themselves to the use of defendants' guns.
- 148. The reliance of consumers upon defendants' misrepresentations and omissions was justifiable in that such misrepresentations and omissions were made by individuals and entities who were in the position to know the true facts.
- 149. As a direct and proximate result of defendants' misrepresentations, Cincinnati residents have been wrongly subjected to unreasonable risk of personal injury, death and property loss, and Cincinnati has been wrongly subjected to bearing the costs associated with such injury, death and loss.

NINTH CAUSE OF ACTION [UNJUST ENRICHMENT AND RESTITUTION]

(Defendant Manufacturers)

- 150. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 151. Defendant Manufacturers have reaped enormous profits and gains from the sale of handguns in and around Cincinnati.
- 152. Defendants' handgun sales in and around Cincinnati have resulted in enormous increases in the City's expenditures in the following areas: medical care, police investigations, emergency personnel, public health resources, human services, courts, prisons and related expenses.
- 153. Cincinnati has also been negatively impacted by defendants' handgun sales due to the decrease in property values throughout Cincinnati, loss of businesses, difficulty in redeveloping Cincinnati, and loss of substantial tax revenues due to lost productivity.

- 154. Defendants undertook the wrongful conduct alleged herein for the purpose of increasing their sales and profits from their sales of handguns, while at the same time avoiding responsibility for the costs related to medical care and criminal investigations caused by such sales and use of handguns and shifting those costs to Cincinnati and its citizens.
- 155. Defendants have, without justification, unjustly refused and failed to pay for the consequences of their unreasonable conduct and, as a result, Cincinnati has been required to pay for the associated costs resulting from defendants' unlawful conduct.
- 156. Cincinnati's expenditure of substantial sums to pay for the associated costs resulting from the use of handguns sold for enormous profit by defendants has unjustly benefited and enriched defendants at Cincinnati's expense, to its detriment.
- 157. By virtue of the foregoing, Cincinnati has incurred expenses that, in law, equity and fairness, ought to have been borne by defendants.
 - 158. Defendants have unjustly enriched themselves at Cincinnati's expense.
- 159. As a result of defendants' conduct, Cincinnati has suffered, and will continue to suffer, substantial injuries and damages for which Cincinnati is entitled to recover.

[PUNITIVE DAMAGES]

- 160. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.
- 161. All of the acts and omissions of defendants hereinbefore stated were willful and malicious, evidenced a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm, and warrants the imposition of punitive or exemplary damages.
- 162. As a direct and proximate result of the foregoing conduct of defendants, plaintiff has suffered actual injury and damages including, but not limited to,

significant expenses for police, emergency, health, prosecution, corrections and other services.

163. Defendants' unconscionable conduct thereby warrants an assessment of exemplary and punitive damages against defendants in an amount appropriate to punish defendants and set an example which will deter similar conduct in the future.

WHEREFORE, plaintiff respectfully requests that this Court enter judgment against the defendants and order appropriate relief as follows:

- 1. Preliminary and permanent injunctive relief enjoining defendants from:
 - A. continuing to distribute handguns without appropriate safety devices and/or warnings;
 - B. using any unfair or deceptive advertising practices in the future; and
 - C. using any unfair or deceptive sales practices in the future.
- Preliminary and permanent injunctive relief enjoining Defendant
 Manufacturers:
 - A. to create and implement standards regarding their own distribution of handguns as well as the conduct of the dealers to whom the distributors supply handguns in an effort to eliminate or substantially reduce the secondary handgun market, which supplies irresponsible persons and persons with criminal purposes, and which currently exists in the City of Cincinnati and elsewhere;
 - B. to provide adequate warnings relating to the risk of handguns and the proper storage thereof;
 - C. to fund studies, programs, advertising campaigns and other events focused upon handgun safety and owner responsibility; and
 - D. to fund studies, programs, events and advertising campaigns with the goal of reducing handgun violence.

- 3. For compensatory damages in an amount to be proven at trial.
- 4. For exemplary and punitive damages in an amount to

be proven at the time of trial, and sufficient to punish defendants or deter them and other s from repeating the injurious conduct alleged herein;

- 5. For restitution and disgorgement of profits;
- 6. For costs of this suit and attorneys' fees; and
- 7. All other legal or equitable relief that the Court deems appropriate.

Respectfully submitted

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JURY DEMAND

Plaintiff hereby demands a trial by jury.
Stanley M. Chesley

DIRECTIONS FOR SERVICE

TO THE CLERK: Please issue a summons and serve it, along with a copy of the foregoing complaint, upon each defendant at the address listed in the caption of the Complaint.