

COMPLAINT AND JURY CLAIM

Now comes the plaintiff, City of Gary, by and through its attorneys, and hereby brings the present action against the above-named defendants. The facts alleged in this Complaint are made on information and belief.

A. NATURE OF THE ACTION

The City of Gary (“Gary”) brings the present action to obtain relief from the defendants’ willful, deliberate, reckless, and negligent marketing and distribution of handguns which injure Gary and its citizens. Defendants design, manufacture, distribute, and sell thousands of handguns in a manner which enables those guns to be ultimately purchased by juveniles, criminals, and other prohibited persons for use in the commission of crimes. Defendants employ a strategy which couples manufacturing decisions, marketing schemes, and distribution patterns with a carefully constructed veil of deniability regarding particular point-of-sale transactions. Through this calculated strategy of willful blindness, defendants exploit, rely upon, and help maintain an active illegitimate secondary market in handguns. The resulting flood of guns for criminal use has created a public nuisance within the City of Gary by threatening the public health and safety of Gary’s citizens.

Defendants’ conduct creates and maintains a public nuisance because it is injurious to health and significantly interferes with the public’s health, safety, peace, and comfortable enjoyment of life or property, and because it is conduct which defendants knew or should have known to be of a continuous and long-lasting nature that produces a permanent and long-lasting significant negative effect on the rights of the public. Defendants’ conduct also constitutes actionable negligence because it violates defendants’ duty not to create an unreasonable risk of foreseeable harm, and has thereby proximately caused harm to the City of Gary and its citizenry.

The vast majority of handguns used to commit crimes in Gary, as throughout the country, are purchased or otherwise diverted from licensed dealers in a wide and ever changing array of schemes -- including sham or “straw” purchases, multiple sales, and diversions by corrupt dealers -- designed to supply guns to an illegitimate secondary market of felons, juveniles, and other dangerous individuals who could not qualify to purchase guns on their own. Defendants not only know that this diversion takes place; they depend upon it. Defendants have the ability to dramatically reduce the flow of handguns to this illegitimate secondary market. They have chosen not to do so. Instead, they rely upon and exploit this market as a steady and lucrative source of profit.

Defendants affirmatively rely upon the laxness of dealers and the ingenuity of criminals to ensure that thousands of handguns find their way to their expected place in the illegitimate secondary market. In order to facilitate this strategy, defendants have erected a veil of deniability between themselves and the distributors and dealers. Defendants scrupulously avoid monitoring distributors and dealers. They are careful not to provide training or guidance to either. They do not curtail shipments to distributors or dealers who supply handguns to the illegitimate secondary market. Indeed, defendants make no efforts to ascertain which of their distributors or dealers are supplying guns to criminals. What defendants do know -- what they depend upon and budget for -- is that so long as they continue their strategy of willful blindness, thousands of profitable handguns will get to their expected illegitimate buyers and users.

Defendant distributors and dealers are compliant in this enterprise. Many dealers make openly illegal sales without filling out required federal paperwork or conducting background checks on purchasers. Others conveniently look the other way while sales are made to straw purchasers or under circumstances where the dealer knows or should know the gun will thereafter be diverted into the illegal secondary market to unauthorized buyers who will use the guns in crime.

From the perspective of the defendants, this strategy has been a resounding success. Producing thousands of handguns for indirect but predictable sale on the illegitimate secondary market has been enormously lucrative. From the perspective of the City of Gary and its citizens, the consequences of this strategy have been nothing short of disastrous. Dozens of lives are lost each year in crimes committed with handguns supplied by the defendants in this fashion. Millions of dollars must be spent by the City to investigate and prosecute crimes committed with handguns supplied by the defendants in this fashion. Millions more dollars must be spent on emergency services and other costs responding to this crisis. Put simply, defendants have adopted a strategy which allows them to sell thousands of handguns to criminals at enormous cost to the City of Gary and its citizens. Defendants have knowingly and unreasonably subsidized their lucrative business at the expense of the City of Gary and its residents.

In addition, defendants have willfully, deliberately, and negligently marketed defective and unreasonably dangerous handguns which have injured the City of Gary and its citizens. Despite the foreseeable risk of injury and death attending the use of guns, the defendants have knowingly, willfully, and negligently failed to install even the most basic safety features and have failed to adequately warn users of the dangers associated with the use of their product. Although inexpensive safety devices have existed for years, and in some cases, decades, to prevent the accidental pulling of the trigger, to indicate whether or not a gun is loaded, to prevent the firing of a gun when the magazine has been removed, and to prevent the firing of the gun by an unauthorized user, the defendants have failed to incorporate such devices.

Defendants have also made their guns unreasonably dangerous by their failure to provide any sort of meaningful warning on the products. Even a disposable lighter has certain safety devices and contains warnings regarding the risk of misuse of the product. In fact, some of the most common products used in homes warn of even obvious dangers attending their use. Nevertheless, despite the latent dangers that defendants have designed into their products, by failing to provide adequate safety devices, the defendants

have made no attempt to insure that the end user of their products is aware of the unreasonable hazards involved with using the products. Moreover, defendants have affirmatively and deceptively advertised and promoted their dangerous products as improving home and personal safety despite well known empirical studies that indicate bringing a gun into the home increases rather than decreases the risks of injury and death to members of the household.

The defects in design of the products not only pose a danger to the user of the products, but intentional, willful, and negligent defective design features of the products make them unreasonably dangerous to all citizens of Gary. Instead of developing design improvements to enhance the safety of the products, the defendants have willfully, intentionally, and negligently developed, designed and marketed their guns without such safeties.

As a result of the defendants' actions, the plaintiff has had to expend large amounts of money in investigating crime, preventing crime, transporting and treating the injured and those who have died, and supporting the victims of gun violence. In so incurring costs for which the defendants are responsible, the defendants have been unjustly enriched at the expense of the plaintiffs. Moreover, the City of Gary has lost revenue and property value as a result of defendant's acts and omissions. For these reasons, the plaintiffs seek injunctive and compensatory relief as set forth herein.

B. PARTIES

1. The City of Gary is a municipal corporation and political subdivision existing under the laws of the State of Indiana, located in Lake County, Indiana, and is responsible for promoting and protecting the health, safety and welfare of its citizens. Scott L. King is the duly elected Mayor of Gary, Indiana and is thereby authorized to sue on its behalf.

2. The following defendants, in paragraphs 3 through 36, manufacture, distribute or sell handguns that are found and used in the City of Gary on an on-going and continuous basis.
3. Defendant BERETTA U.S.A. Corp. (“BERETTA U.S.A”) is a corporation organized and existing under the laws of the State of Maryland with its principal place of business at 17601 Beretta Dr., Accokeek, Maryland.
4. Defendant B.L. JENNINGS Corp. (“JENNINGS”) is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada.
5. Defendant BROWNING ARMS Corp. (“BROWNING”) is a corporation organized and existing under the laws of the State of Utah with its principal place of business at One Browning Place, Morgan, Utah.
6. Defendant BRYCO ARMS Corp. (“BRYCO”) is a corporation organized and existing under the laws of the state of Nevada with its principal place of business in Nevada.
7. Defendant CHARTER ARMS Corp. (“CHARTER ARMS”) is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business at 430 Sniffens Lane, Stratford, Connecticut.
8. Defendant COLT’S MFG. Corp. (“COLT’S”) is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business at 545 New Park Avenue, Hartford, Connecticut.
9. Defendant FIREARMS IMPORT & EXPORT CORP. (“F.I.E”) (a/k/a Heritage Manufacturing, Inc.) is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 4600 N.W. 135th Street, Opa Locka, Florida.

10. Defendant GLOCK, Corp. (“GLOCK”) is a corporation organized and existing under the laws of the State of Georgia with its principal place of business at 6000 Highlands Parkway, Smyrna, Georgia.
11. Defendant HARRINGTON & RICHARDSON Corp. (“H&R”) is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business at 60 Industrial Rowe, Gardner, Massachusetts.
12. Defendant HI-POINT FIREARMS Corp. (“HI-POINT”) is a corporation organized and existing under the laws of the State of Ohio with its principal place of business at 5990 Philadelphia Drive, Dayton, Ohio.
13. Defendant INTERNATIONAL ARMAMENTS Corp., d/b/a INTERARMS Inc. (“INTERARMS”) is a corporation organized and existing under the laws of the State of Virginia with its principal place of business at 10 Prince Street, Alexandria, Virginia.
14. Defendant KEL-TEC CNC, INDUSTRIES, Inc. (“KEL-TEC”) is a corporation organized and existing under the laws of the State of Florida with its principal place of business at Kel-Tec CNC Industries Inc., Cocoa, Florida.
15. Defendant LORCIN ENGINEERING Corp. (“LORCIN”) is a corporation organized and existing under the laws of the State of California with its principal place of business at 10427, San Sevaine Way, Suite A, Mira Loma, California.
16. Defendant NAVEGAR INC. d/b/a INTRATEC USA Corp. (“INTRATEC”) is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 12405 SW 130th Street, Miami, Florida.

17. Defendant PHOENIX ARMS Corp. (“PHOENIX”) is a corporation organized and existing under the laws of the State of California with its principal place of business at 1420 S. Archibald Avenue, Ontario, California.
18. Defendant SAVAGE ARMS Corp. (“SAVAGE”) is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business at 100 Springfield Road, Westfield, Massachusetts.
19. Defendant SIGARMS Corp. (“SIGARMS”) is a corporation organized and existing under the laws of the State of New Hampshire with its principal place of business at Corporate Park, Exeter, New Hampshire.
20. Defendant SMITH & WESSON Corp. (“SMITH & WESSON”) is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business at 2100 Roosevelt Avenue, Springfield Massachusetts.
21. Defendant STURM, RUGER & CO Corp. (“RUGER”) is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business at One Lacey Place, Southport, Connecticut.
22. Defendant SUNDANCE INDUSTRIES Corp. (“SUNDANCE”) is a corporation organized and existing under the laws of the State of California with its principal place of business at 25163 W. Avenue Stanford, Valencia, California.
23. Defendant TAURUS FIREARMS Corp. (“TAURUS”) is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 16175 NW 49th Avenue, Miami, Florida.
24. Defendant AMERICAN SHOOTING SPORTS COUNCIL, INC. (“ASSC”) 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 Georgia with its principal office in Georgia. ASSC is an industry trade association composed of firearms manufacturers and sellers, including some or all of the defendant manufacturers.

25. Defendant NATIONAL SHOOTING SPORTS FOUNDATION, INC. (“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 with its principal office in Connecticut. NSSF is an industry trade association composed of firearms manufacturers and sellers, including some or all of the defendant manufacturers.
26. 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 organized and existing under the laws of the State of Connecticut with its principal office in Connecticut. SAAMI is an industry trade association composed of firearms manufacturers and sellers, including some or all of the defendant manufacturers.
27. AMERI-PAWN OF LAKE STATION, INC. is a corporation organized and existing under the laws of the State of Indiana with its principal place of business at 3555 Central Avenue, Lake Station, Indiana.
28. BLYTHES SPORT SHOP, INC. is a corporation organized and existing under the laws of the State of Indiana with its principal place of business at 138 North Broad Street, Griffith, Indiana.
29. CASH INDIANA, INC. is a corporation organized and existing under the laws of the State of Indiana with its principal place of business at 855 Central Avenue, Lake Station, Indiana.

30. FETLAS BARGAIN CENTER, INC. is a corporation organized and existing under the laws of the State of Indiana with its principal place of business at 1457 South State Road 2, Valparaiso, Indiana.
31. JIM SHEMA'S OUTDOOR SPORTS, INC. is a corporation organized and existing under the laws of the State of Indiana with its principal place of business at 7199 Broadway, Merrillville, Indiana.
32. WESTFORTH SPORTS, INC. is a corporation organized and existing under the laws of the State of Indiana with its principal place of business at 4704 Roosevelt Street, Calumet Township, Indiana.
33. DOES 1-50, inclusive, are business entities, the status of which are currently unknown. DOES 1-50 manufactured handguns that are or were distributed, marketed, sold and/or possessed within the City of Gary.
34. DOES 51-100, inclusive, are business entities, the status of which are currently unknown. DOES 51-100 are retailers of handguns that are or were found within the City of Gary.
35. DOES 101-225, inclusive, are business entities, the status of which are currently unknown. DOES 101-225 distribute and/or market handguns that are or were found within the City of Gary.
36. DOES 226-250, inclusive, are business entities, the status of which are currently unknown. DOES 226-250 are industry trade associations which are composed of firearm manufacturers, distributors and retailers.
37. Plaintiffs are not aware of the true names and capacities of defendants referred to as DOES 1-250. Plaintiffs allege that each of the fictitiously named defendants is

responsible in some manner for the violations alleged herein. Plaintiffs will seek leave to amend this Complaint to allege such names and capacities as soon as they are ascertained.

C. JURISDICTION

38. The plaintiff's causes of action against the defendants arise from the defendants' transacting business in the State; contracting to supply services or things in the State; causing tortious injury by an act or omission in the State; causing tortious injury in the State by an act or omission outside of the State; regularly doing and soliciting business and engaging in other persistent courses of conduct and deriving substantial revenue from goods used or consumed or services rendered in the State; and having an interest in, using or possessing real property in the State.

D. SPECIFIC FACTUAL ALLEGATIONS

39. The widespread availability and misuse of handguns by juveniles, felons, and other unauthorized users is a national problem of immense proportions. Gun violence is the second leading cause of injury-related death in the United States. In 1996, more than 34,000 people were killed with firearms. Of these, more than 14,300 were homicides and about 18,100 were suicides, with more than 1,100 deaths from unintentional shootings. This death toll strikes particularly hard at children and teenagers, with approximately 13 children a day killed by gunfire, or more than 4,600 a year. More than one child a day is killed in an unintentional shooting.
40. In addition, based on 1992 data, approximately 99,000 individuals are treated annually in hospital emergency rooms for non-fatal firearm injuries, with about one-fifth of these for accidental shootings. The cost of these shootings to cities like Gary is staggering. It is estimated that nationally, gun-related violence costs taxpayers more

than \$4.5 billion dollars per year. Most of these injuries and deaths are caused by handguns.

41. One of the most serious problems facing Gary, as with most major cities in the United States, is the high level of violent crime committed with firearms. For example, in 1997, more than 70 people were murdered with firearms in Gary, and another 54 people were murdered with guns in 1998. There were also more than 400 firearm assaults and 400 firearm robberies in the city in both 1997 and 1998. In addition, the Gary Police Department seized more than 2,500 crime guns during those two years.
42. This staggering toll of gun violence and crime is fueled by the easy movement of handguns from the defendants to unauthorized and illegal users through an illegal secondary handguns market.
43. Surveys have consistently shown how easily juveniles and convicted criminals can obtain firearms. For example, one survey showed that approximately 29% of 10th grade boys and 23% of 7th grade boys have at one time carried a concealed handgun. A different survey of high school students and incarcerated juveniles reported that 32% of respondents asked adults to buy guns on their behalf. Yet another survey found that approximately 60% of children between the ages of 10 and 19 said they could acquire a gun should they want one, with 15% having carried a gun with them in the last 30 days. A survey of adult prisoners showed that 70% felt they could easily obtain a firearm upon their release.
44. Tracing of crime guns by the Federal Bureau of Alcohol, Tobacco and Firearms ("ATF") confirms that juveniles, felons, and other unauthorized users can easily obtain firearms for crime. A just-released ATF study of 27 major urban centers throughout the United States, including Gary, which analyzed more than 75,000 guns traced to crime over a one-year period, reported that more than 11% of guns picked up in crime have been possessed by children under age 18. In Gary, the percentage of crime guns

seized from juveniles was 11%. The same tracing study indicated that more crime guns are seized from persons in the next age group up – children who are 18, 19, or 20 years old -- than from any other three-year age group, adult or juvenile. Accordingly, more than 26% of crime guns in the 27 cities were seized from children under 21, who cannot legally purchase handguns under federal or state law. Moreover, ATF tracing of trafficked crime guns found that more than 45% of the weapons seized were illegally possessed by convicted felons. Large percentages of these guns have been used in assaults, robberies, homicides, and other violent crimes. More than 80% of the firearms seized in crime are handguns.

45. The ease with which guns are moved into the illegitimate marketplace is also demonstrated by the short time between retail sale and criminal misuse for a significant percentage of handguns. ATF tracing data indicates that as many as 43% of firearms traced to crime in urban centers across America, including Gary, have been bought from retail dealers less than three years earlier, which is a strong indication that the firearm has been trafficked. The same tracing data indicates that approximately 74% of the crime guns most frequently seized in Gary were sold at retail less than three years earlier. For certain types of firearms, such as semiautomatic pistols, this time-to-crime is even more rapid.

46. The flow of defendants' handguns into the unlawful market and into the hands of unauthorized and irresponsible persons, including children under age 21 and convicted felons, has occurred in numerous ways, including but not limited to those methods listed below. Defendants knew or should have known of these methods of illegal diversion and could have taken action to control and prevent the diversion, but have intentionally, willfully, and negligently failed to do so.
 1. Thousands of guns have flowed into the unlawful market by an illegal method of diversion called "straw purchasing," wherein the purchaser buys the gun from a licensed dealer for a person who is not qualified to purchase the firearm under

federal and state regulations, such as a child under 21 or convicted felon. Indeed, in one recent law enforcement study, more than 50% of the firearms subject to firearm trafficking investigations had been acquired as part of a straw purchase. Many of these straw purchases have occurred under circumstances which have indicated or should have indicated to the firearm seller that a “straw purchase” was being made.

2. Thousands more guns have been diverted into the unlawful market after first being part of multiple sales, wherein the purchaser buys more than one gun at a time or over a short period of time from a licensed dealer with the intention of later selling or transferring the gun to a person who is not qualified to purchase firearms under federal and state regulations, such as a child under 21 or convicted felon. Many multiple sales have occurred under circumstances which indicated or should have indicated to the firearm seller that the handguns being purchased were destined for the unlawful market. Defendants do nothing to curb multiple sales even though guns purchased in this manner continue to flow into the illegitimate handguns market.
3. For many years, defendants have sold thousands of guns to “kitchen table” dealers, i.e., federally licensed firearm dealers who do not sell firearms from a retail store. Many of these firearms dealers, although federally licensed, have sold handguns without completing background checks on purchasers or complying with other reporting requirements, or have otherwise diverted guns into the illegal marketplace. Although defendants knew or should have known of these dealers’ illegal practices, they have done nothing to curb those illegal practices, but have instead continued to supply the dealers with handguns in order to maximize their profits.
4. Thousands of handguns have also reached the unlawful market after having been stolen from retail dealers and other federal firearm licensees who have failed to

provide adequate security of their premises. Despite the foreseeability of such occurrences, defendants have failed to ensure that persons distributing their dangerous products have implemented adequate security to prevent these thefts.

5. Handguns also move across state boundaries into cities such as Gary. The recent ATF study of crime guns seized in Gary indicated that approximately 24% of those guns were originally sold at retail outside of Indiana.
 6. Handguns are also diverted to crime through gun shows, where firearm sellers without federal firearms licenses are not required in most states to perform a background check on prospective purchasers. The result, according to one recent federal study, was that in 314 investigations involving gun trafficking through gun shows, felons were part of more than 46% of the transactions, with more than 54,000 firearms being diverted into the illegal marketplace.
47. The examples listed above are just some of the ways in which defendants' products have fallen into the hands of unauthorized and irresponsible persons, including children under the age of 21 and convicted felons, and used in crime. A large proportion of crime guns recovered from these individuals are quite new and have most likely been deliberately and illegally trafficked. Moreover, in more than two-thirds of the firearms trafficking investigations in one study, improperly transferred firearms were known to have been subsequently involved in additional crimes, a high percentage of which were violent crimes. Such criminal activity has injured Gary and injured and killed its citizens.
48. An undercover investigation conducted by Plaintiff in June and July, 1999, indicates that these negligent distribution practices are widespread in Northern Indiana. This investigation involved undercover members of the Gary Police Department. Several straw purchases were made on behalf of persons representing themselves to dealers as convicted felons or juveniles. Other straw sales were made where the dealer did not

know the criminal history or age of the intended buyer. Defendant dealers were more than willing to participate in these straw purchases. Some of the specific conduct of the defendant dealers that negligently or intentionally facilitates the illegal possession and use of firearms in Gary, Indiana is set forth below:

1. On June 24, 1999, two officers entered the Cash Indiana Pawn Shop, at 387 Melton Road in Burns Harbor, Indiana. Officer 1 asked the clerk if he could see a Glock 27 semiautomatic pistol, and asked the clerk how long the wait would be before he could take the handgun with him. Officer 2 interrupted and said that he had a handgun permit and would purchase the gun for Officer 1. The clerk handed the paperwork to Officer 2, who completed it. Officer 1 handed the clerk the money, and the clerk finished the transaction and handed the gun to him, and Officer 1 walked out of the store with it, and with a box of ammunition he also purchased.
2. On June 25, 1999, two officers entered Fetla's Trading Company in Valparaiso, Indiana. Officer 1 asked the clerk if he could see a Smith & Wesson model 457, .40 caliber pistol. Officer 1 inspected the gun and told the clerk he would take it. As he was approaching the cashier, Officer 1 told the clerk that he had been arrested for burglary, but did not know if he was a convicted felon. The clerk said that they would probably not give the gun to him. However, Officer 2 then stepped forward and said that he would get the gun for Officer 1. The clerk said that would be a straw purchase and would be illegal. Nevertheless, the clerk advised the officers to leave the store and return in 10 minutes, and then Officer 2 could buy the gun. The officers did that. Officer 1 paid for the gun and left the premises with it.
3. On July 21, 1999, two officers entered the Cash Indiana Pawn Shop, at 387 Melton Road in Burns Harbor, Indiana. Officer 1 selected a .25 caliber Beretta handgun that he wanted to purchase. The clerk he had been speaking with

received a phone call, and so handed the transaction off to a second clerk. The second clerk gave Officer 1 a form to fill out for the gun purchase, but at the portion of the form that asks about felony convictions, Officer 1 told the second clerk he had been convicted of felony battery and had served about a year in prison. The clerk said he would probably not be able to get the gun himself. At this point, Officer 2 asked if she could purchase the handgun for Officer 1 and the clerk said yes. While Officer 2 was filling out the paperwork, the clerk and Officer 1 began talking about how it was illegal for a felon to purchase a handgun. The clerk completed the transaction, told Officer 1 the price, received the money from Officer 1, and handed him the handgun and a box of ammunition he had purchased. Officer 1 also asked about assault weapons, and the clerk suggested Officer 1 just put them away on layaway and have Officer 2 pick up the guns when they were paid for. Officer 1 then left the store with the gun.

4. On July 21, 1999, the two officers who had just purchased a gun from Cash Indiana Pawn shop in Burns Harbor, Indiana returned to purchase a second gun. The same clerk advised the officers that they could just add the second gun to the form that was completed earlier because she had not reported the information yet. Officer 1 paid for the second gun and left the store with it.
5. On July 23, 1999, two officers entered the Ameri-Pawn gun shop located at 3535 Central Avenue in Lake Station, Indiana. Officer 1 was posing as a juvenile. He was able to handle any gun with no questions asked about his age. Officer 1 then selected a .40 caliber Glock-23 pistol to purchase, but asked the clerk how old he had to be to purchase a handgun. The clerk advised him he had to be 21 years old. Officer 1 indicated he was only 20 years old and the clerk advised him he could not purchase the handgun. At this point, Officer 2 stepped forward and asked if he could purchase the gun for the juvenile and the clerk said yes. The clerk gave Officer 2 the paperwork to fill out. As Officer 2 was completing the form, Officer 1 asked about bullets for his gun, and asked the clerk to show him how to break

down his gun, which the clerk did. Officer 1 also asked if the clerk had any high capacity magazines, and was told that they no longer make or sell these to the general public. However, Officer 1 pressed the clerk whether he had any in his personal collection and was told to check back the following day. The cost would be around \$100.00. Officer 1 then paid for the weapon and three boxes of ammunition, and left the store with them.

6. On July 24, 1999, two officers entered Blythe's Sport Shop, located at 2810 North Calumet Avenue in Valparaiso, Indiana. Both officers selected guns for purchase: Officer 1 decided to buy a .40 caliber Smith & Wesson pistol, and Officer 2 decided to buy a used Smith & Wesson .357 magnum revolver. The clerk stated that both purchasers would need to provide Indiana identification and a gun permit. Officer 1 indicated he did not have any identification, and asked how old he had to be to buy a handgun. The clerk told him he had to be 21 years old. Officer 1 then informed the clerk he was only 20 years old. The clerk then took the gun from Officer 1 and said he could not buy it. However, after Officer 2 asked if he could buy the gun for Officer 1, the clerk said yes. The clerk asked if he wanted to make the purchase together, or keep it separate, and Officer 2 indicated he wanted to keep them separate. Officer 2 paid for the gun he was purchasing, as well as for a box of bullets. He then stepped aside and let Officer 1 pay for his gun and select the bullets, and the clerk completed this transaction and handed each officer their respective guns and ammunition.
7. On July 26, 1999, two officers entered Fetla's Trading Company in Valparaiso, Indiana. Officer 1 selected two Glock-19 9mm handguns for purchase, and openly asked which gun Officer 2 would like to purchase for herself. Officer 1 told the clerk he would take both handguns. At the cashier, Officer 2 indicated she was buying both handguns and filled out the paperwork. Officer 1, however, paid for both guns and left the store with them.

8. On July 27, 1999, two officers entered Cash Indiana Pawn Shop in Burns Harbor, Indiana. Officer 1 selected two guns, a Glock model 19, which came with a 15-round magazine along with the standard 10-round magazine, and a .38 caliber Smith & Wesson revolver. Officer 1 said he wanted to get one gun for himself and one for his partner, Officer 2. When handed the paperwork, Officer 1 told the clerk he did not have gun permit, but Officer 2 did. The clerk then handed the paperwork to Officer 2 to fill out. Officer 1 paid for both guns and two boxes of ammunition, and left the store with the weapons.

9. On July 27, 1999, two officers entered Ameri-Pawn in Lake Station, Indiana. Officer 1 examined a couple of guns and selected a Taurus 9mm handgun for purchase. It came with a 15-round magazine. The clerk asked Officer 1 if he had a gun permit, and he said no. Officer 2 then said that she had a permit, and the clerk stated that they should put the sale in her name so he would not have to make a background check call. The clerk completed the sale, taking money from Officer 1 and selling him a box of ammunition, and Officer 1 left the store with the gun.

49. Over the course of the undercover investigation, officers were able to straw purchase at least nine handguns and numerous boxes of ammunition for persons who openly declared to the store clerks they were convicted felons or juveniles, or in situations where the clerks had no information on the criminal history or age of the intended purchaser.

50. During the investigation, certain dealers refused to sell to undercover officers seeking to make straw purchases. In each case, the dealer indicated it was an illegal straw sale and refused to sell the firearm. Overall, however, officers posing as straw purchasers were sold firearms in at least nine different transactions, and were turned away only four times. Moreover, one of the dealers who rejected a straw sale made two other straw sales to undercover officers, and one of the other dealers made a straw sale at a

different store location. Accordingly, in the vast majority of cases, dealers were more than willing to facilitate straw purchases to prohibited purchasers and persons for whom no background check was completed.

51. The harm to Gary and its citizens by gun violence is widely publicized and is a matter of common knowledge. Defendants have for years had specific knowledge and information of the harm to Gary and its citizens caused by gun violence. Gang-related shootings and other shooting incidents are regularly reported in the *Post-Tribune*, *Times*, and the Chicago newspapers circulated in Northwestern Indiana, and other media. This public information confirms that juveniles and convicted felons are obtaining and using handguns to harm Gary and its residents.
52. The fact that a substantial percentage of the handguns used to inflict the harm to Gary and its citizens by gun violence are obtained through the illegitimate secondary market is also publicized and is common knowledge within the firearms industry. For example, firearm tracing reports on crime guns prepared by ATF for Gary, and other urban centers across the United States are publicly available, and several can be accessed over the internet. Many of these reports have been available to defendants for years. Thus, defendants knew or should have known that a substantial percentage of the handguns used to inflict the harm to Gary and its citizens by handgun violence are obtained through the illegitimate secondary market. Moreover, defendants are aware that specific guns they have made and/or sold have been traced to crime because ATF has contacted them in conducting traces of crime guns.
53. Robert Haas, the former Senior Vice-President of Marketing and Sales for defendant Smith & Wesson, said the following in a sworn statement concerning gun manufacturers' failure to promote responsible practices by distributors and dealers:

The company [Smith & Wesson] and the industry as a whole are fully aware of the extent of the criminal misuse of handguns. The company and the industry are also aware that the black market in handguns is not simply the result of stolen guns but is

due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal handgun licensees. In spite of their knowledge, however, the industry's position has consistently been to take no independent action to insure responsible distribution practices, to maintain that the present minimal federal regulation of federal handgun licensees is adequate and to call for greater criminal enforcement of those who commit crimes with guns as the solution to the firearm crime problem . . . I am familiar with the distribution and marketing practices of the [sic] all of the principal U.S. handgun manufacturers and wholesale distributors and none of them, to my knowledge, take additional steps, beyond determining the possession of a federal handgun license, to investigate, screen or supervise the wholesale distributors and retail outlets that sell their products to insure that their products are distributed responsibly.

54. Defendants' willful, deliberate, reckless, and negligent distribution of guns is exacerbated by the unsafe design of their guns, and, specifically, their failure to incorporate features which would inhibit unlawful access, transfer, or theft by criminals, juveniles, and other prohibited or unauthorized users. The defective design of defendants' guns further results in thousands of unintentional shooting deaths and non-fatal injuries every year. The General Accounting Office has estimated that each year, 23% of the 1,400 to 1,500 unintentional shooting deaths occur because the user of the gun was not aware that a round of ammunition had been loaded into the gun's firing chamber. This causes as many as 320 to 345 deaths nationwide each year. For each of these deaths, there are countless other unintentional shooting injuries that are not fatal. This appalling total is one of the reasons the firearm death rate among children aged 14 and under in the United States is nearly 12 times higher than the combined rate in 25 other industrialized countries. A number of these unintentional shootings have occurred in Gary.
55. Unintentional shootings with defendants' unsafe guns often involve adolescents. 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 16. A number of these unintentional shootings occur in Gary. Adolescents are naturally attracted to accessible guns and notoriously discount the risks associated with handling a firearm.

56. The unsafe design of defendants' guns also results in thousands of adolescent suicides. Studies have indicated that the odds that potentially suicidal adolescents will kill themselves double when a gun is kept in the home. Moreover, for many years, a youth aged 10-19 has committed suicide with a gun about 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 have been estimated to account for 81% of the increase in the overall rate of suicide from 1980-1992. A number of such firearm-related teen suicides occurred in Gary.
57. Defendants' failure to incorporate "personalized" gun technology to prevent unauthorized and/or prohibited users, including juveniles and felons, from obtaining access to and firing their handguns also results in thousands of homicides and other crimes committed by those users, a number of which occur in Gary. Many of these homicide victims or victims of other crimes are themselves children and teenagers. The perpetrators of these crimes gain access to these unlocked guns in numerous ways. Gun manufacturers are in the best position to conduct research and development to correct the design of their products and to make them safer for children and less accessible to minors and criminals. Defendants have been aware of the need for design features which would inhibit straw purchases, the reuse of stolen weapons, and accidental discharges by unauthorized users. However, defendants have failed to research, develop, and implement feasible, available technology to safeguard the public.
58. At all pertinent times, it was reasonably foreseeable that defendants' guns would fall into the hands of unauthorized users. 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. The Federal Centers for Disease Control and Prevention estimates that 1.2 million elementary-aged, latch-key

children have access to guns in their homes. Moreover, nearly 60% of children between the ages of 10 and 19 have responded in surveys that they can acquire a gun should they want one.

59. At all pertinent times, defendants have been aware, or should have been aware, that when unauthorized users gained access to defendants' guns, tragic, preventable shootings may result. Unintentional shootings, especially among children, teen suicides, and homicides and other crimes committed by juveniles and other unauthorized users could all be prevented had defendants cared to implement safer gun designs, including the incorporation of built-in locking systems to "personalize" guns, and the addition of magazine-disconnect safeties, chamber loaded indicators, and other feasible safeties. Defendants have failed to incorporate these feasible safeties in the guns they sell. The defendants further knew that by failing to make and sell handguns with the means to prevent their firing by unauthorized or prohibited users, it was reasonably foreseeable that guns stolen from private residences, gun stores and other locations, or otherwise unlawfully obtained, could be employed by unauthorized or prohibited users in violent criminal acts.
60. Gary and its citizens, particularly its children, have been repeatedly victimized by defendants' unreasonably dangerous products. A number of children in Gary have been grievously injured and/or killed because defendants' handguns are sold without the means to prevent their use by unauthorized users, without adequate warnings that would prevent such shootings by alerting users of the risks of handguns, and without adequate instruction regarding the importance of proper storage of handguns.
61. At the time the defendants manufactured, distributed, promoted and/or sold these guns, defendants knew or should have known of the unreasonable dangers of their guns, including those described in the foregoing paragraphs. Defendants were also aware of, and had available to them, safety devices, warnings, and other measures, which would prevent and/or decrease these dangers. Further, defendant gun

manufacturers are best positioned to conduct research and development to correct the unreasonably dangerous designs of their products to make it safer and less accessible to minors and criminals. However, defendants have failed to research, develop, and implement existing technology to remedy these deficiencies in their guns, warnings, instructions, promotions and advertising, all of which would safeguard the public. Defendants also failed to adequately warn customers of these dangers, failed to inform customers or distributors of available devices and measures which could prevent or decrease these dangers, and failed to incorporate these life-saving devices into their guns.

62. At all times pertinent, these defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that their products could be sold and/or made with the means to prevent their firing by unauthorized users.

Furthermore, these defendants purposefully and intentionally engaged in these activities knowing that citizens of Gary would foreseeably fall victim to death or serious injuries caused by the actions of unauthorized users of guns. As a consequence, defendants knew or should have known that the City of Gary would be injured and be forced to bear substantial expenses as a result of their irresponsible conduct.

63. At all times pertinent, manufacturing and distributing defendants, who account for most of the handguns sold to the general public, have acted in concert with each other and with defendant trade associations, have tacitly agreed or cooperated, and/or have adhered to industry-wide standards or customs with respect to, among other things:

1. their failure to develop and implement the means to prevent their guns from being fired by unauthorized users;
2. discouraging the development and implementation of the means to prevent guns from being fired by unauthorized or prohibited users;

3. their failure to develop and implement other safety features; and
 4. their failure to issue adequate warnings alerting users of the risks of guns and to the importance of proper storage and handling of guns.
64. For years, and continuing to date, defendants have knowingly, purposefully, intentionally, and/or negligently misled, deceived and confused Gary and its citizens regarding the safety of handguns. To increase sales and profits, defendants have falsely and deceptively claimed through advertising and promotion of their handguns that the ownership and possession of handguns in the home increases protection of one's home and person, and that the ownership of handguns enhances personal security. These same defendants have also falsely represented that handguns without built-in locking devices are safe. For example, handguns manufacturers have promoted handguns with slogans such as "homeowner's insurance," "tip the odds in your favor," "your safest choice for personal protection" and have a "good night."
65. Defendants have made these false and deceptive advertising and promotional claims even though they knew or should have known that studies and statistics show that handguns in the home actually increase the risk of harm to firearm owners and their families. Defendants also knew or should have known that handguns without locking devices on them are not safe. Indeed, studies have indicated that:
1. one out of three handguns is kept loaded and unlocked in the home;
 2. 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;
 3. a gun is used for protection in fewer than two percent of home invasion crimes when someone is home; and

4. 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.

66. Also, more than 30 years ago 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 firearm 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.)

67. These statistics have been proven real in Gary, where numerous deaths and injuries have occurred because handguns were purchased for home protection but were thereafter foreseeably used in unintentional shootings, teen suicides, domestic disputes and other acts of violence.

68. Defendants conduct has caused the City of Gary to incur public costs for the care and treatment of both intentional and accidental gunshot injuries. Moreover, the City has suffered economic injury as a result of increased spending on, among other things, law enforcement, emergency rescue services, increased security at public buildings, pensions, disability benefits, unemployment benefits, higher jail costs, and intervention programs. The City has further been damaged by lower tax revenues and lower property values.

(PUBLIC NUISANCE)

69. The Plaintiff incorporates herein by reference paragraphs 1 through 68 as set forth above.
70. Under Indiana Code § 34-19-1-1, “[w]hatever is: (1) injurious to health; (2) indecent; (3) offensive to the senses; or (4) an obstruction to the free use of property; so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and subject of an action. Similarly, under the common law of Indiana, a public nuisance includes what is injurious to the public’s health, safety, peace, and comfortable enjoyment of life or property.
71. Defendants’ ongoing conduct relating to their creation and supply of an illegitimate secondary market for handguns has created and maintained a public nuisance in the City of Gary, as thousands of handguns that they directly or indirectly supply to the illegitimate handgun market are thereafter used and possessed in connection with criminal activity in the City of Gary. As a result of the availability and continued use in crime of many of these handguns after they enter the City, the City of Gary has been injured, and residents of Gary have been and will continue to be killed and injured by these handguns. Moreover, residents of Gary will continue to fear for their health, safety and welfare and will be subjected to conduct that interferes with the comfortable enjoyment of their life and property.
72. Defendants have also created a public nuisance in the City of Gary by defectively designing and distributing handguns that are unsafe in that they do not contain essential safety features such as internal locking or “personalized”

safety systems, and by failing to adequately warn of risks associated with the use, handling, storage, or operation of their products, including risks to immature or unauthorized persons who may have access to such handguns.

Defendants' false and deceptive advertising and promotion of their dangerous products as improving home and personal safety despite empirical studies that indicate bringing a gun into the home increases rather than decreases the risks of injury and death to members of the household also contributes to a public nuisance in the City of Gary.

Defendants have intentionally and negligently interfered with the rights of the citizens of Gary to be free from avoidable injury and death, have caused damage to the public health, the public safety and general welfare of the residents of the City of Gary, and have thereby wrongfully caused the Plaintiff to incur enormous costs in support of the public health, safety and welfare.

The presence of illegitimately possessed and used handguns in the City of Gary, the widespread distribution of unreasonably dangerous handguns in Gary, and defendants false and deceptive advertising and promotion regarding the safety of handguns for home and personal use, proximately results in significant costs to the City to enforce the law, arm its police force and to treat the victims of handguns. Stemming the flow of handguns into the illegitimate handguns market, creating safer handguns, and stopping the deceptive statements regarding the dangers of handguns, will help abate the nuisance, for to do so will take the handguns away from criminals and juveniles and will save lives, prevent injuries and will make the City of Gary a safer place to live.

COUNT II

(NEGLIGENT DISTRIBUTION AND MARKETING)

76. The Plaintiff incorporates herein by reference paragraphs 1 through 75 as set forth above.

77. Defendant manufacturers have acted negligently and breached their duty of care to the City of Gary and its citizenry by creating an illegitimate secondary market for handguns, whose buyers consist of convicted felons, gang members, minors under the age of 21, and other prohibited firearm purchasers and users. Defendants created this market or negligently failed to inhibit its formation and functioning by failing to exercise adequate control over the distribution and sale of their handguns. Defendants failed to control or limit straw purchases; failed to prohibit or restrict sales to kitchen table and/or corrupt dealers; failed to prevent multiple purchases of their handguns; failed to prevent diversion of their handguns at gun shows; failed to require distributors and dealers to secure their handguns from theft; and failed to prevent the illegal movement of handguns into Indiana.

78. Defendant manufacturers are individually and jointly negligent because they:

1. market and distribute their handguns without adequate supervision or control over distributors and dealers;
2. market and distribute their handguns in such a way that it is reasonably foreseeable that they would be acquired by unauthorized and irresponsible persons, including minors under 21 and felons;
3. cause and/or permit their handguns to be marketed and distributed to unauthorized and irresponsible persons, including young people incapable of appreciating the dangers and hazards of these products, as well as felons;

4. fail to implement reasonable controls to regulate the distribution of handguns, including even failing to investigate the background and business practices of the distributors and retail sellers of their handguns;
 5. fail to take reasonable efforts to ensure that their handguns are not acquired by unauthorized and irresponsible persons, including minors under 21 and convicted felons.
79. In short, defendant manufacturers have breached their duty of care to market and distribute their products in a responsible manner that would prevent or limit their accessibility to unauthorized and irresponsible users. Instead, they have negligently distributed and marketed their products so as to avoid any meaningful training, monitoring, or disciplining of distributors and retailers -- despite their knowledge of an illegal secondary market that is responsible for much of the handguns involved in criminal activity in the City of Gary. Defendants knew or reasonably should have known that their negligent conduct would create an illegitimate secondary market in handguns that has caused and continues to cause the City to expend substantially more resources than it otherwise would in the form of police services, fire services, emergency medical services, pension benefits, disability benefits, workers' compensation benefits, health care, expenses to provide additional security measures in public schools and other public facilities.
80. Defendant manufacturers are also negligent in that they actively market their products in a manner that failed to alert consumers and potential consumers, as well as retailers, regarding the risks of their products. Defendants negligently represented that the purchase of a firearm would enhance household security, that handguns are safe, and that families could safely store handguns unlocked and accessible to minors. This negligence has caused additional harm to the Plaintiff.

COUNT III

(NEGLIGENCE)

81. The Plaintiff incorporate herein by reference paragraphs 1 through 80 as set forth above.
82. The defendants owed a duty to the City of Gary, its residents, and the general public to act in a reasonably prudent manner in connection with the design of their products.
83. Defendants violated this duty and were negligent in designing the products in a manner that the defendants foresaw or should have foreseen that the products would pose great risks to the citizens of Gary who are unaware of the dangers of a firearm or untrained in the use of handguns, or who are children or mentally impaired persons.
84. Defendants specifically violated this duty by designing guns which they knew or should have known did not have adequate safety devices, including, but not limited to the following:
- devices that prevent the products from being fired by unauthorized users;
 - devices that increase the pressure required to activate the trigger;
 - devices that alert users that a round is in the chamber;
 - devices that prevent these products from being fired when the magazine is removed from them; and
 - devices that would inhibit unlawful use by prohibited or unauthorized users.

85. Defendants further violated this duty by designing, manufacturing, and/or distributing guns with inadequate, incomplete, or nonexistent warnings as to the risks of the product, including, but not limited to:

- _ The risks that children could gain access to and discharge their products resulting in serious injury or death;
- _ How to properly store the products to prevent suicide, accidental injury, or theft;
- _ That the product was subject to theft and use in a crime if improperly stored;
- _ That a round of ammunition may be in the chamber of their products;
- _ That their products could be fired even with the ammunition magazine removed or without the trigger being pulled;
- _ That the products may not contain any safety devices;
- _ That training is necessary for the safe handling of the product; and
- _ That a gun in the home dramatically increases rather than decreases the risk of injury to members of the household.

86. Defendants have also acted in concert with each other and with defendant trade associations, have tacitly agreed or cooperated, and/or colluded to adhere to industry-wide standards or customs with respect to, among other things:

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

87. As a direct and proximate result of the defendants' negligence and carelessness, all as aforesaid, the guns manufactured and distributed by the defendants have injured the City of Gary and its citizenry, thereby causing Plaintiff to pay substantial sums of money for police services, law enforcement, fire and rescue services, emergency medical services and other emergency services, indigent health care, pension benefits, disability benefits, workers' compensation benefits, health care, prison costs, increased security and other services in the public schools and other necessary facilities and services due to the threat of or actual use of the defendants' handguns.
88. Furthermore, as a direct result of the defendants' manufacture, sale and distribution of unreasonably dangerous and defective handguns, the City of Gary has suffered diminished tax revenues and property values.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests judgment against Defendants jointly and severally:

1. Allocating monetary damages attributable to each defendant to compensate the City of Gary for the costs that they have incurred and will continue to incur as a result of the defendants' negligent and careless design, manufacture, marketing, promotion, advertising and sale of guns;
2. Awarding punitive damages as to each and every defendant in a sufficient amount to punish and deter conduct that intentionally and recklessly endangers the citizens of the City of Gary;
3. Granting preliminary and permanent injunctive relief requiring defendants:
 1. To implement standards and training regarding their own distribution of handguns, as well as the conduct of the gun dealers and distributors to whom they distribute handguns, for the purpose of eliminating or substantially reducing the illegal secondary market that currently exists in Gary and elsewhere;
 2. To cease manufacturing, distributing, or offering for sale handguns without appropriate safety devices and warnings, including devices designed to prevent unauthorized use;
4. Awarding the Plaintiff their costs and attorneys' fees; and
5. Marketing share liability as to all defendants identified:

1. Money damages as to each and every defendant manufacturer, retailer, and distributor for all damages that cannot be attributed to a particular source, for their: negligent and careless design, manufacture, marketing, promotion, advertising and sale of guns; intentional and negligent failure to incorporate safety devices into the design of their products; intentional and negligent failure to provide adequate warnings; and for the enormous costs incurred by the Plaintiff with regard to public health, safety, and welfare in an amount equivalent to the national market share of each such manufacturer, distributor or retailer.

2. Money damages as to each and every defendant manufacturer, retailer, and distributor for all damages that cannot be attributed to a particular source, for the significant public funds expended as a result of the public nuisance regarding handguns that exists in the City of Gary, including but not limited to, police services, fire services, emergency medical services, pension benefits, disability benefits, and workers' compensation benefits, in an amount equivalent to the national market share of each named manufacturer, distributor or retailer.

3. Special damages, as to each defendant manufacturer, distributor and retailer, incurred by the Plaintiff as a result of the public nuisance created by handguns in the City of Gary that cannot be attributed to a particular source, including but not limited to expenses for transportation and treatment of uninsured victims of gun violence, the decline of real estate tax revenues, and expenses for additional security in public schools and public housing developments in an amount equivalent to the national market share of each named manufacturer, distributor or retailer.

6. Granting any other legal or equitable relief that the Court deems just and appropriate.

Respectfully Submitted,
Scott L. King as Mayor of the
City of Gary

Dated: August 27, 1999

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