

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MAYOR JAMES H. SILLS, JR., and)	
THE CITY OF WILMINGTON,)	
)	
Plaintiffs,)	CA NO.:
)	
v.)	TRIAL BY JURY DEMANDED
)	
SMITH & WESSON CORP., STURM,)	NON-ARBITRATION CASE
RUGER & COMPANY, INC., BERETTA)	
U.S.A., COLT'S MANUFACTURING)	
CO., GLOCK, INC., TAURUS)	
INTERNATIONAL MANUFACTURING, INC.,)	
SIGARMS, INC., BRYCO ARMS,)	
B.L. JENNINGS, INC., PHOENIX ARMS)	
NAVEGAR, INC., (D/B/A "INTRATEC"),)	
HI-POINT FIREARMS, AMERICAN)	
SHOOTING SPORTS COUNCIL, INC.,)	
NATIONAL SHOOTING SPORTS)	
FOUNDATION, INC. and SPORTING)	
ARMS AND AMMUNITION)	
MANUFACTURERS INSTITUTE, INC.,)	
)	
Defendants.)	

COMPLAINT

PARTIES

1.

PLAINTIFFS:

MAYOR JAMES H. SILLS, JR. is the duly elected, and present, Mayor of the City of Wilmington.

2.

THE CITY OF WILMINGTON is a body politic and municipal corporation, operating under

22 Del. C. §§ 801-812, and their Home Rule Charter and as such it has the authority and obligation to initiate legal actions.

3.

MANUFACTURER/SELLER DEFENDANTS:

SMITH AND WESSON CORP. is a corporation organized in the State of Massachusetts, with its principal place of business in the State of Massachusetts, that manufactures and regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

4.

STURM, RUGER & CO. is a corporation organized in the State of Delaware, with its principal place of business in the State of Connecticut, that manufactures and regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware.

5.

BERETTA U.S.A. is a corporation organized in the State of Maryland, with its principal place of business in the State of Maryland, that manufactures and regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

6.

COLT'S MANUFACTURING CO. is a corporation organized in the State of Connecticut, with its principal place of business in the State of Connecticut, that manufactures and regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

7.

GLOCK, INC. is a corporation organized in the State of Georgia, with its principal place of business in the State of Georgia, that manufactures and regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

8.

TAURUS INTERNATIONAL MANUFACTURING, INC. is a corporation organized in the State of Florida, with its principal place of business in the State of Florida, that regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

9.

SIGARMS, INC. is a corporation organized in the State of New Hampshire, with its principal place of business in the State of New Hampshire, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

10.

BRYCO ARMS is a corporation organized in the State of Nevada, with its principal place of business in the State of California, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

11.

B.L. JENNINGS, INC. is a corporation organized in the State of Nevada, with its principal place of business in the State of Nevada, that regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

12.

PHOENIX ARMS is a corporation organized in the State of Arizona, with its principal place of business in the State of California, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

13.

NAVEGAR, INC. (D/B/A INTRATEC) is a corporation organized in the State of Florida, with its principal place of business in the State of Florida, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

14.

HI-POINT FIREARMS is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the State of Ohio, that regularly manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Wilmington and State of Delaware. Service may be made pursuant to 10 Del. C. § 3104.

15.

TRADE ASSOCIATION DEFENDANTS:

AMERICAN SHOOTING SPORTS COUNCIL, INC. (“ASSC”) is a tax exempt business league under section 501 (c)(6) of the Internal Revenue Code with its principal office in the State of Georgia. ASSC is an industry trade association composed of firearms manufacturers and sellers, including some or all of the manufacturer/seller Defendants. Service may be made pursuant to 10 Del. C. § 3104.

16.

NATIONAL SHOOTING SPORTS FOUNDATION, INC. (“NSSF”) is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code with its principal office in Newtown, Connecticut. NSSF is an industry trade association composed of firearms manufacturers and sellers, including some or all of the manufacturer/seller Defendants. Service may be made pursuant to 10 Del. C. § 3104.

17.

SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC. ("SAAMI") is a tax exempt business league under section 501 (c)(6) of the Internal Revenue Code with its principal office in Newtown, Connecticut. SAAMI is an industry trade association composed of firearms manufacturers and sellers, including some or all of the manufacturer/seller Defendants. Service may be made pursuant to 10 Del. C. § 3104.

FACTS

18.

Pursuant to 22 Del. C. §§ 801-812, and the Home Rule Charter for the City of Wilmington, Mayor James H. Sills, Jr. and the City of Wilmington are responsible for the general health, safety and

welfare of their citizens, and have the duty to protect the interest of the general public.

19.

For many years the City has suffered harm and has incurred significant expenses associated with the manufacture, marketing, promotion, negligent distribution and sale of firearms which are unreasonably dangerous under Delaware law.

20.

In addition to the other unreasonably dangerous design features, lack of safety features, and inadequate warnings described herein, Defendants' handguns are unreasonably dangerous because they can be and are fired by unauthorized users, including but not limited to criminals, mentally unstable persons, and others (including children) who put themselves and/or others at risk when they possess a firearm.

21.

This action is brought under the laws cited herein to recover damages, and for other relief as may be obtained, for the harm unjustly, intentionally and wrongfully done and continuing to be done to the City of Wilmington, the Police Department of the City of Wilmington and to the People of Wilmington by the various Defendants, who have been and continue to be unjustly enriched thereby at the expense of the City and its residents.

22.

Defendants are companies and organizations who manufacture, distribute, promote, market, sell and/or instruct in the use of firearms which are sold without the means to prevent their being fired by unauthorized users, without adequate warnings which would prevent such shootings by alerting users of the risks of handguns and of the importance of proper storage of handguns, and without other safety features and warnings which would prevent shootings by unauthorized users. 23.

Defendants negligently market and distribute their handguns in a manner which affords easy access to unauthorized users including criminals.

24.

Actions by Defendants have caused the City to pay out large sums of money to provide services including but not limited to necessary police and emergency services, and related expenditures, as well as to have lost substantial tax revenues due to lost productivity.

25.

At all pertinent times Defendants have been able to manufacture, market, sell and/or promote firearms which prevent shootings by unauthorized users, including firearms which incorporate safety devices intended to prevent unauthorized users from firing firearms if and when they come into possession of them. However, Defendants have failed to do so.

26.

Defendants' handguns are inherently and unreasonably dangerous in that they enable any person who gains access to them - including but not limited to children, who can be expected to be unable to properly handle them or understand their risks - to fire them, even though it was feasible to design the handguns to prevent unauthorized users from firing them.

27.

Defendants' handguns are also inherently and unreasonably dangerous in that these handguns were not distributed with adequate warnings and instructions as to their risks and as to proper storage, and in fact were marketed and promoted in a manner which suggested that they did not pose such risks to users and their households, and which suggested, promoted, and encouraged unsafe storage practices.

28.

Defendants' handguns are also inherently and unreasonably dangerous in that their design features insufficiently warn all foreseeable users, including unintended users, that a round of ammunition may be housed in the firing chamber.

29.

At all pertinent times it was reasonably foreseeable to Defendants that without the aid of some other design feature and/or warning device, Defendants' handguns would end up being used in tragic, preventable 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 handgun, or understand its risks.

30.

With regard to those handguns of Defendants which are semi-automatics, at all pertinent times it was foreseeable that users, including adolescents, would mistakenly believe that a semi-automatic handgun would not fire if the ammunition magazine is removed. At all pertinent times it was foreseeable 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 the handgun even though the detachable ammunition magazine has been removed or unloaded, and that preventable, unintentional shootings would result given Defendants' designs.

31.

Defendants were at all pertinent times aware of these inherent and unreasonable dangers in the design of their firearms.

32.

The design of Defendants' handguns, which enable any person who gains possession of them

to fire them, and which fails to 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. The General Accounting Office estimates that 23% of the annual 1,400 to 1,500 unintentional shooting deaths occur because the user of the handgun was not aware that a round of ammunition had been loaded into the handgun's firing chamber – as many as 320 to 345 deaths each year. For each of these deaths, there are many unintentional shooting injuries that are not fatal, but result in serious injury.

33.

A vast percentage of the injuries and deaths caused by an undetected round of ammunition in the firing chamber occur when an unintended user of the handgun, such as an adolescent, unintentionally shoots another person. According to the General Accounting Office, approximately 35% of all unintentional shooting deaths involve users of handguns who were between the ages of 13 and 18. Adolescents are naturally attracted to accessible handguns and notoriously discount the risks associated with handling a firearm.

34.

The design of Defendants' handguns, which enable any person who gains possession of them to fire them, also results in thousands of adolescent suicides. The odds that potentially suicidal adolescents will kill themselves double when a handgun is kept in the home. A youth aged 10-19 commits suicide with a handgun every six hours. Handguns are the method used in 65% of male teen suicides and 47% of female teen suicides. Among 15-19 year-olds, firearm-related suicides accounted for 81% of the increase in the overall rate of suicide from 1980-1992.

35.

The design of Defendants' handguns, which enable any person who gains possession of them to fire them, also results in thousands of homicides by unauthorized users, including juveniles. Many of these homicide victims are themselves children and teenagers. Many of these perpetrators gained access to handguns in homes or through theft.

36.

At all pertinent times it was foreseeable that Defendants' handguns would fall into the hands of unintended users. The Centers for Disease Control estimate that 1.2 million elementary-aged, latch-key children have access to handguns in their homes.

37.

There are handguns in approximately one-half of the homes in this country, and one survey reports that 30% of these gun-owners who have children in the home keep their handguns loaded. Another survey reports that 36% of handgun owners with children in their home keep their handguns unlocked. In one survey, nearly 60% of the children between the ages of 10 and 19 responded that they can acquire a handgun should they want one. The same survey reports that 15% of the children between the ages of 10 and 19 reported that they had carried a handgun on their person in the past 30 days. At all such times it was also foreseeable that when unintended users would gain access to these handguns, that either the handguns would be loaded or that the user would be able to obtain ammunition.

38.

At such times it was also foreseeable that when unintended users would gain access to Defendants' handguns, tragic, preventable shootings would result. It was foreseeable at these times

that many of these shootings would be unintentional, and many would involve children - as victims and/or as shooters. It also was foreseeable that many of these shootings would involve suicides by children and adolescents. It also was foreseeable that many of these shootings would involve homicides by juveniles, whose victims are juveniles.

39.

At the time the Defendants manufactured, distributed, promoted and/or sold these handguns, Defendants knew and should have known of the unreasonable dangers of their handguns, including those described in the foregoing paragraphs. Defendants were also aware of safety devices, warnings, and other measures which would prevent and decrease these dangers. Defendants failed to remedy these deficiencies in their handguns, warnings, instructions, promotions and advertising; failed to adequately warn customers of these dangers; and failed to inform customers or distributors or retailers of safety devices and measures which could prevent or decrease these dangers and failed to determine whether safety devices were feasible or effective.

40.

Citizens of the City of Wilmington, particularly its children, repeatedly have been victimized by Defendants' unreasonably dangerous products. Year after year, Wilmington children are grievously injured or killed because Defendants' handguns are negligently marketed, distributed and sold without the means to prevent their use by unauthorized users, without adequate warnings which would prevent such shootings by alerting users of the risks of handguns and of the importance of proper storage of handguns, without other safety features which would prevent shootings by unauthorized users, and in a manner that allows criminals access to handguns.

41.

These tragedies, and others like them, demonstrate that the citizens of the City of Wilmington

are under a continuing threat of injury and death, particularly to children, from Defendants' unreasonably dangerous products.

42.

At all times pertinent, these 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, and that their warnings and instructions were inadequate to alert owners and foreseeable users of the risks posed by their handguns, and the importance and means of properly storing handguns, and that the advertising used to promote those products were likely to cause many owners to store their handguns unlocked and/or loaded, which would enable unauthorized users to fire them.

43.

At all times pertinent, these 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, and that by failing to use such means, made it possible for handguns stolen from private residences, handgun stores and other locations to be employed by unauthorized users in violent criminal acts.

44.

Furthermore, Defendants purposefully and intentionally engaged in these activities knowing full well that the citizens of the City of Wilmington, their Police Officers and others would be substantially certain to suffer injuries and substantial expenses due to shootings and crimes which would result, and to the threat of shootings and crimes, and that the City and its people would be injured thereby.

45.

Defendants' marketing and distribution practices help foster an environment for easy criminal and youth access to guns.

46.

At all times pertinent, Defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that the City, in its role of providing protection and care for its citizens, would provide or pay for additional services due to the threat of use of Defendants' products as well as lose substantial tax revenue due to lost productivity and, in the absence of performance of such duty by the Defendants, that the City itself thereby would be harmed.

47.

At all times pertinent, Defendants, who account for most of the handguns sold to the general public, have acted in concert with respect to, among other things:

- (a) their failure to develop and implement the means to prevent their handguns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent handguns 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 to the risk of handguns and to the importance of proper storage of handguns.

48.

At all times pertinent, Defendants have tacitly agreed, colluded, or cooperated with respect to:

- (a) their failure to develop and implement the means to prevent their handguns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent handguns from being fired by unauthorized users;
- (c) their failure to develop and implement their safety features; and
- (d) their failure to issue adequate warnings alerting users to the risk of handguns and to the importance of proper storage of handguns.

49.

At all times pertinent, Defendants have adhered to industry-wide standards or customs relating to:

- (a) their failure to develop and implement the means to prevent handguns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent handguns 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 to the risk of handguns and to the importance of proper storage of handguns.

FIRST CAUSE OF ACTION

UNREASONABLY DANGEROUS IN DESIGN

50.

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

51.

Defendants are liable as their products were unreasonably dangerous in design at the time

these weapons left the manufacturers' control and such defects in design were the proximate cause of the damages suffered by Plaintiffs.

52.

Defendants are liable as they failed to employ alternative designs which would have reduced, if not prevented many of Plaintiffs' damages. Their failure to employ these alternative designs was a proximate cause of the damages suffered by Plaintiffs.

53.

Defendants are liable as they each knew the likelihood that their products designs would cause Plaintiffs' injuries and they knew the gravity of these injuries.

54.

Defendants are liable as they each knew or reasonably should have known that the gravity of the damages which might be and which have been suffered by Plaintiffs would greatly outweigh the burden on them as manufacturers and makers of adopting such alternative designs, and the gravity of those damages would outweigh the adverse effect, if any, on the legitimate utility of the products.

55.

Defendants are liable for the damage caused as a result of the design defects of their products, including the damage incurred by Plaintiffs.

56.

Defendants' conduct constitutes negligence, which is the legal and proximate cause of the damages suffered by Plaintiffs.

57.

Plaintiffs suffered substantial actual injury and damages as the direct and proximate result of Defendant's wrongful acts described above.

58.

Plaintiffs specifically allege that alternative designs would have reduced the injuries suffered by the City.

SECOND CAUSE OF ACTION

FAILURE TO INCLUDE SAFETY DEVICES IN DESIGN

59.

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

60.

Defendants are liable as their products were unreasonably dangerous in design at the time their weapons left the manufacturers' control and such defects in design were the proximate cause of the damages suffered by Plaintiffs. Alternative designs which incorporate safety devices would:

- a. prevent these weapons from being fired by unauthorized users;
- b. alert users that a round is in the chamber; and
- c. prevent these weapons from being fired when the magazine is removed from them.

61.

Defendants are liable as they each participated in the design and manufacture of products which were defective because they did not incorporate available safety devices and/or participated in the manufacture of these defective products which were the proximate cause of the damages suffered by Plaintiffs.

62.

Defendants are liable as they failed to employ alternative designs incorporating safety devices which would have reduced, if not prevented many of Plaintiffs' damages.

63.

Their failure to employ these alternative designs incorporating safety devices was a proximate cause of the damages suffered by Plaintiffs.

64.

Defendants are liable as they each knew the likelihood that their products' designs would cause Plaintiffs' injuries and they knew the gravity of these injuries.

65.

Defendants are liable as they each knew or reasonably should have known that the gravity of the damages which might be and which had been suffered by Plaintiffs would greatly outweigh the burden on them as manufacturers and makers of adopting such alternative design, and the gravity of those damages would outweigh the adverse effect, if any, on legitimate utility of the products.

66.

Defendants' conduct constitutes negligence, which is the legal and proximate cause of the damages suffered by Plaintiffs.

THIRD CAUSE OF ACTION

UNREASONABLY DANGEROUS BECAUSE OF INADEQUATE WARNING

67.

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

68.

Defendants' handguns were unreasonably dangerous in the hands of reasonably foreseeable users, including households with children, not only because of their design, but because they did not have a suitable warning or instruction as to the risks of the weapon, including, but not limited to, adequately warning owners of the risks that minors could gain access to handguns, how to properly store weapons, that a round may be hidden in the chamber of a pistol, that their pistols could be fired

even with the ammunition magazine removed and the attendant risks that could and did thereby occur.

69.

In addition to failing to provide adequate or suitable warnings or instructions to users, including households with children, Defendants actively promoted and advertised their handguns in a manner which failed to alert customers and potential customers, as well as retail dealers who would be expected to sell and recommend their handguns, to the risks of handguns, and which, on the contrary, suggested that by purchasing handguns for their households they would become more safe, that the design of the handguns was safe, and that families could safely store handguns unlocked and accessible to minors.

70.

As a direct and legal result of the Defendants' negligence including inadequate warnings, instructions, advertising and promotion of the handguns, Plaintiffs suffered the damages alleged herein.

FOURTH CAUSE OF ACTION

NEGLIGENCE

71.

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

72.

At all times pertinent Defendant Manufacturers failed to act with reasonable care, with respect to, among other things:

- (a) their failure to develop and implement the means to prevent their handguns from being fired by unauthorized users;

- (b) discouraging the development and implementation of the means to prevent handguns from being fired by unauthorized users;
- (c) their failure to develop and implement other safety features; and their failure to issue adequate warnings alerting users to the risk of handguns and to the importance of the proper storage of handguns; and
- (d) their failure to properly market and distribute their guns.

73.

It was reasonably foreseeable that, as a result of the above-described conduct, Defendant Manufacturers would continue to manufacture and/or sell handguns that, because of their unreasonably dangerous design and lack of suitable warnings, would be used to harm the Plaintiffs' citizens and that Plaintiffs, in their role of providing protection and care for its citizens, would provide or pay for additional police protection, emergency services and other necessary facilities and services due to the threat of use of Defendants' firearms and for certain of its citizens harmed by the use of Defendants' firearms, as well as lost substantial tax revenues due to lost productivity.

FIFTH CAUSE OF ACTION

NEGLIGENT MARKETING AND DISTRIBUTION

74.

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

75.

Defendants have failed to exercise reasonable care in the distribution and marketing of their handguns.

76.

Among other actions and omissions, Defendants knew or should have known that:

- (a) they were producing, selling and distributing handguns in the United States without adequate or reasonable supervision, regulations, restraints or limitations;

- (b) they were producing, selling, and distributing handguns in the United States with the knowledge that many of their guns could not be expected to be lawfully acquired, possessed and used by responsible persons, and would come into the possession of criminals and other irresponsible persons;
- (c) they were distributing, promoting, advertising, and marketing handguns in a manner such that it was reasonably foreseeable that handguns would be acquired by unauthorized and irresponsible persons, and/or that they would be used and/or stored irresponsibly;
- (d) the production, marketing, and distribution of handguns, without such adequate or reasonable supervision, regulation, restraints, or limitations, created, maintained, with the foreseeable result being that this would supply the unlawful market in handguns;
- (e) the production, marketing, and distribution of handguns, without such adequate or reasonable supervision, regulation, restraints or limitations, in a manner which foreseeably resulted in supplying criminals, and those with the intent to commit crimes, with handguns;
- (f) a substantial portion of the handguns they produced, sold and distributed ended up in criminal hands, and were used for criminal purposes; and
- (g) as a result of the foregoing, many people would be killed and injured with handguns, and others, including the City, would suffer damages as a result.

77.

Among other actions and omissions, Defendants failed to exercise reasonable care by distributing, promoting, and over-promoting handguns without adequate supervision and/or control, in such a manner that made it reasonably foreseeable that persons would be injured by the criminal or irresponsible use of handguns.

78.

Defendants' conduct constitutes negligence, which is the legal and proximate cause of the damages suffered by Plaintiffs.

SIXTH CAUSE OF ACTION

NUISANCE

79.

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

80.

The residents of the City of Wilmington have a right to be free from conduct that creates an unreasonable infringement upon the public health, safety and welfare and to be free from conduct that interferes with this common right of the general public.

81.

Defendants intentionally and recklessly design, market, distribute and sell firearms to persons whom Defendants should know will bring these firearms into Wilmington, causing these firearms to be possessed and used in the City of Wilmington illegally, which results in increased crime, injury and death to Wilmington citizens, as well as a higher level of fear to the residents of Wilmington. This conduct therefore creates an unreasonable interference with the exercise of the common rights of the health, safety and welfare of the citizens of Wilmington.

82.

Defendants' conduct constitutes a nuisance as thousands of the firearms produced by Defendants will be illegally trafficked into Wilmington, illegally possessed and illegally used in Wilmington and will remain illegally in the hands of persons until the illegal possession of these firearms is detected.

83.

Defendants know that their actions interfere with the citizens of Wilmington's public health, safety and welfare and the public's right to be free from unnecessary danger.

84.

Defendants owe a duty of care to the residents of Wilmington to exercise reasonable care to prevent the firearms from landing in the hands of individuals who illegally use and illegally possess firearms in the City of Wilmington.

85.

Defendants' conduct is a direct and proximate cause of violence, injury, and death to Wilmington residents as well as an unreasonable interference with the safety, health and welfare of the citizens of Wilmington as well as the public's right to be free from danger.

86.

Defendants' conduct, if not stopped, will continue to pose an interference to the health, safety and welfare of the citizens of Wilmington.

87.

The actions and inactions of the Defendants have resulted in numerous incidents of violence and death further resulting in significant damages to the City of Wilmington.

88.

The costs incurred by the City of Wilmington as a result of the actions and inactions of the Defendants include, but are not limited to, City funds expended for additional police protection and emergency services as well as other related costs.

SEVENTH CAUSE OF ACTION

FRAUD/FRAUDULENT CONCEALMENT

89.

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

90.

At all times during the manufacture, marketing, promotion, distribution and sale of their handguns, 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 Wilmington residents including, but not limited to, the safety of their products (as described within), 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' handguns and the ownership of such handguns.

91.

When Defendants made the foregoing misrepresentations and omissions, they concealed and suppressed material facts, and when making such misrepresentations and omissions, they did so with the intent to defraud, deceive and mislead consumers and with the intent to induce Wilmington residents to purchase Defendants' handguns.

92.

At all times relevant hereto, Defendants concealed from Wilmington residents the true facts including, but not limited to, the unreasonable risks associated with handguns.

93.

In reliance upon the false and fraudulent representations and omissions of material facts by Defendants, Wilmington residents were induced to and did purchase Defendants' handguns.

94.

Wilmington 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.

95.

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 Wilmington residents.

96.

As a direct and proximate result of Defendants' fraud and concealment, Wilmington residents have been wrongly subjected to unreasonable risk of personal injury, death and property loss, and Wilmington has been wrongly subjected to bearing the costs associated with such injury, death and loss.

EIGHTH CAUSE OF ACTION

UNJUST ENRICHMENT

97.

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

98.

Defendants have reaped enormous profits and gains from the sale of handguns in and around the City of Wilmington.

99.

Defendants' handgun sales in and around the City of Wilmington have resulted in enormous increases in the City's expenditures.

100.

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 emergency care and criminal investigations caused by such sales and use of handguns

and shifting those costs to the City of Wilmington and its citizens.

101.

Defendants have, without justification, unjustly refused and failed to pay for the consequences of their unreasonable conduct and, as a result, the City of Wilmington has been required to pay for the associated costs resulting from Defendants' unreasonable conduct.

102.

The City of Wilmington'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 benefitted and enriched the Defendants at the expense of the City of Wilmington.

103.

By virtue of the foregoing, the City of Wilmington has incurred expenses that, in law, equity and fairness, ought to have been borne by Defendants.

104.

Defendants have unjustly enriched themselves at the expense of the City of Wilmington.

105.

As a result of Defendants' conduct, the City of Wilmington has suffered and will continue to suffer substantial injuries and damages for which the City of Wilmington is entitled to recover.

NINTH CAUSE OF ACTION

CIVIL CONSPIRACY

106.

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

107.

Defendants have fraudulently acted in concert, combination and/or conspiracy among

themselves and others by:

- (a) failing to develop and implement means and mechanisms they knew or should have known would prevent their handguns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent handguns from being fired by unauthorized users;
- (c) failing to develop and implement other safety features; and
- (d) failing to issue adequate warnings they knew or should have known would alert users to the risk of handguns and to the importance of the proper storage of handguns.

108.

In furtherance of this combination, conspiracy and/or collusion, Defendants have explicitly or tacitly agreed, colluded, or cooperated with each other by collectively:

- (a) failing to develop and implement the means to prevent their handguns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent handguns from being fired by unauthorized users;
- (c) failing to develop and implement other safety features; and
- (d) failing to issue adequate warnings they knew or should have known would alert users to the risk of handguns and to the importance of the proper storage of handguns.

DAMAGES

109.

Plaintiffs re-allege and incorporate herein all the foregoing allegations. As a direct and proximate result of the actions and inactions of Defendants as alleged above, Plaintiffs have been obligated to pay and have paid millions of dollars in police services, and emergency services, and other related services due to the threat of use of Defendants' products and actions, and have lost

substantial tax revenue due to lost productivity.

110.

The City was legally obligated to pay the aforementioned sums and did not conduct itself in any wrongful manner in being so obligated to pay and in paying the aforementioned sums.

111.

To prevent an unjust enrichment, Defendants should pay the City for the money spent combating the harm directly caused by Defendants' products and actions.

WHEREFORE, Plaintiffs pray for relief and judgment against the Defendants, jointly and severally as follows:

- a. For damages in an amount which is sufficient to provide restitution and re-pay the Plaintiffs for the sums they have expended on account of Defendants' wrongful conduct, with said amount to be determined at trial;
- b. For damages in restitution for the sums of money to be paid by Plaintiffs in the future on account of Defendants' wrongful conduct;
- c. For pre-judgment interest, as well as Plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;
- d. For punitive damages in such amount as will sufficiently punish Defendants for their conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- e. For such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that Plaintiffs have an effective remedy; and

- f. For such other and further relief, as the Court deems just and proper, to which Plaintiffs may be entitled.

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