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Attorneys for Plaintiffs

MAYOR SHARPE JAMES, AND THE CITY
OF
NEWARK, NEW JERSEY

Plaintiffs

vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.

Civil Action

COMPLAINT

ARCADIA MACHINE & TOOL, ARMS
TECHNOLOGY, INCORPORATED, B.L.
JENNINGS, INC., BERETTA U.S.A.,
BROWNING ARMS CO., BRYCO ARMS,
CARL WALTHER, CHARTER ARMS, INC.,
COLT'S MANUFACTURING CO., DAVIS
INDUSTRIES, FORJAS TAURUS, S.A., FULL
METAL JACKET, INC., GLOCK, INC.,
GLOCK
GMBH, H&R, HECKLER & KOCH, INC.,
HECKLER & KOCH, GMBH,
INTERNATIONAL ARMAMENT CORP.,
D/B/A
"INTERARMS INDUSTRIES, INC.", LORCIN
ENGINEERING CO., INC., MKS SUPPLY,
INC.
(D/B/A "HI-POINT FIREARMS, NAVEGAR,
INC., (D/B/A "INTRATEC"), PHOENIX ARMS,
FABBRICA D'ARMI PIETRO BERETTA
S.P.A.
SIGARMS, INC., SMITH & WESSON CORP.,
STURM, RUGER & COMPANY, INC.,
SUNDANCE INDUSTRIES, INC., TAURUS
INTERNATIONAL MARKETING, INC.,
NATIONAL SHOOTING SPORTS
FOUNDATION, INC., SPORTING ARMS AND

INC., RAY'S SPORTING GOODS

Defendants

Plaintiffs, Mayor Sharpe James and the City of Newark, New Jersey, say by way of Complaint against the Defendants:

1. NATURE OF THE ACTION

1. This is a civil action for injunctive relief and compensatory and punitive damages.

Defendants, named below, by their actions have knowingly and deliberately and for their own financial benefit, and with foresight, designed and marketed guns that have injured and continue to injure the City of Newark and its residents.

2. For years, up to the present moment, the Defendant gun manufacturers and their agents have had the knowledge and ability to design guns which would prevent many tragic shootings resulting in death and injury to innocent persons, including children. Among other feasible design alternatives, gun manufacturers have been able to incorporate various available technologies (including internal locks) to make guns that only authorized persons could fire. Unauthorized and/or unintended users could not fire these guns. These locking devices would "personalize" guns and prevent firearm injuries and deaths that have occurred and continue to occur in the City of Newark when children and other unauthorized and/or unintended users gain access to guns. Gun manufacturers and their agents have failed to implement these or other feasible safety features designed to make guns safer and to prevent foreseeable injuries and deaths suffered by the residents of the City of Newark. Instead, gun manufacturers and distributors design, manufacture, assemble, distribute, promote, market, and sell guns without adequate safety means and warnings to prevent

unintentional shootings and shootings by unauthorized and/or unintended users.

3. For years, and continuing to date, the Defendants have also misled, deceived and confused the City of Newark and its residents regarding the safety of guns. In marketing their product, the gun manufacturers and other Defendants promote the fallacy that possessing guns will increase home safety and security, without mentioning that, in fact, research demonstrates that guns actually increase the risk and incidence of homicide, suicide and intentional and unintentional injuries to gun owners, their families, friends and strangers. The Defendants also over-promote the purported benefits of their guns for self-defense and home protection in a manner which undercuts any warnings or instructions concerning safe storage of guns, and which results in the irresponsible storage and handling of guns.

4. For years, and continuing to date, the Defendant gun manufacturers, distributors and their agents have recklessly and knowingly engaged in conduct which foreseeably and easily results in the development and maintenance of an illegal gun market, and in the arming of juveniles, convicted felons, and other unauthorized and/or illegal users with lethal weapons. Among other conduct, defendants have marketed and distributed their guns without sufficient controls, which, in turn, has fueled crime in the City of Newark.

5. As a result of the foregoing conduct, the City of Newark has suffered, and continues to suffer, irreparable harm and has incurred financial loss and injury, including significant expenses for additional police protection, overtime, emergency services, coroner and morgue services, pension benefits, health care, social services and other necessary facilities and services. In addition, the City

of Newark has sustained loss of investment, economic development and tax revenue due to lost productivity associated with the design, manufacture, assembly, marketing, distribution, promotion and sale of guns.

II. PARTIES

6. Mayor Sharpe James is a resident of the City of Newark, State of New Jersey, and the duly elected Mayor of the City of Newark. As Mayor, Sharpe James has the capacity to initiate legal action on behalf of the City.

7. The City of Newark is a municipal corporation constituted under the Laws of the State of New Jersey, and has the authority to initiate legal actions.

III. DEFENDANT MANUFACTURERS

8. **ARCADIA MACHINE & TOOL**, Defendant, is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

9. **ARMS TECHNOLOGY INCORPORATED**, Defendant, is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah.

10. **B.L. JENNINGS, INC.**, Defendant, is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada.

11. **BERETTA U.S.A.**, Defendant, is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Maryland.

12. **BRYCO ARMS**, Defendant, is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada.

13. **BROWNING ARMS CO.**, Defendant, is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah.

14. **CARL WALTHER**, Defendant, is a corporation organized and existing under the laws of Germany with its principal place of business in Germany.
15. **CHARTER ARMS, INC.**, Defendant, is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in Connecticut.
16. **COLT'S MANUFACTURING CO.**, Defendant, is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Connecticut.
17. **DAVIS INDUSTRIES**, Defendant, is a corporation organized and existing under the laws of the State of California with its principal place of business in California.
18. **FORJAS TAURUS, S.A.**, Defendant, is a corporation organized and existing under the laws of Brazil with its principal place of business in Brazil.
19. **FULL METAL JACKET, INC.**, Defendant, is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business in Tennessee.
20. **GLOCK GMBH**, Defendant, is a corporation organized and existing under the laws of Austria with its principal place of business in Austria.
21. **GLOCK, INC.**, Defendant, is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in Georgia
22. **H&R**, Defendant, is a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business in Massachusetts.
23. **HECKLER & KOCH, GMBH**, Defendant, is a German corporation with its principal place of business in the Federal Republic of Germany.
24. **HECKLER & KOCH, INC.**, Defendant, is a subsidiary of Heckler & Koch, GmbH, organized in the Federal Republic of Germany, with its principal place of business in Virginia.

25. **INTERNATIONAL ARMAMENT CORP., D/B/A INTERARMS INDUSTRIES, INC.**, Defendant, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Virginia, and imports firearms manufactured by Defendant Carl Walther GmbH, a German corporation with its principal place of business in Germany.
26. **LORCIN ENGINEERING CO., INC.**, Defendant, is a corporation organized and existing under the laws of the State of California with its principal place of business in California.
27. **MKS SUPPLY, INC., D/B/A HI-POINT FIREARMS**, Defendant, is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Ohio.
28. **NAVEGAR. INC. (D/B/A INTRATEC)**, Defendant, is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida.
29. **PHOENIX ARMS**, Defendant, is a corporation organized and existing under the laws of the State of Arizona with its principal place of business in Arizona.
30. **FABBRICA D'ARMI PIETRO BERETTA S.P.A.** Defendant, is a corporation organized and existing under the laws of Italy with its principal place of business in Italy.
31. **SIGARMS, INC.**, Defendant, is a corporation organized and existing under the laws of the State of New Hampshire with its principal place of business in New Hampshire.
32. **SMITH & WESSON, CORP.**, Defendant, is a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business in Massachusetts.
33. **STURM, RUGER & COMPANY, INC.**, Defendant, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Delaware.

34. **SUNDANCE INDUSTRIES. INC.**, Defendant, is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

35. **TAURUS INTERNATIONAL MANUFACTURING, INC.**, Defendant, is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida.

DEFENDANT TRADE ASSOCIATIONS

36. **NATIONAL SHOOTING SPORTS FOUNDATION. INC.**, Defendant, ("NSSF") is a tax-exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut and may be served with process through its registered agent for service of process, Richard Rose, 10 Stamford Forum, Stamford, Connecticut 06904. NSSF is an industry trade association composed of firearms manufacturers and sellers, including some or all of the Defendant Manufacturers.

37. **SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC.**, Defendant, ("SAAMI") is a tax-exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut and may be served with process by second original through its registered agent for service of process, Richard Rose, 10 Stamford Forum, Stamford, Connecticut 06904. SAAMI is an industry trade association composed of firearms manufacturers and sellers, including some or all of the Defendant Manufacturers.

DEFENDANT DISTRIBUTORS

38. **NAVY ARMS COMPANY, INC.**, Defendant, is a business entity existing under the laws of the State of New Jersey and may be served with process through its registered agent for service of process, 689 Bergen Blvd., Ridgefield, New Jersey 07657.

39. **RAY'S SPORTING GOODS**, Defendant, is a business entity existing under the laws of the State of New Jersey with its principal place of business at 559 U. S. Highway 22, North Plainfield, New Jersey 07060.

IV. JURISDICTION

40. Each of these Defendants is subject to the jurisdiction of this Court by virtue of transacting business in New Jersey (including advertising, distributing and introducing their products into the stream of commerce) and/or their commission of tortious acts in New Jersey.

V. VENUE

41. Venue is proper in this court because the causes of action outlined in this Complaint arose and/or were committed in the City of Newark (County of Essex, State of New Jersey). Damages suffered by Plaintiffs that give rise to this cause of action occurred in the City of Newark.

VI. FACTUAL ALLEGATIONS

42. Mayor Sharpe James, as the duly elected Mayor of the City of Newark, has the authority to take action to protect the health, safety and welfare of the citizens of Newark and to protect the general public.

43. For many years, the City of Newark and its residents have suffered harm and incurred significant costs and expenses caused by the manufacture, marketing, promotion, and sale of firearms which are defective, negligently designed and unreasonably dangerous under the laws of

the State of New Jersey.

44. 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 children as well as criminals, mentally unstable persons and others who put themselves and others at risk when they possess these firearms.

45. Plaintiffs bring this action to recover damages, and for other relief for the unjust, intentional and wrongful harm done by and continuing to be done by the Defendants, who have been and continue to be unjustly enriched at the expense of Plaintiffs.

46. Defendants' actions have caused Plaintiffs to expend large sums of money to provide services including but not limited to necessary police and medical emergency services, coroner and morgue costs, police pension benefits and related expenditures, as well as the loss of substantial tax revenues.

47. At all pertinent times, Defendants have ignored existing design and safety features which would have prevented shootings by unauthorized users.

48. Defendants' guns are inherently and unreasonably dangerous because any person (including children) who gains access to them can fire them, even though it was and is feasible to design guns to prevent unauthorized users from firing them.

49. Defendants' guns are also inherently and unreasonably dangerous because these guns were not distributed with adequate warnings and instructions as to their risks and as to safe storage, and were marketed and promoted in ways which suggest that they do not pose such risks to users and their households, and which suggested, promoted, and encouraged unsafe storage practices.

50. Defendants' guns are also inherently and unreasonably dangerous because their design features insufficiently warn all foreseeable users, including unintended users, that a round of ammunition may be housed in the firing chamber when the magazine is removed and the gun may be fired in this condition.

51. At all pertinent times, it was reasonably foreseeable to Defendants that without the aid of some other design feature and/or warning device, Defendants' guns would end up being used in tragic, preventable shootings by unauthorized users.

52. Many of these shootings are unintentional shootings, often by children who do not fully understand or appreciate how to properly handle a gun, or understand its risks.

53. With regard to those guns of Defendants which are semi-automatics, at all pertinent times it was foreseeable that users, including children and adolescents, would mistakenly believe that a semi-automatic gun would not fire when the ammunition magazine is removed or unloaded.

54. At all pertinent times it was foreseeable that users of semi-automatic guns would not understand or appreciate that an undetected round of ammunition may be housed in the firing chamber of the gun even though the detachable ammunition magazine has been removed or unloaded, and that preventable, unintentional shootings would result given Defendants' designs.

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

56. The design of Defendants' guns, which enables any person who gains possession of them to fire them, and which does not make users aware that a round of ammunition is housed in the firing chamber, results in numerous unintentional shooting deaths and non-fatal injuries every year.

57. The General Accounting Office of the U.S. government estimates that 23% of the annual 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 -- as many as 320 to 345 deaths each year in the United States. Many of these unintentional shooting deaths occur in Newark.

58. For each of these deaths, there are many more unintentional shooting injuries that are not fatal.

59. When Defendants manufactured, distributed, promoted and/or sold their guns, Defendants knew and should have known of the unreasonable dangers of their guns, including those described in the foregoing paragraphs.

60. Defendants were also aware of safety devices, warnings, and other measures which would prevent and decrease these dangers.

61. Defendants failed to remedy these hazards in their guns, warnings, instructions, promotions and advertising; failed to adequately warn customers of these dangers; failed to inform customers or distributors or retailers of the available devices and measures which could prevent or decrease these dangers; and failed to determine whether devices were feasible or effective.

62. Citizens of the City of Newark, particularly its children, repeatedly have been victimized by Defendants' unreasonably dangerous products.

63. Year after year, Newark children are grievously injured or killed because Defendants' guns are produced, marketed and sold without measures to prevent their use by unauthorized users, without adequate warnings which would alert users of the risks of guns and of the importance of proper storage of guns, and without other safety features which would prevent these shootings.

64. For example, the following incidents were recently reported in New Jersey:

The Star Ledger, September 25, 1998

- Federal statistics show that from September, 1992 to July, 1996, there were 1,997 guns used in crimes in New Jersey that came from southern states while 904 were bought in New Jersey.

The Star Ledger, July 10, 1996

- A Newark man was injured when a neighbor he was arguing with pulled a weapon and shot him in the chest. The man pulled two guns, fired several shots and the police recovered 20 shot casings.

The Star Ledger, October 27, 1995

- A former UPS supervisor intercepted shipments of 250 high powered handguns and re-sold them, dozens of which eventually turned up in drug crimes and driveby shootings in Essex County.

The Star Ledger, August 31, 1995

- A woman was killed on the streets of Newark because a young man in a car took exception to comments by a pedestrian, pulled guns and started shooting at everyone standing in the street. Three additional people were wounded. Five teenagers in a stolen motor vehicle were reportedly responsible for the shooting.

The Star Ledger, June 21, 1995

- An 11 year old boy was critically injured and 8 others hurt in Newark when gunfire erupted across the street from where they sat on their front stoop. Some residents believe the shooting was a case of teenagers shooting guns for kicks.

The Star Ledger, December 28, 1994

- A 13 year old Newark student was shot and killed by a 16 year old Newark boy after reportedly playing with guns.

63. These incidents, and others like them, demonstrate that Plaintiffs' citizens, particularly

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

66. At all times pertinent, Defendants knew full well that their products could be made and/or sold 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 guns, and the importance and means of properly storing guns, and that the advertising used to promote those products was likely to cause many owners to store their guns unlocked and/or loaded, which would enable unauthorized users to fire them.

67. At all times pertinent, Defendants 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 guns stolen from private residences, gun stores and other locations to be employed by unauthorized users in violent criminal acts.

68. Furthermore, Defendants purposefully and intentionally engaged in these activities knowing full well that Plaintiffs 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 its citizens would be injured thereby.

69. At all times pertinent, the Defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that Plaintiffs, in their role of providing protection and care for the citizens of Newark, would have to pay for additional police protection, emergency services, medical expenses, coroner and morgue services, pension benefits and other necessary facilities and services due to the threat or use of Defendants' products and for certain of their citizens and police officers harmed by the Defendants' products, as well as loss of 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.

70. At all times pertinent, Defendants, who account for most of the handguns sold to the general public, have acted in concert with respect to

- (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 to the risk of guns and to the importance of proper storage of guns.

71. At all times pertinent, Defendants have tacitly agreed, colluded, or cooperated with each other with respect to

- (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 their safety features; and
- (d) their failure to issue adequate warnings alerting users to the risk of guns and to the importance of proper storage of guns.

72. At all times pertinent, Defendants have knowingly adhered to manufacturing standards or marketing practices which result in

- (a) the failure to develop and implement the means to prevent 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 to the risk of guns and to the importance of proper storage of guns.

73. For years, and continuing to date, Defendants have negligently, knowingly, purposefully and intentionally misled, deceived and confused the residents of the City of Newark regarding the safety of handguns.

74. 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.

75. Defendants knew or should have known of these statistics, but ignored and belittled them in an effort to promote their handguns as "insurance" for the home.

76. 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.

77. The Defendants have known, or should know, of the dangers of guns in the home and the consequences of widespread availability without restraints or limits. 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.)

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

79. 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 aged 15-19 were committed with handguns. Homicide is the second-leading cause of death for youth aged 15-19.

80. 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 the State of New Jersey and the City of Newark.

81. For many years, Defendants have intentionally produced, marketed, and/or distributed firearms for the unlawful market in firearms.

82. 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.

83. 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.

84. For many years, there has been an unlawful market in firearms.

85. For many years, Defendants knew or should have known that their distribution practices were unreasonably unsafe.

86. For many years, Defendants knew or should have known that by distributing firearms without adequate supervision and regulation they were creating, maintaining, or supplying the unlawful market in firearms.

87. 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.

88. At all times relevant to this action, 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 citizens in the City of Newark.

89. At all times relevant to this action, 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 citizens in the City of Newark.

90. At all times relevant to this action, 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 Defendants' guns travel quickly from Defendants' hands into the hands of unauthorized and irresponsible persons, including children under the age of 21 and convicted felons, where they are used to subject the City of Newark 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.

91. At all times relevant to this action, 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 they sell firearms that are frequently used in crimes but make no meaningful efforts to supervise, regulate or impose standards on the distribution practices of either the distributors or the dealers who channel their handguns to the public.

92. 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 state and federal government. Defendant manufacturers also fail to train dealers adequately and to encourage them to act lawfully and responsibly. Defendant manufacturers choose not to supervise, regulate or standardize dealers because such a practice would limit and/or eliminate sales of their handguns to a significant illegal market and thereby reduce their sales.

93. 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 the City of Newark. Residents of the City and others have obtained and continue to be able to obtain firearms through this illegal market in contravention of law.

94. 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,

those 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 the City of Newark and its residents.

95. 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 these firearms illegally, causing the City of Newark harm. Defendants' actions and omissions set forth above unreasonably facilitate violations of federal and state laws, contribute to physical harm, fear and inconvenience to the City of Newark's residents, and are injurious to the public health and safety of the City of Newark's residents.

96. 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.

97. The aforementioned negligent and wrongful conduct of Defendants has caused, and continues to cause, irreparable injury to Plaintiffs, and will continue to cause irreparable injury to Plaintiffs unless it is stopped.

98. Defendants negligent marketing and distribution of guns, as well as Defendants' failure to incorporate safety devices has resulted in Plaintiffs' citizens being restricted from using services I and facilities in the City of Newark.

COUNT ONE
DEFECTIVE AND NEGLIGENT DESIGN

99. Plaintiffs incorporate by reference paragraphs 1 through 98 as if fully set forth herein.

100. Defendant Manufacturers are liable under N.J.S.A. 2A:58C-1 et seq. because the risks of their product design outweigh the benefits, their products were not reasonably fit, suitable or safe for the use intended at the time they weapons left the manufacturers' control, and such defects in design were the proximate cause of the damages suffered by Plaintiffs.

101. Defendant Manufacturers are liable because they failed to employ available alternative designs which would have reduced, if not prevented, many of Plaintiffs' damages.

102. Defendant Manufacturers' failure to employ these alternative designs was a proximate cause of the damages suffered by Plaintiffs.

103. Defendant Manufacturers are liable because they each knew the likelihood that their products' designs would cause Plaintiffs' injuries.

104. Defendant Manufacturers are liable because they each knew or reasonably should have known that the gravity of the damages suffered b Plaintiffs would greatly outweigh the burden on y them as manufacturers of adopting such alternative designs, and the gravity of those damages would outweigh the adverse effect, if any, on the legitimate utility of the designs.

105. Defendant Manufacturers are liable for the damage caused because of the design defects of their products.

106. Defendant Manufacturers' conduct was a direct and proximate cause of the injuries suffered by Plaintiffs.

107. Plaintiffs suffered substantial actual injury and damages as the direct and proximate result of Defendant Manufacturers' wrongful acts described above. Plaintiffs have been forced to pay and have paid millions of dollars to enhance police protection, emergency services, police pension benefits, facilities and services due to the threat or use of Defendants' products and have lost

substantial tax revenue due to lost productivity.

108. Plaintiffs specifically allege that alternative designs would have reduced the injuries suffered by Plaintiffs' citizens, police, emergency services and other agencies.

COUNT TWO
DEFECTIVE AND NEGLIGENT DESIGN
FAILURE TO INCLUDE SAFETY DEVICES IN DESIGN

109. Plaintiffs incorporate by reference paragraphs 1 through 108 as if fully set forth herein.

110. Defendant Manufacturers are liable under N.J.S.A. 2A:58C-1 et seq., because the risks of their product design outweigh the benefits, the products were not reasonably fit, suitable or safe for the use intended at the time these weapons left the manufacturers' control, and such defects in design were the proximate cause of the damages suffered by Plaintiffs which could have been prevented by available alternative designs which incorporated safety devices, including but not limited to devices which would:

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

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

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

113. Defendant Manufacturers' failure to employ these alternative designs incorporating, safety devices was a proximate cause of the damages suffered by Plaintiffs. Plaintiffs have been obligated to pay and have paid millions of dollars in the past to enhance-police protection, emergency services, police pension benefits, facilities and services due to the threat of use of Defendants' products and for certain of those aforementioned citizens injured by the Defendants' actions and products, and have lost substantial tax revenue due to lost productivity.

114. Defendant Manufacturers are liable as they each knew the likelihood that their products' designs would cause Plaintiffs' injuries.

115. Defendant Manufacturers 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 design, and the gravity of those damages would outweigh the adverse effect, if any, on legitimate utility of the designs.

COUNT THREE
FAILURE TO PROVIDE ADEQUATE WARNING

116. Plaintiffs incorporate by reference paragraphs 1 through 115 as if fully set forth herein.

117 Defendants are liable under N.J.S.A. 2A:58C- 1 et seq., as they knew or reasonably should have known that at the time the guns were manufactured, and at the time they left the control of Defendants, the guns were unreasonably dangerous in the hands of reasonably foreseeable users, including but not limited to households with children, not only because of their design, but because they did not have a suitable warning or instruction as to the hidden or latent dangers that would arise out of a reasonably anticipated use or operation of the weapon, including, but not limited to,

adequately warning owners of the risks that minors could gain access to guns, 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/or empty, and the attendant risks that could and did thereby occur.

118. In addition to failing to provide an adequate or suitable warning or instructions to users, including, households with children, Defendants actively promoted and advertised their guns in a manner which did not alert customers and potential customers, as well as retail dealers who would be expected to sell and recommend their guns, to the risks of guns, and which, on the contrary, suggested that by purchasing guns for their households they would become more safe, that the design of the guns was safe, and that families could safely store guns unlocked and accessible to minors.

119. For the foregoing reasons as well, Defendants' guns were unreasonably dangerous and were not reasonably fit, suitable or safe for the use intended.

120. Defendants' failure to provide adequate or suitable warnings to users also constituted negligence.

121. As a direct and legal result of the inadequate warnings, instructions, advertising and promotion of the guns, Plaintiffs suffered the damages alleged herein, and Plaintiffs have been obligated to pay and have paid millions of dollars in the past to enhance police Protection, emergency services, police pension benefits, facilities and services due to the threat or use of Defendants' products and for certain of those aforementioned citizens injured by the Defendants' actions and products, and has lost substantial tax revenue due to lost productivity.

COUNT FOUR
NEGLIGENT MARKETING AND DISTRIBUTION

122. Plaintiffs incorporate by reference paragraphs 1 to 121 as if fully set forth herein.

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

124. 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; a substantial portion of the handguns they produced, sold and distributed ended up in criminal hands, and were used for criminal purposes;
- (f) 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.

125. 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.

126. Defendants' conduct constituted negligence, which was the legal and proximate cause of the damages suffered by Plaintiffs.

COUNT FIVE
NEGLIGENCE
(TRADE ASSOCIATION DEFENDANTS ONLY)

127. Plaintiffs incorporate by reference paragraphs 1 through 126 as if fully set forth herein.

128. At all times pertinent, Defendant Trade Associations have been associations in which some or all of the Defendant Manufacturers have been or are members.

129. At all times pertinent, Defendant Trade Associations have acted in concert with, tacitly agreed with, colluded, cooperated with and aided and abetted the Defendant Manufacturers, and failed to act with reasonable care, 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 their failure to issue adequate warnings alerting users to the risk of guns and to the importance of the proper storage of guns.

130. It was reasonably foreseeable that, as a result of the above-described conduct of Defendant Trade Associations, the Defendant Manufacturers would continue to manufacture and/or sell guns 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 their citizens, would provide or pay for additional police protection, emergency services, pension benefits and other necessary facilities and services due to the threat of use of Defendants' firearms and for certain of its citizens and police officers harmed by the use of Defendants' firearms, as well as lost substantial tax revenues due to lost productivity.

131. The actions on the part of all Defendants rise to the level of willful misconduct, wantonness, and that entire want of care which raises the presumption of conscious indifference to the consequences of their actions and gives rise to an award of punitive damages.

COUNT SIX
NUISANCE

132. Plaintiffs incorporate by reference paragraphs 1 through 131 as if fully set forth herein.

133. The residents of the City of Newark 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.

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

135. As New Jersey has one of the Nation's strictest laws on handgun sales and possession, New Jersey is a profitable market for firearms traffickers. Traffickers are able to buy firearms in other states especially (southeastern states), where handguns can be obtained easily.

136. These activities were reported in a published newspaper account:

The Star Ledger, October 23, 1994

- "Traffickers Flood Jersey with Illegal 'Import' Guns"

- Study based upon guns found in Essex, Hudson and Bergen Counties revealed that New Jersey has become a "port of call" for illegal handguns. Traffickers buy guns in states where access is easy and make substantial profits in Essex County,

and other New Jersey counties, by selling them in this state where the laws on handgun sales are strict.

137. Many of the guns that are brought into Newark from these other states are often sold to drug dealers as well as other individuals primarily interested in illegal activity.

138. A study by the New Jersey office of the Federal Bureau of Alcohol, Tobacco and Firearms (ATF), found that about 85% of 1,100 guns confiscated by police were legally purchased outside New Jersey. About 37% were bought in Florida, Virginia, Georgia, North Carolina or South Carolina.

139. The Defendants are aware that the number of firearms produced by them each year will, in fact, be trafficked from areas where they are easily accessible into areas, such as Newark, where obtaining firearms is much more difficult.

140. Defendants' conduct in designing, marketing, distributing and selling firearms to persons whom Defendants' know will cause those firearms to end up in Newark is of a constant and continuing nature.

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

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

143. Defendants owe a duty of care to the residents of Newark to exercise reasonable care to prevent the firearms from landing in the hands of individuals who illegally use and illegally posses

firearms in the City of Newark.

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

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

146. The actions and inactions of the Defendants have resulted in numerous incidents of violence and death further resulting in significant costs to the City of Newark in order to enforce the laws and to treat the Victims of crimes facilitated through the use of Defendants' firearms.

147. The costs incurred by the City of Newark as a result of the actions and inactions of the Defendants include, but are not limited to, City funds expended for additional police protection, emergency and hospital services, pension benefits and health care.

COUNT SEVEN **UNJUST ENRICHMENT**

148. Plaintiffs incorporate by reference paragraphs 1 to 147 as if fully set forth herein.

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

150. Defendants' handgun sales in and around the City of Newark 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; sheriffs; and related expenditures.

151. The City of Newark has also been negatively impacted by Defendants' handgun sales due to the decrease in property values throughout the City of Newark, loss of businesses, difficulty in

redeveloping the City of Newark, and loss of substantial tax revenues due to lost productivity.

152. 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 the City of Newark and its citizens.

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

154. The City of Newark'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 the Defendants at the expense of the City of Newark.

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

156. Defendants have unjustly enriched themselves at the expense of the City of Newark.

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

COUNT EIGHT
PUNITIVE DAMAGES

158. Plaintiffs incorporate by reference paragraphs 1 to 157 as if fully set forth herein.

159. Defendants' engaged in the aforementioned conduct with actual malice and/or a wanton and willful disregard of persons who foreseeably might be harmed by those acts and omissions.

160. Defendants willingly engaged in such conduct with the knowledge that their conduct would likely lead to substantial injuries and deaths to people around the country, including in Newark, and

would cause substantial damages to communities around the country, including this City.

161. Therefore, Defendants are liable to the City for punitive and exemplary damages.

WHEREFORE, Plaintiffs demand a trial by jury and requests this Court:

- (a) to grant Judgment for Plaintiffs and against Defendants on all counts of the Complaint;
- (b) to grant Plaintiffs an award of damages representing, the sums of money paid and to be paid by Plaintiffs on account of the Defendants' wrongful conduct;
- (e) to grant Plaintiffs an award of punitive damages in such amount as will sufficiently punish the Defendants for their conduct and prevent a repetition of such conduct in the future;
- (d) to grant Plaintiffs an award of attorney fees;
- (e) to tax all costs against Defendants; and
- (f) to grant Plaintiffs appropriate injunctive relief to prohibit Defendants from continuing to engage in the conduct alleged herein, including but not limited to prohibiting Defendants from introducing, into commerce in the City of Newark, Essex County, State of New Jersey, firearms without adequate safety devices and warnings, and from distributing or selling guns without appropriate and reasonable care, and other relief as the Court deems appropriate and just.
- (g) to grant Plaintiffs such additional relief as this Court deems just.

JURY DEMAND

Plaintiffs hereby demands trial by jury on all issues so triable herein.

CERTIFICATION

We hereby certify that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any such action or proceeding presently contemplated.

DATED:

Respectfully submitted,

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