

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI
22nd JUDICIAL CIRCUIT**

CITY OF ST. LOUIS, MISSOURI,
A Municipal Corporation,

Petitioner,

v.

HENRY J. CERNICEK
Serve: 202 N. Schlueter
St. Louis, Missouri, 63135

and

MARSHALL GUN SHOP & SALES, CO.
1345 Chambers Road
Dellwood, Missouri 63135
Serve via Certified Mail

and

SMITH & WESSON CORP.
2100 Roosevelt Ave.
Springfield, Massachusetts 01104
Serve via Certified Mail

&

Serve: The Corporation Company
120 South Central Avenue
Clayton, MO 63105
and-Serve via Certified Mail

and

STURM RUGER & CO.
CT Corporation System
One Commercial Plaza
Hartford, Connecticut 06103
Serve via Certified Mail

Cause No.: _992-01209_____

Division No.: _____

JURY TRIAL DEMANDED

<i>and</i>)
)
BERETTA U.S.A.)
17601 Beretta Drive)
Accokeek, Maryland 20607)
Serve via Certified Mail)
)
&)
)
Lillian Marie Catterton, Agent)
17601 Beretta Drive)
Accokeek, Maryland 20607)
Serve via Certified Mail)
)
<i>and</i>)
)
FABRICA D'ARMI PIETRO BERETTA S.P.A.)
(a/k/a Beretta S.P.A. Pietro via Beretta)
18-25063 Gardone Val Trompia)
Brescia)
Italy)
Serve via Certified Mail)
)
<i>and</i>)
)
COLT'S MANUFACTURING CO.)
P.O. Box 1868)
Hartford, Connecticut 06144)
Serve via Certified Mail)
)
&)
)
CT Corporation System)
One Commercial Plaza)
Hartford, Connecticut 06103)
Serve via Certified Mail)
)
&)
)
545 New Park Avenue)
Hartford, Connecticut 06103)
Serve via Certified Mail)
)

<i>and</i>)
)
GLOCK, INC.)
6000 Highland Parkway SE.)
Smyrna, Georgia 30081)
Serve via Certified Mail)
)
<i>and</i>)
)
GLOCK, GmbH)
P.O. Box 50)
A-2232 Deutsch Wagram)
Austria)
Serve via Certified Mail)
)
<i>and</i>)
)
TAURUS INTERNATIONAL)
MARKETING, INC.)
16175 N.W. 49th Avenue)
Miami, Florida 33014)
Serve via Certified Mail)
)
&)
)
8080 West Flagler St.)
N. Miami Beach, FL)
Serve via Certified Mail)
)
&)
)
Corpolite Corporation)
1 S.E. Avenue)
Miami, FL 33131)
Serve via Certified Mail)
)
<i>and</i>)
)
SIGARMS, INC.)
Corporate Park)
Exeter, New Hampshire 03833)
Serve via Certified Mail)
)

and)
)
LORCIN ENGINEERING CO., INC.)
10427 San Sevaine Way, Suite A)
Mira Loma, CA 91752)
Serve via Certified Mail)
)
&)
)
3830 Wacker Drive)
Mira Loma, CA 91752)
Serve via Certified Mail)
)
and)
)
BRYCO ARMS)
380 Clinton Street)
Costa Mesa, California 92626)
Serve via Certified Mail)
)
&)
)
Laughlin Association)
2533 North Carson Street)
Carson, City Nevada 89706)
Serve via Certified Mail)
)
and)
)
B.L. JENNINGS, INC.)
3680 Research Way)
Suite #1)
Carson City, Nevada 89706)
Serve via Certified Mail)
)
&)
)
Bruce Jennings)
1285 Hiddenwoods Drive)
Zepher Cove, NV 89448)
Serve via Certified Mail)
)
and)

PHOENIX ARMS

1420 South Archibald Ave.

Ontario, CA 91761

Serve via Certified Mail

&

Dave Brazeau

1420 South Archibald Avenue

Ontario, CA 91761

Serve via Certified Mail

and

DAVIS INDUSTRIES

15150 Sierra Bonita

Chino, California 91710

Serve via Certified Mail

&

Jim Davis, Agent

15150 Sierra Bonita

Chino, CA 91710

Serve via Certified Mail

and

NAVEGAR, INC. (d/b/a "INTRATEC")

12405 S.W. 130th Street

Miami, Florida 33186

Serve via Certified Mail

&

Miami Corporation System, Inc.

Registered Agent

5200 Blue Lagoon Dr.

Suites 300 and 700

Miami, FL 33128

Serve via Certified Mail

and

ARMS TECHNOLOGY, INC.
1142 S. 2475 West
Salt Lake City, Utah 84104-03740
Serve via Certified Mail

&

Bruce R. Farber
2401 Director's Row
Salt Lake City, UT 84104
Serve via Certified Mail

and

FMJ, INC. (a/k/a "Full Metal Jacket")
221 Highway 68 North
Ducktown, Tennessee 37326
Serve via Certified Mail

&

Wayne E. Daniels, Registered Agent
333 Tennessee Ave.
Box 759 Copperhill, TN 37317
Serve via Certified Mail

and

H & R 1871, INC., (Harrington & Richardson)
60 Industrial Row
Gardner, Massachusetts 01440
Serve via Certified Mail

and

RAVEN ARMS
1300 Bixby Drive
Industry, CA 91745
Serve via Certified Mail

<i>and</i>)
)
BROWNING)
One Browning Place)
Morgan, Utah 84050)
Serve via Certified Mail)
)
<i>and</i>)
)
CHINA NORTH INDUSTRIES)
(a/k/a “Norinco”))
2110 S. Lynx Place)
Ontario, CA 91761)
Serve via Certified Mail)
)
<i>and</i>)
)
WINCHESTER)
(a.k.a. U.S. Repeating Arms Co., Inc.))
275 Winchester Ave.)
Morgan, Utah 84050-5237)
Serve via Certified Mail)
)
<i>and</i>)
)
O.F. MOSSBERG & SONS, INC.)
7 Grasso Ave.)
North Haven, CT 06473)
Serve via Certified Mail)
)
<i>and</i>)
)
MARLIN FIREARMS CO.)
100 Kenna Drive)
North Haven, CT 06473-0905)
Serve via Certified Mail)
)
<i>and</i>)
)
ROHM GmbH)
7927 Sontheim on the Brenz)
West Germany)
Serve via Certified Mail)

and

AMERICAN SHOOTING SPORTS
COUNCIL, (COALITION) INC.,
1845 The Exchange, Suite 150
Atlanta, Georgia 30339
Serve via Certified Mail

and

NATIONAL SHOOTING SPORTS
FOUNDATION, INC.
11 Mile Hill Road
Newtown, Connecticut 06470-2359
Serve via Certified Mail

and

SPORTING ARMS & AMMUNITION
MANUFACTURERS' INSTITUTE, INC.
11 Mile Hill Road
Newtown, Connecticut 06470-2359
Serve via Certified Mail

&

Richard Rose, Agent
10 Stanford Forum
Stanford, Connecticut 06904
Serve via Certified Mail

Respondents.

PETITION FOR DAMAGES

COMES NOW, Petitioner, The City of St. Louis, Missouri, (“City”) by and through Counsel, The City Counselor's Office for the City of St. Louis, Missouri, and for Petitioner’s Petition for Damages, hereby state:

Venue and Jurisdiction

1. Jurisdiction is proper in the 22nd Judicial Circuit, City of St. Louis, Missouri.
2. Venue is proper in this Court because one or more of the Respondents resides in the City of St. Louis, can be found in the City of St. Louis, and/or the transaction, some part of the transaction, and tortious acts arose and took place within the corporate city limits of the City of St. Louis, Missouri pursuant to those venue requirements set forth in §508.010 RSMo. (1994) and pursuant to Rule 51 Mo.R.Civ.Pro.

Petitioner

3. The Petitioner, the City of St. Louis, Missouri, is a Municipal Corporation organized and functioning under a Constitutional Charter, adopted in 1914, and pursuant to Article VI, §§ 31-33, of the Missouri Constitution of 1945.
4. The Petitioner, pursuant to its Charter at Article I, §1(25), (33); and, pursuant to the Revised Codes for the City of St. Louis, Missouri, Title 11(11.58.010; 11.58.060; 11.58.070 et al.), are authorized to bring suit on behalf of its citizens and is responsible for the health, safety and welfare of its citizens.

5. Petitioner has a duty to protect the interest of the general public including, but not limited to, nuisance, damage and injury and abatement of the same and brings this suit in its name and in the name of the citizens of the City of St. Louis, and protect its citizens from every continuing act or thing done, made, permitted, allowed or continued on any property, public or private, by any person or legal entity, their agents or servants or any person or legal entity who aids or abets therein, to the damage or injury of the inhabitants of the City or a substantial part, all of which can be deemed a public nuisance and may take any action necessary to protect its citizens from the same.

Respondents

6. The Respondents are companies, organizations and individuals who manufacture, distribute, promote, market, and/or sell in the use of firearms which are sold without incorporating feasible safety features to prevent their guns from being fired by unauthorized users including and especially children and other persons with criminal records or with a past history of violent behavior, without adequate warnings which would prevent such shootings by alerting owners and users of the risks of guns and of the importance of proper storage of guns, without other feasible safety features and warnings which would prevent shooting by unauthorized users, including and especially children and other persons with criminal records or with a past history of violent behavior, have sold guns illegally thereby ending up being used in the commission of a crime or crimes, and who, by their actions and inactions, have failed to: sell properly; monitor sales; train; and provide adequate safety features which have damaged the City of St. Louis, Missouri, and its citizens by subjecting the City and its citizens to the preventable dangers and damages as set forth herein all while being unjustly enriched from said actions and conduct.

7. The following Respondents manufacture, promote, market, distribute, sell or otherwise dominate the firearm trade on an ongoing basis which have damaged the Petitioner:

- A. Henry J. Cernicek;
- B. Marshall Gun Shop and Sales, Co.;
- C. Smith & Wesson Corporation;
- D. Sturm Ruger & Company;
- E. Beretta U.S.A.;
- F. Fabbrica D'Armi Pietro Beretta, S.P.A.;
- G. Colt's Manufacturing Company;
- H. Glock, Inc.;
- I. Glock, GmbH
- J. Taurus International Marketing, Inc.;
- K. Sigarms, Inc.;
- L. Lorcin Engineering Company, Inc.;
- M. Bryco Arms;
- N. B.L. Jennings, Inc.;
- O. Phoenix Arms;
- P. Davis Industries;
- Q. Navegar Inc. (d/b/a "Intratec")
- R. Arms Technology, Inc.;
- S. FMJ, Inc., (a/k/a "Full Metal Jacket");
- T. H & R 1871, Inc.;
- U. Raven Arms;
- V. Browning;
- W. China North Industries;
- X. Winchester (a/k/a U.S. Repeating Arms Co., Inc.);
- Y. O.F. Mossberg & Sons, Inc.;
- Z. Marlin Firearms Co.;
- AA. Rohm GmbH;
- BB. American Shooting Sports Council (Coalition), Inc.;
- CC. National Shooting Sports Foundation, Inc.; and,
- DD. Sporting Arms & Ammunition Manufacturers' Institute, Inc.

General Nature of Case & General Allegations

8. This action is brought to recover damages and other relief as may be properly obtained, for the harm unjustly, intentionally, negligently, and wrongfully done, and that continues to be done, to the City of St. Louis, Missouri, and its citizens by Respondents, who have been and continue to be unjustly enriched at the expense and to the detriment of the City and its citizens.

9. Respondents' conduct, actions and inactions have caused the City to expend large sums of money to provide services including, but not limited to, necessary police, medical, fire, emergency services, health care, and other related expenditures, as well as to have lost substantial tax revenues due to lost productivity, decreased property values and loss of population.

10. For years, and continuing to date, the firearm manufacturers, dealers, distributors, sellers, agents and trade associations (the "Respondents") have had the ability to promote, effect, and design guns to be self-locking, childproof, and/or otherwise safe utilizing various types of devices that prevent the guns from being fired by unauthorized users, including and especially children and other persons with criminal records or with a past history of violent behavior.

11. Such feasible "safety" devices would "personalize" guns and would help prevent and stem the tide of firearm injuries, deaths, crime and unwarranted costs that have occurred and continue to occur in the City of St. Louis.

12. The costs of said injuries, deaths, crime and associated problems are currently borne by the City of St. Louis and its citizens.

13. The unwelcome costs and problems arise when unauthorized users including and especially children and other persons with criminal records or with a past history of violent behavior, gain access to firearms and are incapable of handling said firearms in a safe and competent manner.

14. The Respondents knowingly and purposefully have failed to take adequate measures to make their dangerous weapons safer, in order to prohibit and prevent foreseeable damages, injuries and deaths suffered by the residents of the City of St. Louis including costs borne by said City and its citizens.

15. Instead, the Respondents sell, design, manufacture, assemble, distribute, promote, and/or market firearms without the means to prevent their being fired by said unauthorized users.

16. Specifically, the firearm manufacturers sell, design, manufacture, assemble, distribute, promote and/or market their weapons which lack adequate warnings which would prevent such shootings by alerting users of the risks of guns and of the importance of proper storage of guns, and which lack other safety features and warnings which would prevent shootings by unauthorized users, including children and other persons with criminal records or with a past history of violent behavior.

17. For years, and continuing to date, the Respondents and their agents have engaged in a conspiracy to mislead, deceive and confuse the City of St. Louis, Missouri and its citizens regarding the safety of said firearms while said Respondents know or should have known that, in fact, their products are weapons of human destruction and weapons of death inflicted upon the City and its citizens costing both lives and money.

18. The Respondents advertise and promote the idea that the use of guns will increase home safety and security, while research shows that guns actually increase the risk and incidence of homicide, suicide, intentional and unintentional injury and other monetary cost and have, in fact, caused the same in the City of St. Louis.

19. For years, and continuing to date, the firearm manufacturers, distributors, sellers and/or their agents have knowingly sold their products in a manner that is foreseeable and would knowingly and easily lead to firearms flowing into the illegal market and/or being used in crime in the City of St. Louis.

20. The failure to implement sufficient controls over the methods of firearm distribution has fueled the illegal market for firearms, which, in turn, has fueled crime in the City of St. Louis, Missouri, costing the City and its citizens millions of dollars and other damages.

21. Respondents' products are inherently and unreasonably dangerous in that they enable any person who gains access to them, including, but not limited to, children, who by their nature can be expected to be unable to properly handle said firearms or understand the risks involved with the firearms, even though it was feasible to design the guns to prevent unauthorized users from firing said firearms; said conduct by the Respondents is negligent conduct.

22. Said firearms are inherently and unreasonably dangerous in that these firearms were not distributed with adequate warnings and instructions as to their risks and as to proper storage, and in fact they were negligently designed, manufactured, 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.

23. Said firearms are inherently and unreasonably dangerous in that the Respondents' negligent design of the firearms insufficiently warn all foreseeable users, including unintended users, that a round of ammunition may be housed in the firing chamber, and do not prevent the same from firing when the magazine is removed.

24. As a result of the foregoing negligent and purposeful conduct, the City of St. Louis, Missouri and its citizens have suffered irreparable harm, including financial harm, and have incurred significant expenses for additional police protection, emergency services, pension benefits, health care and other necessary facilities and services. The City of St. Louis, continues to suffer this harm.

25. The City of St. Louis, Missouri, has sustained loss of population, loss of investment, economic development and tax revenue due to lost productivity associated with the negligent design, manufacture, assembly, marketing, distribution, promotion, and sale of firearms. The City of St. Louis, Missouri, continues to suffer this harm.

26. The greatest harm that the City of St. Louis, Missouri, has suffered is the victimization of its citizens who are grievously injured or killed because of the negligent and purposeful conduct alleged herein of the firearm manufacturers, its distributors, product sellers, promoters, and their agents which has brought upon the City and its citizens a public nuisance which should be abated and for which the City and its citizens should be compensated.

27. At all times it was reasonably foreseeable to Respondents and Respondents knew or should have known that without the aid of some other design, feature or warning devices, all available to Respondents, Respondents' firearms would end up being used in tragic, preventable shootings by unauthorized users.

28. At all times the Respondents were aware of the dangers in the design of their firearms and did nothing to change said designs or implement safety measures.

29. National statistics, according to the General Accounting Office ("GAO"), show that each year, 23% of the 1,400 to 1,500 unintentional shooting deaths occur because the user of the gun was not aware that a round of ammunition had been loaded into the guns' firing chamber resulting in

as many as 320 to 345 deaths nationwide each year. For each of these deaths, there are countless other shooting injuries that are not fatal. A number of these unintentional shootings occur in the City of St. Louis, Missouri.

30. The GAO also reports that many shootings involve adolescents who are attracted to guns in that approximately 35% of all unintentional shooting deaths involve users of guns who were between the ages of 13 and 16. A number of these deaths occur in the City of St. Louis, Missouri. Two gun deaths, involving youths, have already occurred this year alone.

31. The design of the Respondents' products enable any person who gains possession of them to fire them, also resulting in thousands of adolescent suicides. The odds that potentially suicidal adolescents will kill themselves double when a gun is kept in the home. A youth aged, 10-19 commits suicide with a gun every six hours and guns are used in 85% 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. A number of such firearm-related teen suicides occur in St. Louis City.

32. The design of Respondents' products enable any person who gains possession of them to fire them, also resulting in thousands of homicides by unauthorized users, including juveniles. Many of these homicide victims are themselves children and teenagers. These perpetrators often gain access to guns in their homes or through theft.

33. At all times it was reasonably foreseeable, either the Respondents knew or should have known that Respondents' guns would fall into the hands of unintended users.

34. The Federal Centers for Disease Control and Prevention estimate that 1.2 million elementary-aged, latch-key children have access to guns in their homes. There are guns in approximately one-half of the homes in this country. One survey reports that 30% of these gun-owners who have children in the home keep their guns loaded. Another survey reports that 36% of gun owners with children in the home keep their guns unlocked. In one survey, nearly 60% of children between the ages of 10 and 19 responded that they can acquire a gun should they want one. The same survey reports that 15% of children between the ages of 10 and 19 reported that they had carried a gun on their person in the past 30 days.

35. At all such times it was reasonably foreseeable that when unintended users gain access to these guns, the guns are loaded or the user can easily obtain ammunition.

36. In the City of St. Louis, the Bureau of Alcohol, Tobacco, and Firearms' (ATF) Crime Gun Trace Analysis Report shows that from August 1, 1997 to July 31, 1998 there were 3,358 gun trace requests in the City. Gun tracing was tracking a recovered crime gun's history from its source (manufacturer/importer) through the chain of distribution (wholesaler/retailer). Of those guns able to be traced to specific age groups, 35.3% were traced from users under 24 years of age; the majority of those guns being semiautomatic pistols, revolvers, rifles and shotguns from the named Respondents.

37. The crimes most frequently associated with firearms trace requests involved firearm offenses, homicide, robbery, assaults/threats, burglary/theft/fraud, and narcotics.

38. In 1997, the St. Louis Metropolitan Police Department recovered 2,859 guns either from crimes, illegal activities or associated with illegal activities.

39. In 1998, the Department recovered 3,214 guns either from crimes, illegal activities or associated with illegal activities.

40. It is estimated by the Health Department for the City of St. Louis that the citizens of the City of St. Louis incur millions of dollars annually from gun related violence. These costs are in addition to the many other associated costs for EMS, fire and police protection to name just a few. Additionally, there are similar costs for previous years including losses due to a decrease of substantial tax revenues due to lost productivity, decreased property values and loss of population.

41. The Respondents were aware and either knew or should have known about the liability being incurred by the City of St. Louis and the citizens of St. Louis as a result of the alleged negligent and purposeful conduct, actions and inactions involving the sales, marketing, and use or misuse of the Respondents' products.

42. At all times, Respondents, who account for most of the firearms sold, marketed and promoted to the general public and whose products show up either in illegal activities or associated with illegal activities on the streets of the City of St. Louis, have acted in concert with respect to, among other things:

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

E. Failing to inspect a customer's physical facility to stop supply to distributors who sell to federal firearms licensees who are non-stocking, have no retail store front, do not maintain adequate liability insurance, and who do not have proper local tax and/or firearms licenses;

F. Failing to establish industry sponsored monitoring systems to ensure that the distributor and retail dealer is not engaging in multiple sales, allowing straw purchases, verifying purchaser's name and address, and selling more than a certain number of guns to the same person in a certain and fixed period of time;

G. Failing to participating in quarterly inspections of their distributors and retail dealers and encouraging through a credible public relations effort the general public to only resell their own firearms through a federally licensed dealer so that more sales will be subject to background checks and federal tracing programs;

H. Failing to provide training to retail dealers including compliance with federal, state and local laws, prevention of straw purchases, and recognizing when not to make a sale, including the legal right to deny purchase; and,

I. Failing to refuse sales to distributors and retail dealers do not allow manufacturers to review the distributor's and retailer's federal firearms log at least four times a year and who do not allow the manufacturers access to sales data.

Count I- Public Nuisance

43. Petitioner hereby incorporates into Count I, Paragraphs 1 through 42 of this Petition as though fully set out herein.

44. Firearms in the City of St. Louis, Missouri cause deaths, injuries, unnecessary monetary expenditures by the City and its citizens, and interference with public safety and health including other widely recognized consequences as the result of easily available and obtained firearms.

45. Many of those firearms are a part of the illegal gun market that are recovered by law

enforcement, as well as those guns not recovered, and which have been and will continue to be used in the commission of crimes and accidents in the City of St. Louis, causing deaths, injuries and a sense of fear among its residents and citizens.

46. Respondent Cernicek sold guns illegally when he knew or should have known that they would be used or possessed illegally or improperly in the City of St. Louis, and in no case did Respondent Cernicek take any action to prevent a violation of Federal, State or Local Laws.

47. The Respondents produce, sell, market or promote guns that are regularly recovered by the City of St. Louis Police Department; guns which have been illegally used in the commission of a crime, associated with other illegal activities, or involved in a shooting causing harm and damage.

48. The Federal tracing information indicates that guns distributed, sold or marketed by each of the Respondents are regularly recovered and found to have been used illegally in the City of St. Louis on a continuous, on-going and frequent basis.

49. Respondents are on notice that they sell guns that are frequently used in crimes, but make no meaningful efforts to supervise, regulate or impose standards on the distributions practices of either the distributors or dealers who channel their products to the public and fail to take other actions as set forth above.

50. The residents and citizens of the City of St. Louis have a common right to be free from conduct that creates an unreasonable jeopardy to the public's health, welfare and safety, and to be free from conduct that creates a disturbance and reasonable apprehension of danger to persons and property.

51. The Respondents purposefully, intentionally, knowingly, outrageously and recklessly manufacture, market, distribute, sell and/or promote firearms with complete indifference and

conscious disregard for safety to persons whom Respondents know or should have known would use, misuse, or resell those firearms to the illegal market, causing thousands of guns to be possessed and used in the City of St. Louis illegally, which results in a higher level of crime, death and injuries to the City of St. Louis citizens and a higher level of fear, discomfort, costs, and inconvenience to the citizens of the City of St. Louis.

52. Respondents are aware that their products contain inadequate measures and warnings which cause significant harm and death to the citizens of the City of St. Louis, thereby endangering the public's safety and welfare.

53. The Respondents' aforementioned conduct causes a significant and unreasonable interference with the public health, safety, welfare, peace, comfort and convenience, and the ability to be free from disturbance and reasonable apprehension of danger to persons and property.

54. The Respondents' aforementioned conduct in manufacturing, marketing, distributing, selling and/or promoting firearms to persons whom Respondents knew or should have known will cause those firearms to end up being possessed, used illegally or accidentally in the City of St. Louis to the harm and detriment to the City of St. Louis and its citizens is of a continuing nature.

55. The Respondents' on-going conduct produces an on-going nuisance, as thousands of guns which they cause to be possessed and illegally and/or accidentally used in the City of St. Louis will remain in the hands of persons who will continue to use and possess the same for years.

56. As a result of the continued use and possession of many of these firearms, The City of St. Louis and its residents will continue to be killed, injured and harmed by those firearms. The

public will continue to fear for their health, safety and welfare; will continue to expend unnecessary tax dollars as a result of the Respondents' conduct; and, will be subjected to further conduct that creates a disturbance and reasonable apprehension of danger to persons and property.

57. Respondents knew or should have known that their conduct will have an on-going detrimental effect upon the public's financial situation, health, and welfare and the public's ability to be free from disturbance and reasonable apprehension of danger to persons and property.

58. Respondents' conduct in manufacturing, marketing, distributing, selling and/or promoting firearms which end up in the City of St. Louis causing death, injury, and harm, and further costing its citizens millions of dollars constitutes a significant and unreasonable interference with public health, safety and welfare and the public's ability to be free from disturbance and reasonable apprehension of danger to persons and property.

59. Respondents knew or should have known that their conduct causes an unreasonable invasion of the public right to health, safety and welfare and the public's ability to be free from disturbance and reasonable apprehension of danger to persons and property.

60. Respondents' conduct in manufacturing, marketing, distributing, selling and/or promoting firearms creates a strong likelihood that these firearms will cause death, injury, harm and undue financial burden to the City of St. Louis and its residents and otherwise significantly and unreasonably interfere with public health, safety and welfare and with the public's right to be free from disturbance and reasonable apprehension of danger to person and property.

61. Respondents' conduct makes it easier for criminals to arm themselves, constituting a dangerous threat to the public, the public's health, safety and welfare.

62. It is reasonably foreseeable that the Respondents' conduct has and will continue to cause death, injury, harm and a financial burden to the City of St. Louis and its residents in enforcement of the laws and ordinances of the City of St. Louis and the State of Missouri.

63. The burden is on the Respondents to take measures to stem the flow of illegal weapons into the City of St. Louis and to ease the financial burden the Respondents imposed on the City of St. Louis by their conduct, actions and inactions.

64. Respondents owe a duty of care to the residents of the City of St. Louis to make their products as safe as possible.

65. Respondents' failure to do so has caused an unreasonable interference with public safety and has cost the City of St. Louis tremendous sums of money to deal with the multitude of problems caused by Respondents' actions and inactions which are themselves a public nuisance.

66. Stemming the flow of firearms into the illegal market will help alleviate this problem, will save lives, prevent injuries and will make the City of St. Louis a safer place to live.

67. Compensation in the form of damages will help offset the costs incurred by the City of St. Louis and its citizens paying for and fighting the insidious nature of the Respondents' conduct.

68. Respondents' conduct if left unabated, will continue to threaten the health, safety and welfare of the City's residents, creating an atmosphere of fear that tears at the residents' sense of well-being and security. The City has a clearly ascertainable right to abate such conduct that perpetuates this harm and to be compensated for the harm already perpetrated upon the City and its citizens.

69. The presence of these firearms, illegal and otherwise, in the City of St. Louis proximately results in significant costs to the City in order to enforce the law and treat the victims of firearm crime.

70. The City of St. Louis petitions for a sum fair and reasonable to compensate Petitioner for the results of Respondents' negligent and purposeful conduct, actions and inactions which has perpetrated a public nuisance on the City of St. Louis and its citizens.

71. The City of St. Louis further petitions for a sum fair and reasonable in the form of punitive damages to further compensate the City of St. Louis and its citizens for the complete indifference and conscious disregard for safety by promoting a public nuisance through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that their negligent and purposeful conduct was perpetrating a public nuisance upon the City of St. Louis and its citizens.

72. The City of St. Louis has expended Attorneys fees and costs in this matter.

WHEREFORE, Petitioner prays that this Court award compensatory damages in a sum fair and reasonable to compensate the City, its citizens and the victims of the Respondents' conduct, actions and inactions constituting a public nuisance; for punitive damages for the complete indifference and conscious disregard for safety by promoting a public nuisance through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that their was perpetrating a public nuisance upon the City of St. Louis and its citizens; for Attorneys fees and costs in this matter; and, for any other such further orders, judgments, decrees and relief as the Court may deem proper in the premises.

Count II-Nuisance Abatement, City of St. Louis Code-Title 11

73. Petitioner hereby incorporates into Count II, Paragraphs 1 through 72 of this Petition as though fully set out herein.

74. Petitioner is authorized pursuant to Title 11(11.58.010; 11.58.060; 11.58.070 et al.,) of the Revised Codes of the City of St. Louis, Missouri, to bring an action or take the necessary steps to protect its citizens against a condition or thing which may endanger the health, safety and welfare of its citizens and has a duty to protect the interest of the general public including, but not limited to, nuisance abatement.

75. As such, Petitioner recognizes the current harm and death brought upon the citizens of the City of St. Louis, and hereby seeks remedial measures, including monetary reimbursement, both compensatory and punitive for those damages already sustained by the City and its citizens and other remedial measures necessary to stop such actions.

76. Respondents are aware that their products contain inadequate measures and warnings which cause significant harm and death to the citizens of the City of St. Louis, thereby endangering the public's safety and welfare.

77. Respondents are also aware that their products are intentionally manufactured, marketed, distributed, sold and/or promoted in such a manner so as to create a nuisance as defined under City Codes and Ordinances.

78. The aforementioned conduct and knowledge of the Respondents, without any action taken by the Respondents to abate the same, constitutes a public nuisance in violation of City Ordinances and Code which are actionable under the Code and City Charter promulgated under the authority of the State of Missouri and the citizens and voters of the City of St. Louis.

79. The Petitioner seeks an order of this Court to require Respondents to abate such nuisance and further seek damages for said nuisance.

80. The City of St. Louis petitions for a sum fair and reasonable to compensate Petitioner

for the results of Respondents' negligent and purposeful conduct, actions and inactions which has perpetrated a public nuisance on the City of St. Louis and its citizens.

81. The City of St. Louis further petitions for a sum fair and reasonable in the form of punitive damages to further compensate the City of St. Louis and its citizens for the complete indifference and conscious disregard for safety by promoting a public nuisance through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that their conduct was perpetrating a public nuisance upon the City of St. Louis and its citizens.

82. The City of St. Louis has expended Attorneys fees and costs in this matter.

WHEREFORE, Petitioner prays that this Court award compensatory damages in a sum fair and reasonable to compensate the City, its citizens and the victims of the Respondents' conduct, actions and inactions constituting a public nuisance under the laws of the City of St. Louis; for punitive damages for the complete indifference and conscious disregard for safety by promoting a public nuisance under the laws of the City of St. Louis through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that their conduct was perpetrating a public nuisance according to the laws of the City of St. Louis and upon the City of St. Louis and its citizens; for Attorneys fees and costs in this matter; and, for any other such further orders, judgments, decrees and relief as the Court may deem proper in the premises.

Count III-Civil Conspiracy

83. Petitioner hereby incorporates into Count III, Paragraphs 1 through 82 of the Petition as though fully set out herein.

84. Respondents have acted in concert, combination and/or conspiracy among themselves and others by engaging in unlawful acts by:

- A. Failing to develop and implement means and mechanisms they knew or should have known would 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. Failing to develop and implement other safety measures and features;
- D. Failing to implement means, mechanisms and procedures that they know or should have known would prevent their guns from ending up in the underground and/or illegal market and ultimately used in the commission of crimes, thus creating a nuisance;
- E. Failing to issue adequate warnings they knew or should have known would alert users to the risk of guns and to the importance of proper storage of guns; and,
- F. Failing to inspect, train, and monitor distributors and retailers as necessary to insure against straw purchases, multiple purchases, and/or illegal sales in general.

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

- A. Failing 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. Failing to develop and implement other safety features;
- D. Failing to issue adequate warnings they knew or should have known would alert users to the risk of guns and to the importance of the proper storage of guns; and,

E. Failing to inspect, train, and monitor distributors and retailers as necessary to insure against straw purchases, multiple purchases, and/or illegal sales in general.

86. Respondents have conspired in their actions in furtherance of profits by selling, distributing and marketing products which have created a public nuisance and unjustly enriched the Respondents.

87. The Respondents' negligence has been to the detriment of the Petitioner and its citizens, all without Respondents taking any steps whatsoever in making the products safe, marketing the products in a safe manner or taking any steps whatsoever to alleviate the myriad of problems associated with Respondents' products.

88. Respondents knew and have known of their problems without taking any affirmative action to alleviate the same.

89. Respondents undertook the wrongful conduct alleged herein for the purpose of increasing their sales and profits from the sale of their firearms, while at the same time avoiding liability for the costs related to the medical care, police, fire, emergency (EMS), public health resources, human services, courts, prisons, sheriffs, and related expenditures and shifting the same to the City of St. Louis and its citizens.

90. Respondents' conspiratorial actions have been on-going with complete indifference and conscious disregard for public safety through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that their

conspiratorial conduct was to the detriment of the City of St. Louis and its citizens.

91. Petitioner and its citizens have been damaged monetarily through the Respondents' conspiratorial actions by expending exorbitant and excessive sums of money for the protection of its citizens, expending sums for victims of shootings, and through the loss of substantial tax revenues due to lost productivity, decreased property values and loss of population.

92. The City of St. Louis petitions for a sum fair and reasonable to compensate Petitioner for the results of Respondents' civil conspiracy which has perpetrated harm and damage to the City of St. Louis and its citizens.

93. The City of St. Louis further petitions for a sum fair and reasonable in the form of punitive damages to further compensate the City of St. Louis and its citizens for the conspiratorial actions which resulted in a complete indifference and conscious disregard for safety through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that their conspiratorial conduct was perpetrating harm and damage upon the City of St. Louis and its citizens.

94. The City of St. Louis has expended Attorneys fees and costs in this matter.

WHEREFORE, Petitioner prays that this Court award compensatory damages in a sum fair and reasonable to compensate the City, its citizens and the victims of the Respondents' conspiratorial conduct; for punitive damages for the complete indifference and conscious disregard for safety by promoting a conspiracy which brought harm and damage to the City of St. Louis and its citizens through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that said conduct was perpetrating harm and damage upon the City of St. Louis and its citizens; for Attorneys fees and costs in this matter; and,

for any other such further orders, judgments, decrees and relief as the Court may deem proper in the premises.

Count IV-Negligence (Manufacturers & Trade Organizations Only)

95. Petitioner hereby incorporates into Count IV, Paragraphs 1 through 94 of the Petition as though fully set out herein.

96. Respondents have negligently and purposefully failed to develop, include and implement safety devices in their products which are and have been available to Respondents including, but not limited to, so-called smart technology, manual safety devices, childproof devices, and other user recognition devices which would prevent guns from being fired by unauthorized users. Respondents are aware that such devices exist.

97. Respondents knew or should have known that their products' negligent designs by failing to develop, include and implement safety devices in their products would cause Petitioner injury and Respondents knew the gravity of the injuries that would result.

98. Respondents knew or should have known that the gravity of the injuries which might be and which have been suffered by Petitioner and its citizens would greatly outweigh the burden on Respondents as manufacturers and makers of the firearms including safety devices on their products and that the gravity of those damages would outweigh the adverse effect, if any, on the legitimate utility of the products.

99. Respondent have negligently and purposefully failed to provide adequate training to its dealers, distributors, retailers and marketing agents.

100. Respondents have negligently and purposefully failed to adequately monitor sales from

its dealers, distributors, and retailers.

101. Respondents have negligently and purposefully failed to adequately warn as to the dangerous nature of their products by failing to include suitable warnings or instructions as to their products' dangerous propensities, including, but not limited to:

- A. Adequate warnings to owners of the risks that minors could gain access to firearms;
- B. Adequate warnings to owners on proper storage of weapons;
- C. Adequate instructions to owners on proper use of the weapons;
- D. Adequate warnings to owners that a round may be hidden in the chamber of a handgun; and,
- E. Adequate warnings to owners that their guns could be fired even with the ammunition magazine removed and the attendant risks that could and do thereby occur.

102. In addition to the failure to warn, the Respondents 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 safer, that the design of the guns was safe, and that families could safely store guns unlocked and accessible to minors.

103. For the foregoing reasons set forth in this Count and herein, Respondents' firearms were negligently designed, manufactured, assembled, and marketed.

104. Respondents' negligent and purposeful actions have been on-going with complete

indifference and conscious disregard for safety through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that their negligent and purposeful conduct was to the detriment of the City of St. Louis and its citizens.

105. As a direct and proximate result of the Respondents' failure to incorporate safety devices in their products, the Petitioner has suffered monetary damages as set forth herein including expending exorbitant and excessive sums of money for the protection of its citizens, costs related to the medical care, police, fire, emergency (EMS), public health resources, human services, courts, prisons, sheriffs, and related expenditures, expending sums for victims of shootings, and through the loss of substantial tax revenues due to lost productivity, decreased property values and loss of population.

106. The City of St. Louis petitions for a sum fair and reasonable to compensate Petitioner for the results of Respondents' negligent and purposeful actions which has brought harm and damage to the City of St. Louis and its citizens.

107. The City of St. Louis further petitions for a sum fair and reasonable in the form of punitive damages to further compensate the City of St. Louis and its citizens for the negligent and purposeful actions which resulted in a complete indifference and conscious disregard for safety through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that their conduct was perpetrating harm and damage upon the City of St. Louis and its citizens.

108. The City of St. Louis has expended Attorneys fees and costs in this matter.

WHEREFORE, Petitioner prays that this Court award compensatory damages in a sum fair and reasonable to compensate the City, its citizens and the victims of the Respondents' negligent and purposeful conduct; for punitive damages for the complete indifference and conscious disregard for safety by their conduct which brought harm and damage to the City of St. Louis and its citizens through the Respondents' intentional, outrageous, reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that said conduct was perpetrating harm and damage upon the City of St. Louis and its citizens; for Attorneys fees and costs in this matter; and, for any other such further orders, judgments, decrees and relief as the Court may deem proper in the premises.

Count V-Unjust Enrichment

109. Petitioner hereby incorporates into Count V, Paragraphs 1 through 108 of the Petition as though fully set out herein.

110. Respondents, through their wrongful, conspiratorial and negligent and purposeful conduct as described herein, have reaped substantial and unconscionable profits from the sale of their firearms in and around the City of St. Louis, Missouri, or which have found their way into the City of St. Louis from other areas.

111. These sales, in turn, have directly resulted in costs paid for by the City of St. Louis including, but not limited to, medical care, police, fire, emergency (EMS), public health resources, human services, courts, prisons, sheriffs, and related expenditures.

112. The City of St. Louis has been negatively impacted by the Respondents' firearms sales due to police protection, loss of substantial tax revenues due to lost productivity, decreased property values and loss of population and diversion of revenue to those needs instead of other budgetary needs and concerns.

113. Respondents undertook the wrongful conduct alleged herein for the purpose of increasing their sales and profits from the sale of their firearms, while at the same time failing to train, warn, supervise or monitor the sales and promotion of the firearms, and while avoiding liability for the costs related to the medical care, police, fire, emergency (EMS), public health resources, human services, courts, prisons, sheriffs, and related expenditures and shifting such costs to the City of St. Louis and its citizens.

114. Respondents have, without justification, refused and failed to pay for the consequences of their unlawful conduct, and as a result, the City of St. Louis has been required to pay for the associated costs resulting from the Respondents' unlawful conduct.

115. The City of St. Louis' expenditure of substantial sums to pay for the associated costs resulting from the use of firearms sold for enormous profit by the Respondents, has unjustly benefitted and enriched the Respondents at the expense of Petitioner.

116. The City of St. Louis has been forced to carry a monetary duty that should have been carried by the Respondents due to their actions, inactions, unlawful and unconscionable conduct.

117. Respondents' unlawful actions have given the Respondents untold wealth and unjust enrichment; said enrichment has been on-going while the Respondents have exhibited a complete indifference and conscious disregard for safety through the Respondents' intentional, outrageous,

reckless, willful, and wanton conduct exhibited by the Respondents who knew or should have known that their unlawful conducts was to the detriment of the City of St. Louis and its citizens and unjustly enriched the Respondents.

118. As a result of Respondents' conduct, actions and inactions, the City of St. Louis has suffered and will continue to suffer substantial injuries and damages for which the City is entitled to recover.

119. The City of St. Louis petitions for a sum fair and reasonable equal to the unjust enrichment gained by Respondents and in an amount equal to the Respondents' profits for the last five years to compensate Petitioner for the results of Respondents' unlawful, negligent and purposeful actions which has brought harm and damage to the City of St. Louis and its citizens and which has led to the unjust enrichment of the Respondents.

120. The City of St. Louis has expended Attorneys fees and costs in this matter.

WHEREFORE, Petitioner prays that this Court award compensatory damages in a sum fair and reasonable equal to the unjust enrichment gained by Respondents and in an amount equal to the Respondents' profits for the last five years; for Attorneys fees and costs in this matter; and, for any other such further orders, judgments, decrees and relief as the Court may deem proper in the premises.

Respectfully submitted,
Thomas J. Ray, City Counselor

By _____
Edward Hanlon #26405
Deputy City Counselor

By _____
Carl W. Yates III #43260
Assistant City Counselor

Office of the City Counselor for the City of St. Louis

Attorneys for Petitioner

City of St. Louis, Missouri

City Hall-1200 Market, Room 314

St. Louis, MO 63103

(314)622-3361 Voice

(314)622-4956 Facsimile