

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

MAYOR MICHAEL R. WHITE, and )  
THE CITY OF CLEVELAND )  
City Hall )  
601 Lakeside Avenue )  
Cleveland, Ohio 44114 )

-v- )

HI-POINT FIREARMS )  
5990 Philadelphia Drive )  
Dayton, Ohio 45415 )

COMPLAINT

c/o Thomas Deeb, Statutory Agent )  
4251 Flowers Road )  
Mansfield, Ohio 44903 )

JURY DEMAND ENDORSED HEREIN

and )

SMITH & WESSON CORP. )  
2100 Roosevelt Avenue )  
Springfield, Massachusetts 01104 )

c/o CT Corporation, Statutory Agent )  
815 Superior Avenue )  
Cleveland, Ohio 44114 )

and )

STURM RUGER & CO. )  
CT Corporation System )  
One Commercial Plaza )  
Hartford, Connecticut 06103 )

and )

BERETTA U.S.A. )  
17601 Beretta Drive )  
Accokeek, Maryland 20607 )  
 )  
and )  
 )  
COLT'S MANUFACTURING CO. )  
P.O. Box 1868 )  
Hartford, Connecticut 06144 )  
 )  
and )  
 )  
GLOCK, INC., )  
6000 Highland Parkway SE. )  
Smyrna, Georgia 30081 )  
 )  
c/o Gary Wade, Statutory Agent )  
206 Turnstone Road )  
Columbus, Ohio 43235 )  
 )  
and )  
 )  
TAURUS INTERNATIONAL )  
MARKETING, INC. )  
16175 N.W. 49th Avenue )  
Miami, Florida 33014 )  
 )  
and )  
 )  
SIGARMS, INC. )  
Corporate Park )  
Exeter, New Hampshire 03833 )  
 )  
and )  
 )  
LORCIN ENGINEERING CO., INC. )  
10427 San Sevaine Way, Suite A) )  
Mariloma, California 91752 )  
 )  
and )  
 )  
BRYCO ARMS )  
380 Clinton Street )  
Costa Mesa, California 92626 )

and )  
)  
B.L. JENNINGS, INC. )  
3680 Research Way )  
Suite #1 )  
Carson City, Nevada 89706 )  
)  
and )  
)  
PHOENIX ARMS )  
1420 SO. Archibald Ave )  
Ontario, Canada 91761 )  
)  
and )  
)  
DAVIS INDUSTRIES )  
15150 Sierra Bonita )  
Chino, California 91710 )  
)  
and )  
)  
NAVEGAR, INC. (D/B/A/ "INTRATEC") )  
12405 S.W. 130th Street )  
Miami, Florida 33186 )  
)  
and )  
)  
FMJ (A.K.A. "FULL METAL JACKET"), )  
INC. )  
221 Highway 68 North )  
Ducktown, Tennessee 37326 )  
)  
and )  
)  
ARMS TECHNOLOGY, INC. )  
1142 S. 2475 W. )  
Salt Lake City, Utah 84104 - 03740 )  
)  
and )  
)  
H&R 1871, Inc. )  
60 Industrial Row )  
Gardner, Massasschuets 01440 )  
)  
and )

AMERICAN SHOOTING SPORTS )  
 COUNCIL, INC., )  
 1845 The Exchange, Suite 150 )  
 Atlanta, Georgia 30339 )  
 )  
 and )  
 )  
 NATIONAL SHOOTING SPORTS )  
 FOUNDATION, INC. )  
 11 Mile Hill Road )  
 Newton, Connecticut 06470-2359 )  
 )  
 and )  
 )  
 SPORTING ARMS AND AMMUNITION )  
 MANUFACTURERS' INSTITUTE, INC. )  
 11 Mile Hill Road )  
 Newton, Connecticut 06470-2359 )

I.

**NATURE OF THE CASE**

1. MICHAEL R. WHITE, the duly elected and present MAYOR OF THE CITY OF CLEVELAND, brings this action on behalf of himself and the CITY OF CLEVELAND (sometimes herein referred to as "the City"), and respectfully represents that under the City of Cleveland's Charter the Mayor is charged with the duty to "define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, conduct, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof."

2. Pursuant to the Charter of the City of Cleveland and under the Constitution of the State of Ohio, the Mayor and the City of Cleveland are responsible for the general health, safety and welfare of its citizens. The Mayor has a duty to protect the interests of the general public.

3. As a result of the manufacturing, marketing, promotion and sale of firearms which, under Ohio law, are defective in design and fail to incorporate firearm safety features designed to prevent harm caused by foreseeable human error making the firearms unreasonably dangerous, the City and its citizens have suffered harm and have incurred substantial expenses. In addition to the defective designs and failure to incorporate feasible safety features, Defendants' guns are unreasonably dangerous as they can be and are fired by unauthorized users, including, but not limited to children, criminals, mentally unstable persons, and others who put themselves and/or others at risk when they possess a firearm.

4. This action is brought to recover damages and other equitable relief as may be obtained, for the harm unjustly, intentionally and wrongfully done and that continues to be done to the City and its citizens by Defendants, who have been and continue to be unjustly enriched thereby at the expense of the City and its residents.

5. Defendants are companies and organizations who manufacture, distribute, promote, market, sell and/or instruct in the use of firearms which are sold without incorporating feasible safety features to prevent their guns from being fired by unauthorized users, without 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 without other feasible safety features and warnings which would prevent shootings by unauthorized users.

6. Defendants' 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, and emergency services, health care, and other related expenditures, as well as to have lost substantial tax revenues due to lost productivity.

## II.

### **PARTIES**

#### **PLAINTIFFS:**

7. PLAINTIFF MICHAEL R. WHITE is a resident of the City of Cleveland, State of Ohio, and the duly elected Mayor of the City of Cleveland, Ohio. As Mayor, Michael R. White has the capacity to initiate legal action on behalf of the City and its police department.

8. As stated in the City of Cleveland Charter, the Mayor may “define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof.”

9. PLAINTIFF THE CITY OF CLEVELAND is a body politic, and in accordance with its Charter has the authority and obligation to initiate legal actions through the person of the duly elected Mayor, Michael R. White.

#### **MANUFACTURER/SELLER DEFENDANTS:**

10. Defendant HI-POINT FIREARMS is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the State of Ohio, that regularly manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

11. Defendant SMITH AND WESSON CORP. is a corporation organized in the State of Massachusetts, with its principal place of business in the State of Massachusetts,

that manufactures and regularly sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

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

13. Defendant BERETTA U.S.A. is a corporation organized in the State of Maryland, with its principal place of business in the State of Maryland, that manufactures and regularly sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

14. Defendant COLT'S MANUFACTURING CO. is a corporation organized in the State of Connecticut, with its principal place of business in the State of Connecticut, that manufactures and regularly sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

15. Defendant GLOCK, INC. is a corporation organized in the State of Georgia, with its principal place of business in the State of Georgia, that manufactures and regularly sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

16. Defendant TAURUS INTERNATIONAL MANUFACTURING, INC. is a corporation organized in the State of Florida, with its principal place of business in the State of Florida, that regularly sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

17. Defendant SIGARMS, INC. is a corporation organized in the State of New Hampshire, with its principal place of business in the State of New Hampshire, that regularly manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

18. Defendant LORCIN ENGINEERING CO., INC. is a corporation organized in the State of California, with its principal place of business in the State of California, that regularly manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

19. Defendant BRYCO ARMS is a corporation organized in the State of Nevada, with its principal place of business in the State of California, that regularly manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

20. Defendant B.L. JENNINGS, INC. is a corporation organized in the State of Nevada, with its principal place of business in the State of Nevada, that regularly sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and the State of Ohio.

21. Defendant PHOENIX ARMS is a corporation organized in the State of Arizona, with its principal place of business in the State of California, that regularly manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

22. Defendant DAVIS INDUSTRIES is a corporation organized in the State of California, with its principal place of business in the State of California, that regularly



manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

23. Defendant NAVEGAR, INC. (D/B/A/ INTRATEC) is a corporation organized in the State of Florida, with its principal place of business in the State of Florida, that regularly manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

24. Defendant FMJ (A.K.A. "FULL METAL JACKET"), INC. is a corporation organized in the State of Tennessee that regularly manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

25. Defendant ARMS TECHNOLOGY, INC. is a corporation organized in the State of Utah, with its principal place of business in the State of Utah, that regularly manufactures, sells, ships and advertises defective firearms that can be fired by unauthorized users in the City of Cleveland and State of Ohio.

26. Defendant H & R 1871, Inc. is a corporation organized in the State of Massachusetts with its principal place of business in the State of Massachusetts, that regularly manufactures, sells, ships and advertises defective firearms in the City of Cleveland and State of Ohio.

**TRADE ASSOCIATION DEFENDANTS:**

27. Defendant AMERICAN SHOOTING SPORTS COUNCIL, INC. ("ASSC") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code with its principal office in the State of Georgia. ASSC is an industry trade association composed of firearms manufacturers and sellers, including some or all of the manufacturer/seller Defendants.

28. Defendant NATIONAL SHOOTING SPORTS FOUNDATION, INC. ("NSSF") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code with its principal office in Newtown, Connecticut. NSSF is an industry trade association composed of firearms manufacturers and sellers, including some or all of the manufacturer/seller Defendants.

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

### III.

#### **VENUE**

30. Venue is proper in this Court pursuant to Rule 3 of the Ohio Rules of Civil Procedure. Defendant Hi-Point Firearms is domiciled and organized in the State of Ohio. The actions of Hi-Point and the other Defendants that give rise to Plaintiffs' claims for relief took place in Cuyahoga County. Defendants have marketed, advertised and supplied guns in Cuyahoga County, Ohio and continue to market, advertise and supply guns in Cuyahoga County, Ohio. Defendants have received and continue to receive substantial compensation, income and profits from the sale of guns in Cuyahoga County, Ohio. Damages suffered by Plaintiffs that give rise to their cause of action occurred in Cuyahoga County, Ohio.

### IV.

#### **FACTS**

31. Within the past five years, fifty-one young lives have abruptly ended as a result of the unintended but reasonably foreseeable use of handguns in the City of Cleveland. Mayor Michael R. White and members of the Cleveland City Council recognize the permanent devastation brought onto the victims, their families, friends and the Cleveland community as a result of such tragedies. These deaths are unmistakably a direct and avoidable consequence of an industry unwilling to embrace available technology designed to make handguns safer.

32. At all pertinent times Defendants have been able to but have refused to manufacture, market, sell and/or promote firearms which prevent shootings by unauthorized users, including firearms which incorporate safety devices intended to

protect against a dangerous aspect of the handgun thus preventing unauthorized users from firing firearms if and when they come into possession of them.

33. Defendants' handguns are inherently and unreasonably dangerous in that they enable any person who gains access to them including but not limited to children who cannot be expected to properly handle guns or understand their risks, to fire them even though it was feasible to design the guns to prevent unauthorized users from firing them. Defendants cannot refute the fact that there are currently numerous low cost safety devices on the market that would make the guns they manufacture much safer for users and children, none of which would destroy the utility of a gun. Defendants' guns are also inherently and unreasonably dangerous in that these guns were not distributed with adequate warnings and instructions as to their risks and proper storage. In fact, said guns were marketed and promoted in a manner which suggested that they did not pose such risks to users and their households, and which suggested, promoted, and encouraged unsafe storage practices. Defendants' guns are also inherently and unreasonably dangerous in that their design features insufficiently warn all foreseeable users, including unintended users, that a round of ammunition may be housed in the firing chamber.

34. Defendants know that their inexpensive "junk handguns" are the most frequently traced guns at crime scenes. A 1995 BATF report ranked the eight most often reported guns traced to crimes scenes. They are as follows:

Lorcin Engineering L380; Davis Industries P380; Raven Arms MP25 (no longer manufactured); Lorcin Engineering L25; Bryco Arms 59; Phoenix Arms Raven; Hi-Point Firearms C (Dayton, Ohio Manufacturer) and; Bryco Arms 38.

In fact, the ATF 1999 "Youth Crime Gun Interdiction Initiative" program reports that in the City of Cleveland, Ohio, Hi-Point Firearms C is the second most frequently used crime

handgun among the “youth” segment and is manufactured by Dayton gun manufacturer Hi-Point.

35. At all pertinent times, it was reasonably foreseeable to Defendants that without feasible safety features and/or warning devices, Defendants’ guns would end up being used in a tragic, preventable shooting by an unauthorized user. 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.

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

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

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

38. The design of Defendants’ guns, which enables any person who gains possession of them to fire them and does not make users aware that a round of ammunition is housed in the firing chamber, results in thousands of unintentional shooting deaths and non-fatal injuries every year. The General Accounting Office 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. This accounts for as many as 320 to 345 deaths each year. In addition to these deaths, there are many unintentional shooting injuries that are not fatal.

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

40. The design of Defendants' guns, which enables any person who gains possession of them to fire them, also results in thousands of adolescent suicides. The odds that potentially suicidal adolescents will kill themselves double when a gun is kept in the home. Children and teenagers between the ages of 10 and 19 commit suicide with a gun every six hours. Guns are the method used in 65% of male teen suicides and 47% of female teen suicides. Among 15-19 year-olds, firearm-related suicides accounted for 81% of the increase in the overall rate of suicide from 1980-1992.

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

42. At all pertinent times it was foreseeable that Defendants' guns would fall into the hands of unintended users. The Centers for Disease Control estimate that 1.2 million elementary-aged, latch-key children have access to 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 their home keep their guns unlocked. In one survey, nearly 60% of the children between the ages of 10 and 19 responded that they can acquire a gun should they want one. Additionally, the same survey reports that 15% of the children between the ages of 10 and 19 reported that they had carried a gun on their person in the past 30 days. At all such times it was also foreseeable that when unintended users gained access to these guns, the guns would be loaded or the user would be able to obtain ammunition.

43. At such times it was also foreseeable that when unintended users would gain access to Defendants' guns, tragic, preventable shootings would result. It was foreseeable at these times that many of these shootings would be unintentional, and many would involve children -- as victims and/or as shooters. It also was foreseeable that many of these shootings would involve suicides by children and adolescents. It also was foreseeable that many of these shootings would involve homicides by juveniles, whose victims are juveniles.

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

measures which could prevent or decrease these dangers, and further, failed to determine whether such devices were feasible or effective.

45. Citizens of the City of Cleveland, particularly its children, have been repeatedly victimized by Defendants' unreasonably dangerous products. Year after year, Cleveland children are grievously injured or killed because Defendants' guns are sold, marketed and distributed without the means to prevent their use by unauthorized users, without adequate warnings which would prevent such shootings by alerting users of the risks of guns and of the importance of proper storage of guns, and without other safety features which would prevent shootings by unauthorized users. For example, in Cleveland,

--On November 23, 1998, a fifteen year old boy shot and killed a sixteen year old boy while playing with a .25-caliber handgun.

-- On September 25, 1998, a man with a prior criminal history appeared at victim's home and opened fire killing one and injuring two.

-- On July 1, 1998, a Cleveland Vice Detective was shot by a man on Cleveland's West Side. Detectives discovered that the gun used to kill the detective was obtained by a former felon who lied on his application in order to purchase the gun from a dealer.

-- On March 23, 1998, a four year old Cleveland boy was discovered with a loaded 9mm handgun while attending a child care center -- fortunately no children were injured.



46. These tragedies, and others like them, demonstrate that the citizens of the City of Cleveland are under a continuing threat of injury and death, particularly to children, from Defendants' unreasonably dangerous products.

47. In 1998 alone, Cleveland EMS and Cleveland Fire Department transported 193 major trauma gunshot wound patients to area hospitals. This figure does not even include EMS responses to gunshot wound patients who do not qualify as major trauma victims including those patients who attempted suicide by use of a firearm.

48. At all times pertinent, Defendants willfully, purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that their products could be sold and/or made with the means to prevent their firing by unauthorized users, that their warnings and instructions of the importance and means of properly storing guns were inadequate to alert owners and foreseeable users of the risks posed by their guns and that the advertising used to promote those products was likely to cause many owners to store their guns unlocked and/or loaded, which would enable unauthorized users to fire them.

49. At all times pertinent, Defendants willfully, purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that their products could be sold and/or made with the means to prevent their firing by unauthorized users, and that by failing to use such means, made it possible for guns stolen from private residences, gun stores and other locations, to be employed by unauthorized users in violent criminal acts. Defendants purposefully and intentionally engaged in these activities knowing full well that the citizens of the City of Cleveland, their Police Officers and others

would be substantially certain to suffer injuries and substantial expenses due to shootings and crimes thereby injuring the City and its people.

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

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

- (a) failing to develop and incorporate feasible alternative designs that would have prevented harm caused by an unintended but reasonably foreseeable use of their handguns;
- (b) discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- (c) failing to implement safety devices on the market at any time;
- (d) failing to develop and implement other feasible safety features; and
- (e) failing to issue adequate warnings alerting users to the risk of guns and to the importance of proper storage of guns.

FIRST CAUSE OF ACTION  
OHIO PRODUCTS LIABILITY ACT R.C. 2307.75  
UNREASONABLY DANGEROUS IN DESIGN  
[MANUFACTURING/SELLER DEFENDANTS ONLY]

52. Plaintiffs re-allege, as if fully set forth, each and every allegation contained in paragraphs 1 through 51 above, and further allege:

53. Defendants are liable under the Ohio Products Liability Act R.C. 2307.75, as their products were unreasonably dangerous and defective in design at the time these weapons left the manufacturers' control and such defects in design were the proximate and foreseeable cause of the damages suffered by Plaintiffs.

54. Defendants are liable under the Ohio Products Liability Act R.C. 2307.75, as they failed to employ feasible alternative designs which would have prevented the harm caused by the unintended but reasonably foreseeable use of their handguns. Their failure to employ these alternative designs was a proximate cause of the damages suffered by Plaintiffs.

55. Defendants are liable under Ohio Products Liability Act R.C. 2307.75, as they knew their products were defective in design yet failed to incorporate feasible safety features to prevent harm caused by foreseeable use, even though the safety features would not compromise the utility of their guns. Defendants knew their product would be handled and used by unauthorized users, yet did nothing to protect the users against a very foreseeable harm.

56. Defendants are liable under Ohio Products Liability Act R.C. 2307.75, as they manufacture, market and sell handguns knowingly failing to incorporate feasible safety features designed to prevent harm caused by the unintended use of such guns by children.

57. Defendants are liable under the Ohio Products Liability Act R.C. 2307.75, as they each knew the likelihood that their products would cause Plaintiffs' injuries and they knew the gravity of these injuries.

58. Defendants are liable under the Ohio Products Liability Act R.C. 2307.75, as they each knew or reasonably should have known that the gravity of the damages which might be and which have been suffered by Plaintiffs would greatly outweigh the burden on them as manufacturers and makers of adopting such alternative designs, and the gravity of those damages would outweigh the adverse effect, if any, on the legitimate utility of the products.

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

60. Defendants' conduct was a direct and proximate cause of the injuries suffered by Plaintiffs.

61. Plaintiffs suffered substantial actual injury and damages as the direct and proximate result of Defendants wrongful acts described above.

62. Plaintiffs specifically allege that alternative designs would have reduced the injuries suffered by the police, emergency services, health services and other City agencies.

63. Defendants' products were unreasonably dangerous in design at the time these weapons left the manufacturers' control and such defects in design were the proximate cause of the damages suffered by Plaintiffs; and alternative designs which incorporated safety devices would have done the following:

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

SECOND CAUSE OF ACTION  
NEGLIGENT DESIGN  
[MANUFACTURING/SELLER DEFENDANTS ONLY]

64. Plaintiffs re-allege, as if fully set forth, each and every allegation contained in paragraphs 1 through 63 above, and further allege:

65. Defendants are liable under common law negligent design. At the time Defendants' guns were manufactured, and at the time they left the control of Defendants, the guns were unreasonably dangerous in design.

66. Defendants have failed to incorporate the numerous safety devices on the market which, if used, would have reduced the City's damages. Defendants failure to employ such alternative designs was a proximate cause of the damages suffered by Plaintiffs.

67. Defendants are aware that the safety devices currently available on the market will not destroy or impair the utility of a gun. Defendants are also aware that such devices are not overly expensive. Defendants are aware that their guns are used by unintended foreseeable users -- often in a manner which results in death or severe harm.

68. Defendants are aware that the burden of placing safety devices, which is in fact their duty, is greatly outweighed by the burden the City is forced to pay as a result of Defendants inactions.

69. Because Defendants have failed to incorporate the proper safety devices, their guns maintain a design defect and as such are negligent in design. As a direct result, the City has suffered substantial economic damages.

THIRD CAUSE OF ACTION  
OHIO PRODUCTS LIABILITY ACT R.C. 2307.76  
UNREASONABLY DANGEROUS BECAUSE OF INADEQUATE WARNING  
[MANUFACTURING/SELLER DEFENDANTS ONLY]

70. Plaintiffs re-allege, as if fully set forth, each and every allegation contained in paragraphs 1 through 69 above, and further allege:

71. Defendants are liable under the Ohio Products Liability Act R.C. 2307.76, as at the time the guns were manufactured, and left control of Defendants, they were unreasonably dangerous in the hands of reasonably foreseeable users, including households with children, not only because of their design, but because they did not have suitable warnings or instructions as to the risks of the weapon, including, but not limited to, adequate instructions warning owners of the risks involving minors' access to guns, proper storage of weapons, the possibility of a round being hidden in the chamber of a pistol, as well as the capability to be fired when the ammunition magazine removed and the attendant risks that could and did thereby occur.

72. In addition to failure to provide adequate or suitable warnings 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.

73. For the foregoing reasons as well, Defendants' guns were unreasonably dangerous.

74. As a direct and legal result of the inadequate warnings, instructions, advertising and promotion of the guns, Plaintiffs suffered the damages alleged herein.

FOURTH CAUSE OF ACTION  
UNJUST ENRICHMENT

75. Plaintiffs re-allege, as if fully set forth, each and every allegation contained in paragraphs 1 through 74 above, and further allege:

76. Defendants, through their wrongful and negligent conduct as described herein, have reaped substantial and unconscionable profits from the sale of handguns in the City. These handgun sales, in turn, have directly resulted in costs paid for by the City.

77. As a result, the City has been required to pay numerous categories of costs associated with the use of guns in the City. The City has been forced to carry a duty that in law, equity, and fairness ought to have been carried by Defendants.

78. In equity and good conscience, it would be unjust for Defendants to enrich themselves at the expense of the City of Cleveland.

FIFTH CAUSE OF ACTION  
NUISANCE ABATEMENT, CLEVELAND CITY CODE 203.01

79. Plaintiffs re-allege, as if fully set forth, each and every allegation contained in paragraphs 1 through 78, and further allege:

80. Cleveland City Code 203.01 authorizes the City to bring an action against a condition or thing which "may affect or endanger the life, health or senses of the inhabitants of the City." As the City of Cleveland recognizes the current harm and death brought upon the inhabitants of the City, it seeks remedial measures to stop such actions.

81. Defendants are aware that their products contain inadequate measures and warnings which cause significant harm and death to inhabitants of the City of Cleveland, thereby endangering their life and health.

SIXTH CAUSE OF ACTION  
PUBLIC NUISANCE

82. Plaintiffs re-allege, as if fully set forth, each and every allegation contained in paragraphs 1 through 81 above, and further allege:

83. The residents of the City of Cleveland have a common right to live in an environment free from unreasonable jeopardy of life, welfare and safety, and to be free from conduct that creates disturbance and reasonable apprehension of danger to all persons, especially children.

84. Defendants intentionally and recklessly design, market, distribute and sell firearms without equipping their products with available safety devices, thereby knowingly causing a significant and unreasonable interference with the public health, safety, welfare, peace, comfort and convenience, and ability to be free from disturbance and reasonable apprehension of danger to person and property. Defendants' ongoing conduct produces an ongoing nuisance to all persons living in the City of Cleveland. Defendants are now, and have been, aware of the problems their products bring to cities across the country.



85. Defendants owe a duty of care to the residents of the City to make their products as safe as possible. Defendants' failure to do so has caused deaths and injuries to Cleveland residents creating an unreasonable interference with public safety. Additionally, as a result of Defendants' actions, the City has expended tremendous sums of money to deal with the multitude of problems caused by Defendants' defective products.

SEVENTH CAUSE OF ACTION  
NEGLIGENCE  
[TRADE ASSOCIATION DEFENDANTS ONLY]

86. Plaintiffs re-allege, as if fully set forth, each and every allegation contained in paragraphs 1 through 85 above, and further allege:

87. At all times pertinent, Defendants ASSC, NSSF and SAAMI have been associations in which some or all of the manufacturer/seller Defendants have been members.

88. At all times pertinent, Defendants ASSC, NSSF and SAAMI have acted in concert with, tacitly agreed with, colluded, cooperated with and aided and abetted the manufacturer/seller Defendants, with respect to, among other things:

- (a) failing to develop and implement the means to prevent their guns from being fired by unauthorized users;
- (b) failing to discourage 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; and
- (d) failing to issue adequate warnings alerting users to the risk of guns and to the importance of the proper storage of guns.

89 It was reasonably foreseeable that, as a result of the above-described conduct of Defendants ASSC, NSSF and SAAMI, the manufacturer/seller Defendants 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 City's citizens and that the City, in its role of providing protection and care for its citizens, would provide or pay for additional police protection, emergency services, pension benefits, health care and other necessary 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.

#### DAMAGES

90 As a direct and proximate result of the actions and inactions of Defendants as alleged above, the City has been obligated to pay and has paid millions of dollars in the past to enhance police protection, emergency services, police pension benefits, court and jail costs, medical care, facilities and services due to the threat of use of Defendants' products and for certain of those aforementioned citizens injured by the Defendants' products and actions, and have lost substantial tax revenue due to lost productivity.

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

92 To prevent an unjust enrichment, Defendants should indemnify the City for its enhancement of police protection, emergency services, police pension benefits, medical

care, facilities and services, as well as court and jail costs, due to Defendants' products and actions.

93 Wherefore Plaintiffs pray for relief and judgment against Defendants, jointly and severally as follows:

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

Plaintiffs request a trial by jury.

Respectfully submitted,

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