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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule  
1550(b))

FIREARM CASE

Including actions:

*People, et al. v. Arcadia Machine & Tool, Inc.,  
et al.*

*People, et al. v. Arcadia Machine & Tool, Inc.,  
et al.*

*People, et al. v. Arcadia Machine & Tool, Inc.,  
et al.*

) JUDICIAL COUNCIL COORDINATION  
) PROCEEDING NO. 4095

) San Francisco Superior Court No. 303753  
) Los Angeles Superior Court No. BC210894  
) Los Angeles Superior Court No. BC214794

) DECLARATION OF JOSEPH J. VINCE JR.  
) IN SUPPORT OF PLAINTIFFS'  
) OPPOSITION TO DEFENDANT  
) MANUFACTURERS' MOTION FOR  
) SUMMARY JUDGMENT

) Date: March 7, 2003  
) Time: 8:30 a.m.  
) Dept: 65

Hon. Vincent P. DiFiglia

REDACTED VERSION OF DOCUMENT ORIGINALLY FILED UNDER SEAL

1 I, Joseph J. Vince, Jr., declare as follows:

2 **Background and Credentials**

3 1. I have firsthand knowledge of the facts set forth in this declaration and, if called upon  
4 to do so, could and would competently testify truthfully with respect thereto.

5 2. I am currently President of Crime Gun Solutions ("CGS"), a company devoted to  
6 assisting law enforcement in the collection, access, management, analysis, and dissemination of  
7 crime gun information. I also serve on the Firearms Committee of the International Association of  
8 Chiefs of Police, and have served as a facilitator/instructor for that organization.

9 3. I received an M.A. in Criminal Justice from the University of Detroit in 1979 and a  
10 B.A., with a major in Criminal Justice, from Youngstown State University in Youngstown, Ohio in  
11 1970.

12 4. I have received or been strongly considered for several awards, including being a  
13 finalist in 1997 for an Innovations in Government award presented by the Ford Foundation and the  
14 John F. Kennedy School of Government at Harvard University for my work on the project  
15 "Disarming the Criminal." In 1996, I received the Vice Presidential Hammer Award for innovations  
16 in Federal Firearms Enforcement. Upon retirement, I received the Treasury Department's highest  
17 award for distinguished government service, The Albert Galatin Award. I have also authored  
18 numerous publications, including Crime Gun Analysis Branch Reports on the Illegal Youth Firearms  
19 Market. I have given numerous lectures, speeches, and presentations training law enforcement  
20 groups in the U.S. and abroad.

21 5. Before becoming President of CGS in 1999, I served for almost thirty years as a law  
22 enforcement agent within the United States Bureau of Alcohol, Tobacco and Firearms ("ATF"). My  
23 tenure began in May 1971 as a Special Agent in the Detroit, Michigan Division Office, where I was  
24 a finalist for "Special Agent of the Year." I also received ATF's Gold Star Award for wounds  
25 received in the line of duty. I worked as a Special Agent in Flint, Michigan and as a Resident Agent  
26 in Charge in Omaha, Nebraska. In 1983, I moved to ATF headquarters in Washington, D.C., first  
27 as an Operations Officer in the Firearms Division, then as Special Agent In Charge of the Firearms  
28 Tracing Branch, and then as Special Agent In Charge of the Intelligence Branch. By July 1995, I

1 became Chief of the Firearms Enforcement Division at ATF headquarters. During my tenure in the  
2 Firearms Division, I instituted the Youth Crime Gun Interdiction Initiative, which was adopted as  
3 a national Presidential Initiative. From July 1997 through January 1999, I created and managed the  
4 Crime Gun Analysis Branch at ATF's offices in Falling Waters, West Virginia, where ATF keeps  
5 its crime gun tracing information. During my tenure, in cooperation with law enforcement  
6 throughout the United States, I worked to reduce gun crime and used crime gun tracing to assist in  
7 those efforts. My curriculum vitae is found in Notice of Lodgment filed herewith ("NOL") as Ex.  
8 27.

9         6. This declaration contains my analyses and conclusions regarding the distribution  
10 practices of the gun industry in general and the defendants in these consolidated California actions  
11 as they relate to defendants' motions for summary judgment. Should these actions go to trial, I may  
12 supplement these analyses and conclusions.

13         **Federal and State Controls on Retail Firearm Sales Are Not Sufficient, by Themselves, to**  
14         **Curb the Supply of New Guns to the Underground Market in California**

15         7. Many of the defendant gun manufacturers utilize multi-tiered distribution systems.  
16 The additional layers of federally-licensed middlemen that gun manufacturers have placed between  
17 themselves and the gun-buying public are not required by federal law. Based on my experience, it  
18 is my opinion that defendants have the ability to require safeguards to be implemented at the retail  
19 level to prevent firearms from being trafficked into an underground market. Moreover, given the  
20 risks posed by guns diverted to criminals, juveniles, and other prohibited possessors, defendants  
21 should have required such safeguards.

22         8. Gun manufacturers distribute firearms through a very large network of distributors  
23 and dealers. In 1995, for example, there were hundreds of firearms wholesalers and more than  
24 168,000 retail dealers and pawnbrokers federally licensed to sell firearms in the United States  
25 (hereinafter referred to as "federal firearms licensees" or "FFLs"). Bureau of Alcohol, Tobacco and  
26 Firearms, *Firearms Commerce in the United States 2001/2002*, at Ex. 12. NOL, Ex. 55. In 1992,  
27 the number of FFLs reached their peak at approximately 284,000. *Id.* Given this staggering number  
28 of FFLs, it was very difficult for ATF to monitor or oversee their distribution practices. Upon

1 passage of the Brady Law in 1993, which changed the requirements for obtaining a federal firearms  
2 license, the number of FFLs began to sharply decline to where in 2001 there were approximately  
3 102,000 FFLs. *Id.* Even with these lower numbers, ATF cannot prevent gun trafficking from  
4 occurring at these dealerships without responsible behavior by gun manufacturers, including  
5 defendants.

6         9.       The federal government imposes only very limited controls on commerce in firearms  
7 in the United States. Manufacturers are required to keep acquisition and disposition records  
8 indicating when they have acquired or manufactured a firearm, and when and to whom they have  
9 sold it. Firearms distributors are required to keep similar records. Retail licensees are required to  
10 record from whom they have purchased firearms. When the firearm is sold to a member of the  
11 public, an instant background check is required under the Brady Law, and the dealer and buyer must  
12 each fill out an ATF Form 4473 "Firearms Transaction Record" for each firearm sold. If a member  
13 of the public purchases two or more handguns from the same dealer within a period of five business  
14 days, this is considered a "multiple sale" and the dealer must also fill out a "multiple sale form"  
15 (ATF F 3410.4) and forward a copy to ATF as well as local law enforcement. ATF records these  
16 sales in a national multiple sale database. Local law enforcement, however, is required to destroy  
17 these forms within 20 days. 18 U.S.C. §923(g)(3)(B). Additional sales and recordkeeping  
18 requirements placed on manufacturers, distributors and dealers are found in 18 U.S.C. §922 et seq.  
19 and 27 C.F.R. pts. 178, 179.

20         10.       Certain states, such as California, have imposed additional requirements on firearms  
21 purchasers. *See, e.g.,* Cal. Penal Code §12000 et seq. Coupled with a federal prohibition on  
22 purchasing handguns other than from a dealer in the state of one's residency, the California firearms  
23 statutes and regulations are intended to prevent dangerous individuals from gaining access to  
24 firearms. Even so, a significant percentage of the handguns traced to crime in California have been  
25 purchased outside California, in states with weaker firearms laws. *See, e.g.,* App. A, ¶¶k, m, q, s,  
26 aa, dd (identifying percentages of in-state and out-of-state sales for crime guns traced in California).

27         11.       The important lesson to be drawn from this information is what restrictions are *not*  
28 found in federal or California law. For example, there are no federal limits on how many guns can

1 be purchased at any one time. The multiple-sale reporting requirement, as with all paperwork  
2 requirements imposed on FFLs, must be complied with, but violations of these statutes are only  
3 misdemeanors. *See* 18 U.S.C. §924(a)(3). As of January 1, 2000, California prohibited multiple  
4 handgun sales in the state, but it is my understanding that the time period at issue in these actions  
5 predates that statute. Further, the Form 4473 Firearm Transaction Record stays with the FFL, not  
6 ATF, and can be "lost" or missing when ATF later tries to trace the firearm in connection with a  
7 criminal investigation. A background check needs to be completed on the person whose name  
8 appears on the Form 4473, but if the FBI is unable to complete the check within 3 business days,  
9 federal law allows the FFL to sell the firearm, even if the person is shown to be a disqualified buyer  
10 after a more thorough check. Law enforcement must then try to track the person down to confiscate  
11 the gun. Many records that should be checked are not computerized or not entered into the  
12 background check system in a timely manner, preventing law enforcement agencies from completing  
13 the check within 3 business days. In many instances, felons and other prohibited purchasers have  
14 been able to obtain guns via this "delayed denial" problem. California law requires a 10-day waiting  
15 period, but this restriction does not help with handguns trafficked into California from out of state.  
16 Defendants have not implemented a policy requiring dealers to wait until background checks are  
17 completed. Further, if a buyer is a "straw purchaser" obtaining the gun for transfer to a prohibited  
18 person, even if the dealer is aware of this fact, it is extraordinarily difficult for law enforcement to  
19 prove a crime has been committed because the transaction is between private parties, all of whom  
20 have an incentive to conceal the truth.

21       12. Accordingly, the limited controls in federal law, and even the more stringent controls  
22 imposed by California, can easily be circumvented if FFLs are not given the incentive to be diligent  
23 in preventing gun trafficking. At the present time, gun manufacturers have established distribution  
24 systems where all the incentives favor selling guns to gun traffickers or others who funnel the guns  
25 into an illegal secondary market because of the added profit of increased gun sales. This is  
26 dramatically illustrated by videotaped undercover "sting" operations done by Chicago, Illinois,  
27 Wayne County, Michigan, and Gary, Indiana. The video of the sting conducted by Wayne County  
28 provides an excellent example. NOL, Ex. 104. Several dealers in the Detroit area were approached

1 by two undercover officers, one of whom indicated openly to the dealer he was either a convicted  
2 felon or a juvenile. The prohibited buyer proceeded to pick out and pay for the firearm, but the  
3 paperwork was filled out by his companion, a "straw purchaser." According to the video, in 9 out  
4 of 10 instances, the dealer confronted with this open, yet illegal, straw purchase situation went ahead  
5 and made the sale. The sting operations in Chicago and Gary obtained similar results. This straw  
6 purchasing scenario occurs on a widespread and regular basis at FFLs throughout the United States,  
7 including in California.

8 **Defendants' Continued Supply of New Firearms Through Distribution Systems Without**  
9 **Proper Controls Provides the Primary Source of Guns for the Underground Market**

10 13. As I wrote in CGAB Shots (an ATF newsletter on gun trafficking) in October 1998,  
11 "[i]t still appears that acquisition of firearms by false declarations and straw purchasers are still the  
12 method preferred by traffickers, both small and large." Joseph J. Vince, Jr., *Memo from the Chief re:*  
13 *Firearms Outside the Retail Chain*, CGAB Shots, Vol. II, Issue 8, at 2 (1998). NOL, Ex. 42.  
14 Moreover, the most important "single source of firearms for the illegal market is still illegal  
15 traffickers who are acquiring firearms from retail outlets." *Id.*

16 14. According to ATF, "[v]irtually all new firearms used in crime first pass through th[is]  
17 legitimate distribution system of federally licensed firearms dealers." Bureau of Alcohol, Tobacco  
18 and Firearms, *A Progress Report: Gun Dealer Licensing and Illegal Gun Trafficking* at BOS 106214  
19 (1997) (App. A, ¶n). Only a small percentage of firearms in the underground market have been  
20 stolen. *See, e.g.*, App. A, ¶¶k, q.

21 15. To my knowledge, firearms manufacturers and distributors, including defendants, have  
22 not altered the incentives identified above by training, monitoring, auditing or disciplining FFLs who  
23 engage in irresponsible sales practices because they profit when guns are sold into the underground  
24 market.

25 16. The result is that convicted criminals, juveniles, and other prohibited purchasers, as  
26 well as those with criminal purposes, have ready access to handguns and other firearms through  
27 defendants' distribution systems. The specific methods of diversion into this underground market are  
28 discussed more fully below.

1     **Published Studies Detail Problems of Widespread Gun Trafficking from Licensed Dealers**

2           17.     Publicly available federal reports and studies have long highlighted how the  
3     underground market in firearms is supplied by a massive diversion of firearms from the licensed  
4     dealers that gun manufacturers and distributors, including defendants, utilize. Many of these reports  
5     were disseminated directly to gun manufacturers, distributors, and dealers. ATF also meets regularly  
6     with major gun manufacturers or their trade associations and informs them about gun trafficking  
7     problems. While at ATF, I personally met with industry representatives on several occasions to  
8     discuss these issues. In or about 1985, I also personally initiated and disseminated to firearm  
9     manufacturers, large wholesalers and large retail dealers a quarterly publication entitled "Significant  
10    Trace Reports." The objective of this report was to inform FFLs of the results of completed traces  
11    in which criminals were identified and arrested and how traces were worth the expenditure of their  
12    resources in furtherance of public safety. To the best of my recollection, this report was continued  
13    until 1989.

14           18.     Appendix A includes more than 25 major published reports demonstrating crucial  
15    information about gun trafficking from licensed dealers of which gun manufacturers and distributors  
16    should have been aware. Not only do these documents inform gun makers and sellers of widespread  
17    diversion of their firearms into the underground market, but also they provide extensive guidance,  
18    sometimes explicitly, regarding steps that defendants could take to prevent this diversion. Among  
19    the key conclusions supported by the reports are the following:

- 20           a.     FFLs sell firearms to gun traffickers (*i.e.*, persons who sell guns into the underground  
21                  market) on a massive scale. A significant volume of these diversions is concentrated  
22                  in a small percentage of FFLs, who account for the majority of firearms successfully  
                traced in the United States.
- 23           b.     Corrupt FFLs are a very serious problem. Even a few corrupt dealers can funnel  
24                  thousands of firearms very quickly into the underground market.
- 25           c.     ATF has identified a large percentage of FFLs with violations of reporting  
26                  requirements or other provisions of the gun control laws, but restrictions in federal  
                law make it very difficult to prosecute these companies or revoke their license to  
                conduct business.
- 27           d.     Straw purchasing from FFLs has occurred for decades and is one of the major means  
28                  by which gun traffickers obtain guns for the underground market.

- e. Multiple sales are an ideal means by which illegal gun traffickers can obtain firearms from FFLs.
- f. Many crime handguns recovered in states, such as California, that have enacted stronger gun control laws have been purchased in states with weaker laws and trafficked illegally into the stronger-law state.
- g. Gun theft from FFLs and common carriers is also a means by which gun traffickers obtain guns.
- h. An analysis of crime gun traces, using key indicators explained by ATF, can identify FFLs that, more likely than not, either engaged in sales to gun traffickers or whose high-risk business practices have facilitated the diversion of guns into the underground market.
- i. Gun manufacturers could and should take steps to self-police their distribution systems to prevent the diversion of firearms into the underground market. Law enforcement lacks sufficient resources and tools to eliminate this problem without gun manufacturers, distributors and dealers acting responsibly.
- j. All of these conclusions apply to guns recovered in crime in California.

#### **ATF Traces Provide Specific Notice to Defendants**

19. Through the ATF's National Tracing Center, ATF traces thousands of firearms seized in connection with crimes each year. Trace requests originate with federal, state and local law enforcement agencies. In recent years, more and more law enforcement departments are comprehensively tracing all firearms recovered in crime. To trace a firearm, in most cases ATF reports a gun's serial number, make and model to the gun's manufacturer, who then provides ATF with the date and name of the firearms distributor or dealer to whom the manufacturer sold the gun. (A small fraction of traces can be completed based on multiple sale or out-of-business records in ATF's possession, in which case the manufacturer is not directly contacted.) ATF traces the gun from the manufacturer to each licensed distributor and/or dealer who may have owned the gun until a sale to an unlicensed individual purchaser is recorded. Through the tracing process, manufacturers are put on notice that their firearms have been traced in connection with a crime. {

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20. In recent years, many manufacturers have electronically stored their acquisition and disposition records and allowed ATF to access those records on-line in a program entitled Access 2000. This system, however, keeps control of the information in the hands of manufacturers, who



1 can determine the makes, models, serial numbers, and disposition information for their guns traced  
2 by ATF.

3 21. Through the ATF's tracing process, which began to be collected in a national database  
4 in 1989, gun manufacturers receive thousands of ATF trace requests each year. From 1989 to the  
5 present, local law enforcement and ATF have engaged in more comprehensive tracing, increasing  
6 the number of traces nationally from 10,566 in 1989 to 76,794 in 1995, to approximately 200,000 per  
7 year since 1997. *See* Fox Task 1 Tables (identifying year-by-year breakdown of number of national  
8 ATF traces). NOL, Ex. 4. A chart prepared by my colleague at Crime Gun Solutions, Gerald A.  
9 Nunziato, identifies the number of traces each defendant manufacturer received between 1989 and  
10 the end of 2000. NOL, Ex. 17. (Defendant Manufacturer Profile). Although there have likely been  
11 many more traces, on average, in recent years, some of the defendant manufacturers have had huge  
12 numbers of traced guns even when averaged over the 3000 workdays during this entire 12-year  
13 period. For example, Smith & Wesson has averaged more than 45 guns traced per workday over 12  
14 years, Sturm Ruger has averaged more than 28 guns traced, Colts' has averaged more than 23 guns  
15 traced, Taurus has averaged more than 14 guns traced, Bryco and Davis Industries have each  
16 averaged more than 13 guns traced, Beretta has averaged almost 11 guns traced, and Glock has  
17 averaged about 10 guns traced, per workday.

18 22. The tracing process gives defendants continual notice of the criminal use of their  
19 products. The tracing process informs each manufacturer of the guns it sold to each distributor that  
20 were eventually recovered and traced in connection with crimes.

21 23. Each manufacturer and distributor could also use the tracing process to identify crime  
22 guns associated with each of its dealers, if it required the distributors and dealers to collect and report  
23 information about trace requests back up the chain to the manufacturer. It should be noted here that  
24 manufacturers are not dependent on receiving ATF trace data to fill in this picture, as the information  
25 provided to ATF to complete a trace is maintained by FFLs. Therefore, once a manufacturer is  
26 notified by ATF that one of its manufactured firearms was used in a crime, an examination could be  
27 initiated without further consultation or receipt of data from ATF.

1           24.     As large as the numbers are of defendants' guns being traced, most crime-guns in the  
2 United States are not traced. Since the mid-1990s, ATF has been tracing approximately 200,000  
3 crime-guns each year, as more and more law enforcement departments, including several in  
4 California, are engaging in comprehensive tracing. Nonetheless, this is only a fraction of the overall  
5 number of crime-guns recovered by law enforcement in the U.S. Furthermore, a high percentage of  
6 crime-guns are never recovered by law enforcement, thus indicating that traced guns are only the tip  
7 of the iceberg when it comes to the crime problem created by the illegal gun market.

8                   **The Illegal Gun Market Is Supplied in a Number of Ways that ATF Has**  
9                   **Repeatedly Made Known to Defendants**

10           25.     **High-risk dealers.** Numerous federal reports have indicated that a small percentage  
11 of FFLs are responsible for a majority of the crime gun traces. *See, e.g., App. A, ¶¶j, n, u, v, y.*  
12 Moreover, the vast majority of FFLs have no gun traces associated with them. *See, e.g., App. A, ¶j,*  
13 *y.* Based on personal knowledge gained during my career with ATF, it is my opinion that FFLs with  
14 significant numbers of traces and/or other indicators of crime gun trafficking, such as traces with  
15 short time-to-crime, guns recovered with obliterated serial numbers, patterns of multiple sales, or  
16 traces that cannot be accounted for by the dealer, are more likely than not selling guns that are being  
17 trafficked into the underground market.

18           26.     **Corrupt dealers.** A small number of FFLs have been found to be engaged in gun  
19 trafficking. As the ATF report *Following the Gun* indicates, *see App. A, ¶z*, however, even a small  
20 number of corrupt dealers can funnel huge numbers of firearms into the underground market. This  
21 problem was identified as far back as 1976. *See App. A, ¶¶a, b, g.* Certainly, any corrupt dealer must  
22 be terminated immediately from receiving further gun supplies by manufacturers and distributors.

23           27.     **Straw purchases.** Straw purchases refer to firearms sales to otherwise legal buyers  
24 who acquire guns on behalf of a prohibited purchaser. Gun traffickers frequently use straw  
25 purchasers to purchase significant quantities of guns in states with weak firearms laws for transport  
26 and resale into states with stronger gun laws. It is a major source of firearms for the underground  
27 market. Properly trained FFLs could assist in identifying many prospective straw purchasers. Once  
28 identified, FFLs must have a firm policy to refuse all gun sales to such individuals. The reports

1 identified in Appendix A discuss the problem of straw purchasing in great detail. *See, e.g.*, App. A,  
2 ¶¶h, i, k, l, m, q, t, z. I have been aware of it as a significant firearms trafficking problem since I  
3 joined ATF in the early 1970s. Since that time, ATF has certainly made gun manufacturers aware  
4 of the magnitude of the problem.

5       28.     **Multiple sales.** Under federal law, multiple sales are defined as the sale of two or  
6 more handguns to a single individual within five business days. 18 U.S.C. §923(g)(3)(A). Multiple  
7 purchases of single guns by a single person over a short period of time should also be considered  
8 "multiple sales." Multiple sales must be recorded on a special ATF form and forwarded to ATF and  
9 local law enforcement. *Id.* This reporting requirement was originally required by regulation in 1975,  
10 and thereafter enacted by Congress because Congress and the ATF realized that multiple handgun  
11 sales were inherently high-risk sales, with much greater likelihood than individual firearm purchases  
12 of being involved in gun trafficking. *See, e.g.*, App. A, ¶¶a, b, c, d, q, t, aa, dd. (Actually, in 1976,  
13 the Treasury and Justice Departments, under President Ford, supported legislation which would have  
14 gone farther and limited handgun sales to one per month, similar to California's current prohibition,  
15 arguing before Congress that the reporting requirement was insufficient to curb gun trafficking. *See*  
16 App. A, ¶b, at 64-65, 73.

17       29.     The existence of multiple sales by an FFL, especially multiple sales of more than two  
18 handguns at a time, may be indicative of gun trafficking. Most FFLs do not have multiple sales  
19 transactions. *See, e.g.*, App. A, ¶f. Patterns of significant numbers of multiple sales transactions, in  
20 conjunction with other trafficking indicators, indicate that an FFL is more likely than not making  
21 sales to gun traffickers.

22       30.     **Interstate movement.** California has stricter gun sales requirements than many other  
23 states. *See* Cal. Penal Code §12000 et seq. As a result, many of the handguns traced to crime in  
24 California have been sold at retail outside the state. *See, e.g.*, App. A, ¶¶k, m, q, s, aa, dd. The  
25 interstate movement of guns traced to crime is another indicator of gun trafficking. FFLs with places  
26 of business outside California who have a significant number of guns traced to crime in California  
27 more likely than not have sold guns that are being trafficked into crime.

1           31.     **Obliterated serial numbers.** This is a serious problem nationally, including  
2 California. Serial numbers are obliterated so law enforcement, if it recovers the gun, cannot trace it.  
3 According to the *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999) National*  
4 *Report*, at 40 (App. A, ¶aa), "[a]mong handguns both sold and traced in 1999, those recovered and  
5 traced with obliterated serial numbers were 2.3 times as likely to have been from a multiple sale (51  
6 percent) as were all handguns together (22 percent)." Any firearm with an obliterated serial number  
7 has a high likelihood of being involved in gun trafficking. If manufacturers were to make their serial  
8 numbers tamper-proof, it would have a significant beneficial impact on ATF's ability to trace crime  
9 guns and on the underground market in California.

10           32.     **Gun thefts from dealers and common carriers.** Pursuant to the Violent Crime  
11 Control and Law Enforcement Act of 1994, FFLs are required to report firearms lost and stolen from  
12 inventory to the ATF National Tracing Center within 48 hours of loss or theft. 18 U.S.C. §923(6).  
13 It is not sufficient, however, for FFLs to merely report thefts. It should be incumbent upon them, and  
14 the manufacturers and distributors who supply them with new firearms, to take steps necessary to  
15 prevent gun thefts from their premises. In Appendix A ¶p, I cite an ATF report entitled *Safety and*  
16 *Security Information for Federal Firearms Licensees*, that outlines a number of steps FFLs can take  
17 to prevent thefts. Unfortunately, ATF could not make these recommendations mandatory.  
18 Defendants, however, could make improved security mandatory for the FFLs in their distribution  
19 networks. Given the levels of gun thefts from FFLs and common carriers discussed in the reports  
20 cited below, *see, e.g.*, App. A, ¶¶b, d, i, k, q, z, this would be an important improvement and would  
21 more likely than not have an impact on the underground market in California.

22           33.     Defendants have been, or should have been, aware of all of this information for years.  
23 All of it is discussed in the publicly-available reports cited in Appendix A. In addition, I personally  
24 explained these methods of diversion to gun manufacturers, distributors and dealers at the SHOT  
25 Show hosted annually by the National Shooting Sports Foundation and at other meetings with  
26 industry members.

**Defendants' Guns Have More Likely than Not Been Trafficked Into the  
Underground Market in Firearms in California**

34. I have examined tracing data with respect to firearms recovered in crime in California, as well as national ATF data, and information found in the ATF multiple sale database. The scope of this data is discussed more fully in the declaration of Gerald A. Nunziato.

35. The data I examined, while extremely robust, provides only a snapshot of a much larger problem caused by defendants' lax methods of distributing firearms. For example, the California trace data that was provided to plaintiffs by ATF for the years 1995 through 2001 is only a fraction of the total number of guns traced by ATF that were recovered in crime in California during those years. There may also have been thousands of firearms recovered in crime in California that were traced by local law enforcement through California state databases that are not counted in Mr. Nunziato's spreadsheets. In addition, the National Trace database obtained through the Freedom of Information Act ("FOIA") has dealer information redacted after 1996, though other data in the database runs through 2000. The multiple sale database also provides an undercount of the multiple sale transactions. Further, not all crime guns recovered in California or nationally are traced, and recovered crime guns are only a fraction of the number of guns used in crime in California. Nonetheless, the data I have examined is illustrative of the crime gun problems caused in California by defendants' conduct.

36. Indications of gun trafficking or the diversion of firearms into the underground market can be gleaned from the data. These indicators have been identified in many of the reports identified in Appendix A. For example, in *Commerce in Firearms*, App. A, ¶y, ATF highlighted the following non-exhaustive list of trafficking indicators: "multiple crime guns traced to an FFL or first retail purchaser; short time-to-crime for crime guns traced to an FFL or first retail purchaser; incomplete trace results, due to an unresponsive FFL or other causes; significant or frequently reported firearms losses or theft by an FFL; frequent multiple sales of handguns by an FFL or multiple purchases of firearms by a non-licensee, combined with crime gun traces; [and] recovery of firearms with obliterated serial numbers." *Id.* at 22.

1           37.     The data provided to Mr. Nunziato has been compiled into a series of spreadsheets,  
2 or "profiles," found at NOL, Exs. 17, 18 and 19. Based on my review of each profile, I can make the  
3 following observations and conclusions. (I reserve the right to expand upon these observations and  
4 conclusions at trial.).

5           38.     **Defendant Manufacturer Profile (NOL, Ex. 17).** This profile provides aggregate  
6 information regarding the number of each defendant manufacturer's guns that have been traced in  
7 California and nationally. As noted above, the California traces are a significant undercount of the  
8 total number of guns recovered in crime in California that are associated with that manufacturer. In  
9 addition, the profile gives data on time to crime, obliterated serial numbers, and multiple sales. The  
10 range of California traces is a low of 10 traces for Interarms to a high of 4,144 traces for Smith &  
11 Wesson. National trace counts range from a low of 653 for Interarms to a high of 141,590 for Smith  
12 & Wesson.

13           39.     These trace counts, and the associated counts of crime guns recovered with a short  
14 time to crime or obliterated serial numbers, lead me to conclude that each of the defendant  
15 manufacturers is contributing significantly to the crime gun problem in California communities.

16           40.     **Defendant Distributor and Dealer Profile (NOL, Ex. 18).** This profile provides  
17 aggregate information, similar to the profile for defendant manufacturers, regarding the number of  
18 guns traced through each defendant distributor and dealer that have been recovered in crime in  
19 California and nationally. The same undercount of California traces applies to this profile as well.

20           41.     These trace counts, and the associated counts of crime guns recovered with a short  
21 time to crime or obliterated serial numbers, lead me to conclude that each of the defendant  
22 distributors and dealers is contributing significantly to the crime gun problem in California  
23 communities.

24           42.     **California Dealer Profile (NOL, Ex. 19).** This profile captures information  
25 regarding each of the FFLs associated with crime guns recovered in California that are contained in  
26 the California trace data that was provided to the plaintiffs by ATF. There are a total of 6,788 FFLs  
27 listed in the data, including FFLs inside and outside California, and FFLs that, as of 2002, are no  
28 longer in business under the particular federal firearms license number listed in the profile, though

1 they may remain in business under a different FFL number. For each FFL listed, the profile captures,  
2 using California and national data, many of the gun trafficking indicators used by ATF: trace counts,  
3 guns with time to crime of less than 3.5 years and 1.5 years, number of multiple sale transactions and  
4 number of guns sold through multiple sales, and the count of completion codes within the data that  
5 indicate suspect activity on the part of the FFL, including the inability of the FFL to account for  
6 certain firearms traced to it. *See e.g., supra* ¶36, App. A, ¶y (outlining indicators). This data is then  
7 imported into two additional profiles – the Defendant Manufacturer to Dealer Profile (NOL, Ex. 21)  
8 and the Defendant Distributor to Dealer Profile (NOL, Ex. 22) – linked to each of the defendants.  
9 The result is a snapshot of the gun trafficking indicators associated with each of the FFLs linked to  
10 California crime gun traces with which defendants have chosen to do business.

11 43. The data in the California Dealer Profile undercounts the severity of the problem in  
12 at least two significant ways. First, as Mr. Nunziato explains in his declaration, the California trace  
13 counts do not include thousands of guns recovered in crime in California and traced by ATF. The  
14 counts include only 35,108 traced California crime guns for which Mr. Nunziato was provided dealer  
15 data, but not the balance of 80,293 traced California crime guns indicated by the national ATF data.  
16 In addition, it does not include an unknown number of additional traces that may have been  
17 conducted by California law enforcement using only state databases and not ATF. It also does not  
18 include crime guns recovered in California that were not traced. Second, the national data counts in  
19 the California Dealer Profile count only the approximately one-third of the national traces that were  
20 conducted through the end of 1996. (The other two-thirds of national traces in the overall national  
21 database were conducted between 1997 and the end of 2001.) Dealer information was redacted from  
22 traces occurring after 1996. Professor Fox, as explained in his declaration, estimated the number of  
23 national traces likely to be associated with each FFL if the national trace data were not redacted, and  
24 that number is provided in the profile. This is likely to be a conservative estimate due to the  
25 significant decline during this period in the number of federal licensees.

26 44. **California Dealer Final Sale Profile (NOL, Ex. 20).** This profile captures additional  
27 information regarding final sales, both for California and national traces, associated with all of the  
28 6,788 FFLs identified in the California Dealer Profile. The final sale numbers include guns for which

1 a retail purchaser was identified as well as guns where the FFL was simply the last dealer to whom  
2 a gun was traced, and there is a breakdown in the profile of these two categories. The data in this  
3 chart and the California Dealer Profile should be read together.

4 45. I can conclude, based on the totality of the indicators in the California Dealer Profile  
5 and the California Dealer Final Sale Profile, that it is more likely than not that many of these FFLs  
6 have either engaged in sales to gun traffickers or whose high-risk business practices have facilitated  
7 the diversion of guns into the underground market in California.

8 46. Let me use the California dealers named as defendants in these actions as examples  
9 to draw out this conclusion. Trader Sports, Inc. ("Traders"), a defendant dealer located in San  
10 Leandro, California, has overwhelming gun trafficking indicators associated with it. Among the  
11 California trace databases provided to Mr. Nunziato, Traders had at least 710 gun traces between  
12 1995 and 2001, or more than 100 per year on average. (Traders appears on three rows in the  
13 California Dealer Profile, rows 6145-47, corresponding to three different federal license numbers it  
14 has. Most of the traces are associated with the license in row 6145.) 183 of these guns were traced  
15 within 3.5 years of sale by Traders, and 77 were recovered within 1.5 years of sale by Traders.  
16 Overall, Traders made the final sale in 571 of these traces. Traders engaged in 1,414 known multiple  
17 sale transactions involving 3,112 handguns between 1995 and 1999. Traders was also linked to 927  
18 national crime gun traces between 1989 and 1996, or more than 115 per year. 192 of these guns were  
19 traced within 3.5 years of sale by Traders, and 97 were traced within 1.5 years. The estimated  
20 national traces associated with Traders from 1988-2001 is 2,878, or an average of more than 220  
21 traced guns per year. In addition, Traders is associated with suspect completion codes in 66 of its  
22 traced guns. One FFL in San Leandro, California, is also identified in Senator Schumer's reports of  
23 the 140 FFLs nationally with the most significant tracing indicators in 1998. *See App. A, ¶¶u, v.* The  
24 FFL in the Senator's reports is almost certainly Traders. Based on these indicators, I can conclude  
25 that Traders was either engaged in sales to gun traffickers or engaged in high-risk business practices  
26 that facilitated the diversion of guns into the underground market in California.

27 47. B & E Guns ("B & E") of Cypress, California is another example. B & E appears on  
28 two separate rows of the California Dealer Profile (rows 348 and 3521) because the company



1 obtained and used two different FFL numbers. In my experience, FFLs that were engaged in suspect  
2 firearm sales would often obtain multiple FFLs to disperse their trace counts in an attempt to avoid  
3 oversight by ATF. The California Dealer Profile shows that a significant number of FFLs have had  
4 firearms traced to them under multiple license numbers. Another reason firearm retailers would  
5 obtain multiple FFLs would be to stay in business even if one of their FFLs was revoked. Often  
6 spouses of licensees would carry on the business in a new name after prosecution by ATF.

7 48. The tracing data made available to me supports the conclusion that B & E Guns was  
8 associated with overwhelming trafficking indicators. In the California trace databases, B & E Guns  
9 had 174 guns traced to one license number between 1995 and 2001 (row 348) and another 17 guns  
10 traced to a separate license number (row 3522). 78 of the guns had a time to crime of 3.5 year or less,  
11 and 39 had a time to crime of 1.5 years or less. Overall, B & E made the final sale in 140 of these  
12 traces. B & E engaged in 1048 known multiple sale transactions involving 2350 handguns between  
13 1995 and 1999. B & E was also linked to 169 national crime gun traces between 1989 and 1996, or  
14 more than 20 per year. 25 of these guns were traced within 3.5 years of sale by B & E, and 14 were  
15 traced within 1.5 years. The estimated national traces associated with B & E from 1988-2001 is 525,  
16 or an average of more than 40 traced guns per year. In addition, B & E is associated with suspect  
17 completion codes in 23 of its traced guns. As with Traders, I can conclude that, based on these  
18 indicators, B & E Guns was either engaged in sales to gun traffickers or was engaged in high-risk  
19 business practices that facilitated the diversion of guns into the underground market in California.

20 49. Similar analyses and conclusions apply to the other defendant dealers, B & B Group  
21 Inc. (B & B Sales), Hawthorne Distributors Inc. (Western Surplus of Hawthorne), Andrews Sporting  
22 Goods, Inc. (Turner Outdoorsman), and National Gun Sales, and would apply to many other FFLs  
23 if I went through the data line by line. I can conclude, based on the indicators spelled out below, that  
24 each was either engaged in sales to gun traffickers or was engaged in high-risk business practices that  
25 facilitated the diversion of guns into the underground market in California.

26 50. B & B Group, with two locations in California (rows 342 and 343 in the California  
27 Dealer Profile) has significant trafficking indicators associated with it. In the California trace  
28 databases, the three locations together had at least 681 gun traces between 1995 and 2001, or almost

1 100 per year. 171 of these guns were traced within 3.5 years, and 93 were traced within 1.5 years.  
2 Overall, B & B Group made the final sale in 553 of these traces. B & B Group engaged in 1,256  
3 known multiple sale transactions involving 2,808 handguns between 1995 and 1999. B & B Group  
4 was also linked to 597 national crime gun traces between 1989 and 1996, or more than 74 traces per  
5 year. 128 of these guns were traced within 3.5 years of sale, and 60 were traced within 1.5 years of  
6 sale. The estimated national traces associated with B & B Group from 1988-2001 is 1,853, or an  
7 average of more than 142 traced guns per year. In addition, B & B Group is associated with suspect  
8 completion codes in 46 of its traced guns.

9 51. Similarly, Hawthorne Distributors ("Hawthorne"), in Hawthorne, California (row 2673  
10 in the California Dealer Profile) has significant trafficking indicators associated with it. In the  
11 California trace databases, Hawthorne had at least 398 gun traces between 1995 and 2001, or about  
12 57 per year. 215 of these guns were traced within 3.5 years, and 131 were traced within 1.5 years.  
13 Overall, Hawthorne made the final sale in 383 of these traces. Hawthorne engaged in 188 known  
14 multiple sale transactions involving 411 handguns between 1995 and 1999. Hawthorne was also  
15 linked to 195 national crime gun traces between 1989 and 1996, or almost 25 traces per year. 102  
16 of these guns were traced within 3.5 years of sale, and 60 were traced within 1.5 years of sale. The  
17 estimated national traces associated with Hawthorne from 1988-2001 is 605, or an average of more  
18 than 46 traced guns per year. In addition, Hawthorne is associated with suspect completion codes  
19 in 13 of its traced guns.

20 52. Andrews Sporting Goods ("Andrews"), with seventeen locations in California (and  
21 21 FFL numbers) (rows 189-208 and 210 in the California Dealer Profile) also has significant  
22 trafficking indicators associated with it. In the California trace databases, the seventeen locations  
23 together had at least 1,375 gun traces between 1995 and 2001, or almost 200 per year. 281 of these  
24 guns were traced within 3.5 years, and 152 were traced within 1.5 years. Overall, Andrews made the  
25 final sale in 1,272 of these traces. Andrews engaged in 1,037 known multiple sale transactions  
26 involving 2,192 handguns between 1995 and 1999. Andrews was also linked to 861 national crime  
27 gun traces between 1989 and 1996, or more than 107 traces per year. 247 of these guns were traced  
28 within 3.5 years of sale, and 98 were traced within 1.5 years of sale. The estimated national traces

1 associated with Andrews from 1988-2001 is 2,508, or an average of more than 192 traced guns per  
2 year. In addition, Andrews is associated with suspect completion codes in 60 of its traced guns in  
3 the California trace database and 144 in the National trace database. This includes 25 traces in the  
4 California trace database and 36 traces in the National database where Andrews was unable to  
5 properly account for the disposition of a firearm it sold.

6 53. National Gun Sales ("National"), with four locations in California (and 5 FFL  
7 numbers, all of which have now expired) (rows 3089 and 4364-67 in the California Dealer Profile)  
8 also has significant trafficking indicators associated with it. In the California trace databases, the four  
9 locations together had at least 380 gun traces between 1995 and 2001, or about 54 per year. 69 of  
10 these guns were traced within 3.5 years, and 30 were traced within 1.5 years. Overall, National made  
11 the final sale in 377 of these traces. National engaged in 328 known multiple sale transactions  
12 involving 764 handguns between 1995 and 1999. National was also linked to 157 national crime gun  
13 traces between 1989 and 1996, or almost 20 traces per year. 29 of these guns were traced within 3.5  
14 years of sale, and 10 were traced within 1.5 years of sale. The estimated national traces associated  
15 with National from 1988-2001 is 487, or an average of more than 37 traced guns per year. In  
16 addition, National is associated with suspect completion codes in 7 of its traced guns.

17 54. **Defendant Manufacturer to Dealer Profile (NOL, Ex. 21).** This profile provides  
18 a snapshot of the FFLs associated with each of the manufacturing defendants' California crime gun  
19 traces. Given the California trace counts in the Defendant Manufacturer Profile, this profile identifies  
20 each FFL through which the defendant manufacturer sold that gun. The profile then imports the  
21 trafficking indicator data regarding that FFL from the California Dealer Profile. In addition, the  
22 number of the defendant manufacturer's guns traced nationally through that FFL is provided.

23 55. I can conclude, based on the totality of the indicators provided in this profile and the  
24 California Dealer Final Sale Profile that each of the manufacturer defendants sell their firearms  
25 through FFLs for which it is more likely than not they have either engaged in sales to gun traffickers  
26 or whose high-risk business practices have facilitated the diversion of guns into the underground  
27 market in California.

1           56.     Let me use the same examples as above to draw out this conclusion. Trader Sports,  
2 Inc., discussed above in ¶46, has California traces associated with at least the following defendant  
3 manufacturers: Accu-tek (1), Bryco (24), the Beretta entities (75), Browning (8), Colts' (19), Davis  
4 (40), Glock (48), Heckler & Koch (18), Kel-Tec (2), North American Arms (3), Phoenix (1), Sig  
5 Arms (22), Sturm Ruger (34), Smith & Wesson (18), and Taurus (37). These numbers are all likely  
6 undercounts of the real trace numbers, not to mention the numbers of guns used in crime that were  
7 sold by Trader Sports that have never been recovered or traced. Each of these manufacturers, had  
8 they monitored their downstream sales, would have learned of the gun trafficking indicators  
9 associated with Traders and could have taken appropriate action to ensure that these indicators did  
10 not continue, thereby reducing the number of crime guns associated with Traders Sports.

11           57.     Many defendant manufacturers also sold guns through B & E Guns that were later  
12 traced. The data available to me indicates the following California traces through B & E: Arcadia  
13 Machine & Tool (3) Beretta (24), Browning (1), Bryco (4), Colts' (15), Davis (8), Glock (27),  
14 Heckler & Koch (2), Hi-Point (1), Kel-Tec (1), Phoenix Arms (7), Sig Arms (13), Sturm Ruger (18),  
15 Smith & Wesson (25), Taurus (5). These numbers are all likely undercounts of the real trace  
16 numbers, not to mention the numbers of guns used in crime that were sold by B & E Guns that have  
17 never been recovered or traced. Each of these manufacturers, had they monitored their downstream  
18 sales, would have learned of the gun trafficking indicators associated with B & E and could have  
19 taken appropriate action to ensure that these indicators did not continue, thereby reducing the number  
20 of crime guns associated with B & E Guns. The fact that the trace counts above are associated with  
21 FFLs that are no longer in business indicates that defendant manufacturers could have terminated  
22 sales to B & E Guns long before this FFL was allowed to funnel hundreds of guns into crime in  
23 California.

24           58.     The same analyses and conclusions apply to B & B Group, Hawthorne, Andrews, and  
25 National.

26           59.     The data available to me indicates the following California traces through B & B  
27 Group: Arcadia Machine & Tool (10), Beretta (184), Charter Arms (5), Colts' (45), Davis (3), Glock  
28

(64), Heckler & Koch (10), North American Arms (1), Sig Arms (27), Sturm Ruger (104), Smith & Wesson (89), Taurus (2), Carl Walther (10).

60. For Hawthorne, the totals are: Accu-Tek (3), Arcadia Machine & Tool (1), Beretta (30), Bryco (6), Charter Arms (5), Colts' (8), Davis (58), Glock (11), H & R 1871 (1), Heckler & Koch (6), Hi-Point (3), Kel-Tec (11), Phoenix Arms (25), Sig Arms (4), Sturm Ruger (44), Smith & Wesson (15), and Taurus (20).

61. For Andrews, the totals are: Accu-Tek (2), Arcadia Machine & Tool (10), Beretta (142), Browning (45), Bryco (8), Charter Arms (4), Colts' (57), Davis (41), Glock (37), H & R 1871 (2), Heckler & Koch (9), Hi-Point (1), Kel-Tec (1), North American Arms (9), Phoenix Arms (6), Sig Arms (16), Sturm Ruger (245), Smith & Wesson (158), Taurus (49), and Walther (8).

62. For National, the totals are: Arcadia Machine & Tool (5), Beretta (33), Browning (8), Bryco (1), Charter Arms (11), Colts' (26), Glock (22), Heckler & Koch (4), North American Arms (2), Sig Arms (78), Sturm Ruger (34), Taurus (20), and Walther (5).

63. **Defendant Distributor to Dealer Profile (NOL, Ex. 22).** This profile provides a snapshot of the FFLs associated with each of the distributor defendants' California crime gun traces. Given the California trace counts in the Defendant Distributor and Dealer Profile, this profile identifies each FFL through which the defendant distributor sold that gun. The profile then imports the trafficking indicator data regarding that FFL from the California Dealer Profile. In addition, the number of the defendant distributor's guns traced nationally through that FFL is provided.

64. I can conclude, based on the totality of the indicators provided in this profile and the California Dealer Final Sale Profile, that each of the distributor defendants sell their firearms through FFLs for which it is more likely than not they have either engaged in sales to gun traffickers or whose high-risk business practices have facilitated the diversion of guns into the underground market in California.

65. Let me again use the defendant dealers as examples. Traders has California traces associated with at least the following defendant distributors: B.L. Jennings (21), Interarms (41), RSR (6), and Southern Ohio Guns (3). These numbers are all likely undercounts of the real trace numbers, not to mention the numbers of guns used in crime that were sold by Trader Sports that have never

1 been recovered or traced. Each of these distributors, had they monitored their downstream sales,  
2 would have learned of the gun trafficking indicators associated with Traders and could have taken  
3 appropriate action to ensure that these indicators did not continue, thereby reducing the number of  
4 crime guns associated with Traders Sports.

5 66. B & E Guns was also supplied by several defendant distributors and dealers,  
6 associated with the following California trace counts: B.L. Jennings (3), MKS Supply (2), RSR (15),  
7 and Trader Sports (17). These numbers are all likely undercounts of the real trace numbers, not to  
8 mention the numbers of guns used in crime that were sold by B & E Guns that have never been  
9 recovered or traced. Each of these distributors and dealers, had they monitored their downstream  
10 sales, would have learned of the gun trafficking indicators associated with B & E and could have  
11 taken appropriate action to ensure that these indicators did not continue, thereby reducing the number  
12 of crime guns associated with B & E Guns. The fact that the trace counts above are associated with  
13 FFL licenses that are no longer in business indicates that defendant distributors and dealers could  
14 have terminated sales to B & E Guns long before this FFL was allowed to funnel hundreds of guns  
15 into crime in California.

16 67. The same analyses and conclusions apply to B & B Group, Hawthorne, Andrews, and  
17 National.

18 68. The data available to me indicates that B & B Group has California traces associated  
19 with at least the following defendant distributors: Interarms (33); RSR (1); and Southern Ohio Gun  
20 Distributors (1).

21 69. For Hawthorne, the totals are: B.L. Jennings (6); Ellett Brothers (167); Interarms (17);  
22 MKS Supply (10); RSR (13); and Southern Ohio Gun Distributors (1).

23 70. For Andrews, the totals are: B.L. Jennings (5); Ellett Brothers (14); Interarms (43);  
24 MKS Supply (6); RSR (14); SG Distributing (126); and Southern Ohio Gun Distributors (1).

25 71. For National, the totals are: B.L. Jennings (1) and Interarms (8).

26 72. I can also conclude, based on the totality of the indicators provided in this profile and  
27 the California Dealer Final Sale Profile, that each of the defendant dealers have more likely than not  
28

1 either engaged in sales to gun traffickers or whose high-risk business practices have facilitated the  
2 diversion of guns into the underground market in California.

3 73. I have already outlined the indicators for Trader Sports (§46), B & E (§§47-48), B &  
4 B Group (§50); Hawthorne (§51); Andrews (§52), and National (§53). As defendant dealers, the gun  
5 trafficking indicators itemized in these paragraphs indicate that each of these defendant dealers more  
6 likely than not has either engaged in sales to gun traffickers or whose high-risk business practices  
7 have facilitated the diversion of guns into the underground market in California.

8 **Defendants' Distribution Practices Make It Exceedingly Difficult to**  
9 **Track Each Step From Manufacturer to Crime Gun Possessor**

10 74. The process by which guns are diverted by dealers into the underground market makes  
11 it inherently difficult to track the precise path of each diverted gun from the point of retail sale to its  
12 recovery in connection with a criminal investigation. For example, although ATF trafficking  
13 investigations reveal that straw sales are a primary means by which guns are diverted to the  
14 underground market, many straw sales go undiscovered because all the participants to the transaction  
15 have an obvious interest in secrecy. Although it has long been known that multiple sales are an ideal  
16 source of diverted guns, the path of specific multiple sale guns into the underground market is  
17 difficult to determine because of the secrecy that is inherent in the underground market itself. Thus,  
18 the nature of the underground market formed by the failure of defendants to control the distribution  
19 of their products makes it inherently difficult to determine whether each gun recovered in a criminal  
20 investigation was diverted into the underground market because of a specific business practice of a  
21 gun dealer.

22 75. Similarly, it is inherently difficult to say with certainty that a specific dealer is  
23 "corrupt" or is "knowingly" selling guns to straw purchasers, as opposed to negligently facilitating  
24 such sales, unless one can witness sales transactions at the dealership first hand.

25 76. Nonetheless, indicators of gun trafficking present in trace information, coupled with  
26 30 years of ATF's experience with the methods by which firearms are diverted from FFLs into the  
27 underground market, allow me to conclude that FFLs through which defendant manufacturers and  
28 distributors sell their firearms are more likely than not either engaged in sales in sales to gun

1 traffickers or whose high-risk business practices have facilitated the diversion of guns into the  
2 underground market in California.

3 77. Further, the pool of crime guns in California would be substantially reduced if  
4 defendants would enforce an industry code of conduct that would include accountable training and  
5 manufacturer and distributor monitoring to reduce the frequency of the kinds of transactions known  
6 to funnel guns into the underground market.

7 **Defendants Could and Should Have Utilized Responsible Distribution**  
8 **Practices to Self-Police Their Own Distribution Networks**

9 78. There are many changes that each defendant could implement that would lessen  
10 considerably the number of guns that enter the criminal and juvenile market. For example, defendant  
11 manufacturers and distributors could sell only to authorized or certified distributors and dealers who  
12 agree to implement safeguards designed to prevent gun trafficking. These safeguards could include,  
13 among other things:

- 14 ○ Pre-screening members of the distribution network to ensure they are engaged in safe  
15 business practices;
- 16 ○ Requiring accountable training to distributors and dealers as well as their own sales  
17 personnel;
- 18 ○ Monitoring and supervising distributors and dealers to detect problems;
- 19 ○ Requiring dealers to curb multiple sales (including outside California);
- 20 ○ Requiring dealers to refuse to make sales unless background checks required by law  
21 have been completed; and
- 22 ○ Taking remedial action – up to and including terminating sales – against distributors  
23 and dealers that provide a significant source of guns traced to crime.

24 79. A critical element in responsible industry self-policing would be the reporting to  
25 manufacturers of information from distributors and dealers relevant to the diversion of guns to the  
26 underground market. Manufacturers could require, among other information:

- 27 ○ Periodic reporting of the number of ATF trace requests received;
- 28 ○ Information about the dates of retail purchase sufficient to monitor the time-to-crime  
of traced guns;
- Information about any regulatory audits, citations of violations, or enforcement  
actions instituted by government agencies against the distributor or dealer; and



1           ○     An explanation of each firearm sale where the firearm was later used in crime.

2           80.     The paragraphs above are not an exhaustive list of the safeguards gun manufacturers  
3 could implement to reduce gun trafficking and the diversion of guns into the criminal and juvenile  
4 market.

5           81.     For some time, defendants have been able to self-police the distributors and dealers  
6 in their distribution chain but have failed to do so. During my tenure at ATF, ATF would have  
7 welcomed improved industry distribution practices that would diminish the supply of guns to the  
8 criminal and juvenile underground market and made this fact known to gun manufacturers. Indeed,  
9 on numerous occasions, ATF, or the United States Department of Treasury or Justice, openly  
10 requested the industry to self-police the licensees within their distribution systems.

11          82.     A 2001 Department of Justice Report entitled *Gun Violence Reduction: National*  
12 *Integrated Firearms Violence Reduction Strategy*, App. A, ¶cc, goes into great detail about measures  
13 gun manufacturers could and should implement that would cut off the supply of guns to gun  
14 traffickers. The report stated:

15           ○     pp. 6-7 (Executive Summary). The firearms industry must do much more to help  
16 solve our country's firearms violence problem. Each gun manufacturer and distributor  
17 must do a better job of policing its own distribution chain to reduce the illegal supply  
18 of guns and keep them from falling into the hands of criminals, unauthorized  
19 juveniles, [etc.] .... We are actively encouraging firearms manufacturers to voluntarily  
20 improve their distribution controls ....

21           ○     p. 34. *Industry Self Policing*. The firearms industry can make a significant  
22 contribution to public safety by adopting measures to police its own distribution  
23 chain. In many industries, such as the fertilizer and explosives industries,  
24 manufacturers impose extensive controls on their dealers and distributors. Gun  
25 manufacturers and importers could substantially reduce the illegal supply of guns by  
26 taking similar steps to control the chain of distribution for firearms. To properly  
27 control the distribution of firearms, gun manufacturers and importers should: identify  
28 and refuse to supply dealers and distributors that have a pattern of selling guns to  
criminals and straw purchasers; develop a continual training program for dealers and  
distributors covering compliance with firearms laws, identifying straw purchase  
scenarios and securing inventory; and develop a code of conduct for dealers and  
distributors, requiring them to implement inventory, store security, policy and record  
keeping measures to keep guns out of the wrong hands, including policies to postpone  
all gun transfers until NICS checks are completed.

26           ○     p. 34. To assist industry efforts to keep guns from falling into the wrong hands, ATF  
27 will supply manufacturers and importers that request it with information about crime  
28 gun traces of the manufacturer's or importer's firearms.

1           83. In addition, several ATF reports called on the industry to use trace information to  
2 "build sounder and safer businesses." *See* App. A, ¶¶aa at 1, dd at 1. ATF's Strategic Plan 2000-2005  
3 states that "Enforcement efforts would benefit if the firearms industry takes affirmative steps to track  
4 weapons and encourage proper operation of Federal Firearms Licensees to ensure compliance with  
5 all applicable laws." App. A, ¶bb, at 11. A Department of Treasury press release accompanying  
6 *Commerce in Firearms* states that ATF will be "[p]roviding the firearms manufacturers and  
7 importers, upon request, a list by serial number of the firearms they sold that were traced as crime-  
8 guns during the previous year. This will enable the manufacturers and importers to police the  
9 distribution of the firearms they sell." App. A, ¶y.

10           84. ATF also engaged in correspondence with several specific gun manufacturers  
11 notifying them that they should be using trace information to police their distribution systems to help  
12 reduce the diversion of guns into crime. *See, e.g.*, NOL, Ex. 102 (PLTF 101149-53, letter from  
13 Forest Webb, Special Agent in Charge, National Tracing Center of ATF to Taurus), NOL, 121 (SR  
14 21972, letter from Forest Webb to Sturm Ruger).

15           85. Moreover, several members of the firearms industry have said that gun manufacturers  
16 could and should take control of their distribution systems to curb the diversion of firearms into the  
17 underground market. These voices have included:

- 18           ○ Robert Hass, a former Vice President for Sales and Marketing with Smith & Wesson,  
19           *see* NOL, Ex. 143 (affidavit), NOL, Ex. 144 (deposition excerpts),
- 20           ○ Robert Lockett, a Kansas gun dealer, who wrote an open letter to the gun  
21           manufacturers on how they should reform their lax sales practices. *See* NOL, Ex. 72  
22           (open letter – draft and as published) NOL, Ex. 159 (deposition excerpts),
- 23           ○ Doug Painter, current Executive Director of the National Shooting Sports Foundation  
24           (NSSF) and the Sporting Arms and Ammunition Manufacturers' Institute, who wrote  
25           a memo in 1993 after reading ATF's Operation Snapshot study (App. A, ¶f) that NSSF  
26           should develop a "proactive industry position" to address the serious "potential for  
27           illegal firearms transactions through ostensibly 'legal' FFL channels," and "minimiz[e]  
28           the possibility of illegal transactions through unscrupulous FFL holders" NOL, Ex.  
              117, and
- Bill Bridgewater, former Executive Director of the National Association of Stocking  
              Gun Dealers, who admitted in a pledge with numerous law enforcement officials in  
              April 1994 that "within the firearms industry are elements who divert the flow of  
              firearms from the legitimate trade into the more lucrative firearms black market" and  
              "[w]e further recognize that gun licensees, who through willful, negligent or

irresponsible actions contribute to the illicit gun market, undermine those businesses which carefully adhere to the letter of the law." *See* App. A, ¶g.

86. To my knowledge, none of these voices was heeded by the industry.

**Defendants Should Reverse Their Lax Distribution Policies  
and Help Law Enforcement Fight Gun Trafficking**

87. ATF is the primary federal agency responsible for enforcing federal firearms laws. ATF tracks the legal and illegal movement of firearms through the country. It is responsible for licensing and monitoring firearms manufacturers, distributors, and dealers, and it investigates illegal firearms distribution.

88. ATF has been limited by statute and regulation from keeping guns out of the hands of prohibited persons. Some of the limitations of enforcement are: compliance inspections of firearm dealers can only be conducted once a year; problem dealers cannot be fined or suspended, instead a complex regulatory process is initiated in order to revoke a dealer's license, which can take years; willful wrongdoing must be proved; and, if a dealer is indicted for criminal wrong doing involving firearms violations, he or she can still keep their license until conviction, and then they can stay in business until all appeals are exhausted. Despite the fact that ATF snapshots of the FFL population have consistently shown violations occurring at 30% or more of all dealers, *see* App. A, ¶¶f, r, ATF has been unable to revoke more than 44 licenses in any year since 1975, and has averaged less than 15 revocations per year over that span. *See* App. A, ¶z, at A-22. In addition, since the inception of the Gun Control Act in 1968, ATF has always lacked sufficient numbers of Regulatory Inspectors to closely monitor the number of Federal Firearms Dealers, which at one time numbered over 284,000. The restrictions placed upon ATF have made adequate supervision impossible. Thus, law enforcement oversight is not sufficient to achieve safe distribution without responsible behavior by defendants. *See, e.g.,* App. A, ¶¶b, f, g, t, bb, cc.

89. Industry efforts would greatly aid law enforcement's efforts to curb gun trafficking. During my tenure at ATF, ATF would have had no objection to manufacturers: (1) requiring periodic reporting from distributors and dealers of ATF traces of crime guns and other information relevant to the diversion of guns into the underground market; (2) requiring a set of universal precautions

1 throughout their distribution networks; (3) terminating distributors or dealers with large numbers of  
2 crime gun traces.

3 90. Gun manufacturers and industry trade associations have discussed the need to take a  
4 responsible "proactive industry strategy," but they have not followed through on the ideas that have  
5 been proposed. To take just one example – dealer training – within the last couple of years, Smith  
6 & Wesson developed a "Training Syllabus" for training firearms dealers on methods for screening  
7 out and prohibiting sales to straw purchasers. SW 14901-14 (NOL, Ex. 119) This syllabus provides  
8 useful training messages for dealers, but Smith & Wesson used it to train only the clerks in the few  
9 gun stores they own and operate directly. Smith & Wesson did not even make it available to the  
10 thousands of other retail dealers who sell their firearms. Pluff dep. at 31:4-32:1, {REDACTED}  
11 (NOL, Ex. 166.)

12 91. More recently, the National Shooting Sports Foundation has co-sponsored with ATF  
13 a program called "Don't Lie for the Other Guy," designed to prevent dealers from selling to straw  
14 purchasers. This program involves a poster and counter cards, as well as a short brochure for dealers.  
15 Once again, this program is beneficial, even if it is not as comprehensive as it should be. The bigger  
16 problem, however, is that it is completely voluntary for dealers.

17 **Implementation of Responsible Distribution Practices by Defendants**  
18 **Would Have Reduced the Numbers of Defendants' Guns Present in the**  
19 **Illegal Gun Market in California**

20 92. If defendants had implemented the policies discussed above, it is more likely than not  
21 that the number of defendants' guns diverted into the illegal gun market in California would have  
22 been reduced substantially.

23 93. Moreover, it is my experience as a law enforcement officer involved with fighting  
24 firearms trafficking for almost 30 years that where you reduce the availability and accessibility of  
25 illegally trafficked firearms to a community, you reduce violent crime.  
26  
27  
28

1                   **APPENDIX A TO DECLARATION OF JOSEPH J. VINCE, JR.**

2           94.     The following published reports, studies, and other documents itemize the extensive  
3 problem of gun trafficking from federally licensed firearms dealers. The reports provide more-than-  
4 sufficient information to gun manufacturers that should have led them to reform their firearm  
5 distribution systems to prevent the diversion of guns explained in these reports.

6           95.     This is not an exhaustive list of relevant material on this subject. I have listed the  
7 reports in chronological order. After each citation, I have highlighted some of the important points  
8 made by the document.

9           **a.     1975 – *Firearms Legislation: Hearings before the Subcomm. on Crime, House***  
10           ***Judiciary Committee, 94th Cong. (NOL, Ex. 29).***

- 11                   o     Testimony of ATF director Rex Davis regarding the association between  
12 multiple sales and gun trafficking. These legislative hearings contain a  
13 multitude of information on gun trafficking practices in the 1970s.

14           **b.     1976 – U.S. House of Representatives, *Federal Firearms Act of 1976, H.R. Rep.***  
15           ***No. 94-1103 (NOL, Ex. 30).***

- 16                   o     Committee report, drafted after extensive hearings, discusses the weaknesses  
17 in federal firearms regulation, and how it relies almost entirely upon the  
18 cooperation of manufacturers, importers and dealers with Federal, State, and  
19 local law enforcement officials to achieve its purposes. *Id.* at 15.
- 20                   o     Details how weaknesses in federal licensing standards allow irresponsible  
21 parties to obtain federal firearms licenses. "It is these licensees who are least  
22 likely to fully comply with the requirements of Federal, State, and local law  
23 – thus increasing the likelihood that they become, either deliberately or  
24 unwittingly, major sources of criminally-used firearms – and who, by their  
25 sheer numbers, diminish the potential effectiveness of Federal enforcement  
26 and assistance initiatives." *Id.* at 16-17.
- 27                   o     New FFLs "strain the Bureau's limited resources to the breaking point." Gives  
28 numbers of new and renewal applications, and notes that 98% of the renewals  
were not investigated prior to renewal. *Id.* at 20. Concludes it is clearly not  
possible for ATF to maintain adequate checks on the thousands of FFLs. *Id.*  
at 39.
- o     Notes that "thefts from licensees contribute substantially to the illegal firearms  
population," and discusses theft of guns from common carriers. *Id.* at 25.
- o     Explains that firearm sale restrictions to out-of-state residents or disqualified  
persons "have proven to be easily circumventable." "The burden of  
identifying prohibited persons and denying them acquisition of new firearms  
falls heavily upon each firearms dealer," and the prospects for diversion are  
great. *Id.* at 26-27.

- Concludes that "[w]hile conscientious dealers make individual attempts to assure that their purchasers are State residents and not prohibited persons, the opportunity remains for lax or unscrupulous dealers to do nothing and rely on the fact that, because of lack of frequent inspection of their records, they will escape detection and avoid prosecution." *Id.* at 28.
- The Report also concludes that merely requiring multiple sales to be recorded is insufficient to curb that practice as a major source of illegal handgun supply, instead recommending a nationwide one-handgun-per-month limitation. *Id.* at 54, 64-65. "Moreover, it has become evident that this illicit firearms trafficking has been facilitated by the absence of Federal controls upon the multiple sale of handguns." *Id.* at 73.
- Commentary by the Treasury Department is included in the Report. "The Treasury Department has consistently maintained the position that the underpinnings of effective firearms regulation must be a body of responsible and cooperative Federal firearms licensees. The most critical point of contact is the implementation of Federal, State and local firearms regulations is the firearms dealer. For in the majority of cases it is he who must assure that firearms sales are in compliance with the law. In short, the Federal licensee can become a critical asset or an unmanageable liability in our quest for responsible firearms regulations." *Id.* at 69.
- Treasury also stated: "Due to the sheer magnitude of the number of licensees, it is impossible for ATF to monitor each licensee and it is becoming increasingly difficult to maintain an effective compliance program based upon even random or periodic inspections." *Id.* at 70.
- Treasury discusses the need for a greater range of penalties to deal with firearms dealers who violate the law. *Id.* at 70-71.

**c. 1976 – Bureau of Alcohol, Tobacco and Firearms, *Project Identification: A Study of Handguns Used in Crime* (NOL, Ex. 31).**

- Discusses the interstate trafficking of firearms, and how handguns move from states with weaker gun control laws to states with stronger laws.
- Report also discusses trafficking case in which South Carolina FFLs working with gun traffickers sold approximately 40,000 handguns that were trafficked to New York City.

**d. 1977 – Steven Brill, Police Foundation, *Firearms Abuse: A Research and Policy Report* (NOL, Ex. 61).**

- Discussing the role of gun thefts from dealers, the problems of multiple sales, interstate gun trafficking, and the diversion of new handguns into crime.

**e. 1989 – FFL newsletter (Vol. 2); 1992 FFL newsletter (Vol. 1) (NOL, Ex. 32).**

- Both newsletters explain to FFLs that "straw purchases" are illegal.

**f. 1993 – Bureau of Alcohol, Tobacco and Firearms, *Operation Snapshot* (June 1993) and attached *Operation Snapshot Final Report* (July 12, 1993) (NOL, Ex. 33).**

- 74% of dealers conduct the firearms business in their homes.
- Only 9% of dealers had previously been subject to an application investigation by ATF. Only 10% of dealers had been subject to a compliance inspection by ATF.
- 34% of dealers were found to have federal firearms violations. 7% of dealers were found to have violations for which a followup inspection was required.
- 4% of dealers could not account for the disposition of one or more firearms.
- 7% of dealers had multiple handgun sales within the previous 12 months.
- Report notes: "In 1968 there were about 87,000 licensees. Today there are over 287,000. In 1968 we did not have sufficient resources to inspect all licensees; nor do we today. Given our current commitment of resources, we project that it would take over ten years to inspect each and every licensee." July Final Report at i.

**g. 1994 – National Alliance of Stocking Gun Dealers, *Alliance Voice* (April 1994) (NOL, Ex. 89).**

- In a joint statement by Bill Bridgewater, Executive Director of the National Association of Stocking Gun Dealers, and numerous law enforcement executives, the parties admit, in part: "[W]ithin the firearms industry are elements who divert the flow of firearms from the legitimate trade into the more lucrative firearms black market." "We further recognize that gun licensees, who through willful, negligent or irresponsible actions contribute to the illicit gun market, undermine those businesses which carefully adhere to the letter of the law." "At present, the ATF has regulatory authority over the firearms industry, but its ability to ensure compliance with firearms laws is hampered by insufficient resources and inadequate statutory authority." *Id.* at PLTF 102540.

**h. 1994 – Bureau of Alcohol, Tobacco and Firearms, *Memorandum from the Special Agent in Charge, Los Angeles Field Division, to the Chief, Firearms Division, ATF* (NOL, Ex. 35).**

- Early tracing report of crime guns recovered in Southern California, discusses straw purchases and storefront FFLs diverting large numbers of guns into the underground market.

**i. 1995 – Bureau of Alcohol, Tobacco and Firearms, *1994 Firearms Enforcement Investigative Report* (NOL, Ex. 36).**

- "Historically, firearms trace studies have proven to be an excellent tool in identifying illegal firearms trafficking patterns, illegal purchasers, problem firearms dealers, and source areas supplying firearms." *Id.* at 19.
- Report contains 38 pages of sample trafficking cases as reported by ATF field offices throughout the U.S., including the LA field office.
- Among other charts, at page 73 is a table noting that 6,760 firearms were stolen in 1994 from FFLs and interstate carriers.

1           j.       **1995 – Glenn L. Pierce, et al., *The Identification of Patterns in Firearms***  
2                   ***Trafficking: Implications for Focused Enforcement Strategies* (Northeastern**  
3                   **University) (NOL, Ex. 75).**

- 4                   ○       Examines patterns in firearms trafficking from ATF national firearm tracing  
5                           data.
- 6                   ○       91.6% of all FFLs had no crime-related guns traced back to them as  
7                           the last retail seller. *Id.* at 11. The percentage of dealers in California  
8                           with a crime gun trace was 5.4%. *Id.* at Table 1.
- 9                   ○       .1% of all FFLs (145) accounted for approximately 25% of all guns  
10                          traced back to active FFLs. Similarly, approximately .4% of all  
11                          dealers accounted for almost half of all guns traced back to FFLs.  
12                          Each of the FFLs in this category had 25 or more traces traced to them  
13                          as the final retail seller. *Id.*
- 14                   ○       Table 6. Calculates time-to-crime averages for FFLs and compares it  
15                          to total percentage of traces. The approximately 4% of dealers who  
16                          have tracing averages of 3 years or less account for almost 44% of the  
17                          traces.
- 18                   ○       Concludes that "an extremely small number of FFLs are involved with a large,  
19                          disparate number of firearms recovered at crime scenes." *Id.* at ii.

20           k.       **1995 – Bureau of Alcohol, Tobacco and Firearms, *Sources of Crime Guns in***  
21                   ***Southern California* (NOL, Ex. 37).**

- 22                   ○       Identifies six important sources of crime guns: kitchen table dealers, corrupt  
23                          commercial dealers, unlicensed street dealers, straw purchasers, interstate  
24                          traffickers and gun thefts. *Id.* at 9.
- 25                   ○       Discusses cases involving FFLs making off-the-books diversions, and  
26                          acquiescence in straw purchases. Notes that two problem commercial dealers  
27                          have female owners of record who took over operations when previous license  
28                          was revoked. *Id.* at 9-10.
- 29                   ○       Identifies indicators for straw purchasing, including brief lag between  
30                          purchase and recovery in crime, as well as the gun being recovered from a  
31                          third party, recovered from a third party shortly after purchase, and purchased  
32                          by a female but recovered from a male. *Id.* at 18-20.
- 33                   ○       Discusses interstate trafficking of firearms into California. *Id.* at 21-23. Also  
34                          gun thefts from FFLs. *Id.* at 24.

35           l.       **1996 – Bureau of Alcohol, Tobacco and Firearms, *1996 Firearms Enforcement***  
36                   ***Report* (NOL, Ex. 38).**

- 37                   ○       Report contains 31 pages of sample trafficking cases as reported by ATF field  
38                          offices throughout the U.S., including the LA and SF field offices.

39           m.       **1997 – Bureau of Alcohol, Tobacco and Firearms, *Youth Crime Gun Interdiction***  
40                   ***Initiative, Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets***  
41                   ***in 17 Communities* (1997) (including city reports for Inglewood and Salinas, CA)**  
42                   **(NOL, Ex. 40).**



- Discusses initial findings of more comprehensive crime gun tracing by 17 cities, including Inglewood and Salinas, CA.
- "Many recovered firearms are rapidly diverted from first retail sale at FFLs to a black market that supplies juveniles and youth... . New guns in young hands signal direct diversion – by illegal firearms trafficking, including straw purchases, theft from federally licensed firearms gun dealers, or a combination of all of these." *Id.* at 8.
- "Crime guns with obliterated serial numbers are likely to have been illegally trafficked." *Id.*

**n. 1997 – Bureau of Alcohol, Tobacco and Firearms, *A Progress Report: Gun Dealer Licensing and Illegal Gun Trafficking* (NOL, Ex. 41).**

- Raymond W. Kelly, Under Secretary (Enforcement) states: "Virtually all new firearms used in crime first pass through the legitimate distribution system of federal firearms licensees." *Id.* at i.
- Discusses the rapid decline in the number of FFLs after the Brady Law was enacted. *Id.* at 2-10.
- "There is a large problem of diversion to the illegal market from licensed gun establishments." *Id.* at 15.
- "A 1994 examination showed that of the 120,370 crime guns that were traced to purchases from the FFLs then in business, 27.7% of these firearms were seized by law enforcement in connection with a crime within two years of the original sale. This rapid 'time to crime' of a gun purchased from an FFL is a strong indicator that the initial seller or purchaser may have been engaged in unlawful activity." *Id.*

**o. 1997-1998 – *CGAB Shots, News of the Crime Gun Analysis Branch, Bureau of Alcohol, Tobacco and Firearms* (NOL, Ex. 42).**

- December 1997 (Vol. I, Issue 2) – Joseph J. Vince, Jr., *Memo from the Chief re: Reducing Violent Crime Through Focused Enforcement*, at 2 (discussing successes in firearms tracing and Project LEAD and ways to strategically manage the data obtained in investigations).
- January 1998 (Vol. II, Issue 1) – Martin J. Gidron, *Tracing USA: 1997 in Review*, at 1 (citing continuing increase in guns traced and discussing how gun tracing has helped reduce violent crime).
- February 1998 (Vol. II, Issue 2) – Joseph J. Vince, Jr., *Memo from the Chief re: Where Are the Guns Coming From?*, at 2 (discussing upcoming YCGII-funded research that will explore "secondary source markets").
- March 1998 (Vol. II, Issue 3) – Joseph J. Vince, Jr., *Memo from the Chief re: Obliterated Serial Numbers: An Investigator's Gold Mine*, at 2 (discussing the importance of restoring obliterated serial numbers to shut off the flow of illegal guns to criminals).

- May 1998 (Vol. II, Issue 4) – Joseph J. Vince, Jr., *Memo from the Chief re: To Trace or Not to Trace: That is the Question!*, at 2 (discussing the importance of tracing in identifying patterns of illegal activity).
- July 1998 (Vol. II, Issue 5) – Joseph J. Vince, Jr., *Memo from the Chief re: Suspect Guns*, at 2 (discussing new tools available to identify patterns of gun traffickers).
- August 1998 (Vol. II, Issue 6) – Joseph J. Vince, Jr., *Memo from the Chief re: Obliterated Serial Numbers: A Growing Criminal's Technique and An Investigator's Gold Mine*, at 2 (discussing trends in restoring obliterated serial number).
- September 1998 (Vol. II, Issue 7) – Joseph J. Vince, Jr., *Memo from the Chief re: Multiple Sales: The Obvious Indicator*, at 2 (discussing indicators of illegal trafficking provided by multiple sale forms).
- October 1998 (Vol. II, Issue 8) – Joseph J. Vince, Jr., *Memo from the Chief re: Firearms Outside the Retail Chain*, at 2 (discussing how guns enter the secondary source market, ways criminals attempt to thwart law enforcement efforts to trace crime guns and the importance of maintaining trace data).
  - "In our latest examination of data from the 27 YCGII cities, the single source of firearms is still illegal traffickers who are acquiring firearms from retail outlets. It still appears that acquisition of firearms by false declarations and straw purchasers are still the method preferred by traffickers, both large and small." *Id.* at 2.
- November 1998 (Vol. II, Issue 9) – Joseph J. Vince, Jr., *Memo from the Chief re: G.I.S. Mapping*, at 2 ("If law enforcement can decrease the availability and accessibility of illegally trafficked firearms to a community or neighborhood, violent crime will be reduced. The continued decline in violent crime in the cities of the United States will need firearms interventions that identify those who supply weapons to the violent segment of our society.").
- December 1998 (Vol. II, Issue 10) – Joseph J. Vince, Jr., *Memo from the Chief re: The Rules Have Changed*, at 2 ("[I]llegal firearm traffickers will be looking for methods to circumvent the intent of the law and to acquire firearms for sale to a willing criminal market.").

**p. 1998 – Bureau of Alcohol, Tobacco and Firearms, *Safety and Security Information for Federal Firearms Licensees* (1998) (NOL, Ex. 43).**

- Identifies advisable security steps that FFLs should take. ATF cannot mandate these, however.

**q. 1998 – Julius Wachtel, *Sources of Crime Guns in Los Angeles, California*, 21 *Policing: An Int'l J. of Police Strategies & Mgmt.* 220 (NOL, Ex. 82).**

- This study, which is focused on Southern California, evaluates a series of surveys regarding where criminals obtain their firearms and discusses gun trafficking more generally. Mr. Wachtel, a former fellow ATF agent, concludes that dealer corruption is a significant source of supply for the illegal market. P. 234. 71% of diverted guns passed through 15 licensed dealers. Mr. Wachtel provides charts of these breakdowns.

r. **1998 – Bureau of Alcohol, Tobacco and Firearms, *Operation Snapshot: An Analysis of the Retail Regulated Firearms Industry* (NOL, Ex. 33).**

- As a follow up to *Operation Snapshot* (1993), ATF conducted a random survey of the 1998 population of approximately 100,000 FFLs, including retail dealers and pawnbrokers. The reports provides major findings with respect to both types of FFL. Among the major findings:
- For 1998 dealers selling more than 50 guns: 56% had violations during inspections, 16% reported lost or stolen guns to ATF, 52% previously had a crime gun traced to them, and 18% had guns missing from inventory. *Id.* at 12.
- For all 1998 dealers: 30% had violations, 6% reported lost/stolen guns, 22% previously had a trace, 7% had guns missing from inventory. *Id.*
- For 1998 pawnbrokers selling more than 50 guns: 30% had inspection violations, 10% reported lost/stolen guns, 56% previously had traces, 45% had guns missing from inventory. *Id.*
- For all 1998 pawnbrokers: 45% had violations, 10% reported lost/stolen guns, 44% previously had traces, 13% had guns missing from inventory. *Id.*
- Only 13% of the dealers made multiple sales, *id.* at 17, while 37% of pawnbrokers did. *Id.* at 20. "These percentages are significant because such transactions are often indicators of firearms trafficking, particularly among youth and juveniles." *Id.* at 20-21.
- Although 22% of all dealers and 44% of all pawnbrokers previously had a trace connected to them, only 8% of dealers and 20% of pawnbrokers had a crime gun traced to them within three years or less of sale. *Id.* at 28. The percentages were much higher for dealers and pawnbrokers who also had missing, or lost/stolen firearms. *Id.* at 29.

s. **1999 – Bureau of Alcohol, Tobacco and Firearms, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets in 27 Communities* (including Highlights and city reports for Inglewood, Los Angeles, and Salinas, CA) (NOL, Ex. 47).**

- Provides results from expanded comprehensive crime gun tracing for 27 cities nationwide, as well as Inglewood, Los Angeles, and Salinas, CA. Among the report's conclusions:
  - "The Trace Reports confirm that illegal trafficking is occurring in new guns." *Id.* at Highlights 1.
  - "The Performance Report shows that the most important factor leading to trafficking investigations involving juveniles and youth was analysis of trace and multiple sale records." *Id.*
  - Half of the illegal trafficking investigations reported in the Performance Report involved firearms trafficked by straw purchasers, either an individual or a ring. *Id.* at 2.

- "Experienced trafficking investigators have found that recovery of crime guns within three years is a significant trafficking indicator. New guns in juvenile or criminal hands signal direct diversion, by illegal firearms trafficking – for instance through straw purchases or off the book sales by corrupt FFLs." *Id.* at 12.
- "For purposes of firearms tracing, a crime gun is any firearm that is illegally possessed, used in a crime, or suspected to have been used in a crime." *Id.* at 5. The report is based on crime gun traces. *Id.* at 7.
- t. **1999 – Bureau of Alcohol, Tobacco and Firearms, *Youth Crime Gun Interdiction Initiative Performance Report* (NOL, Ex. 48).**
  - Discussed 640 trafficking investigations involving approximately 27,000 trafficked firearms.
  - In more than 2/3 of the investigations, the trafficked guns were known to be involved in additional crimes. *Id.* at 5.
  - More than 23% of the investigations were associated with juvenile possession. *Id.*
  - Over 1/3 of the traffickers had prior felony convictions. *Id.* at 6.
  - Half of all investigations involved trafficking through some form of straw purchase. *Id.* at 6.
  - Analysis of firearms traces and multiple sales information was the most important factor in identifying trafficking involving juveniles and youths. *Id.* at 7.
  - 1993 Sheley and Wright survey of juveniles is consistent with ATF's trace analysis showing that diversion from retail sources is a significant source of crime guns for minors. *Id.* at 9.
- u. **1999 – Report of Senator Charles Schumer, *A Few Bad Apples: Small Number of Gun Dealers the Source of Thousands of Crimes* (NOL, Ex. 77).**
  - Discusses 137 FFLs nationwide that sold more than 50 guns traced to crime in 1998. Although dealers are not identified by name, they are identified by place, along with other information. 12 dealers in California are identified as the source of 2,468 crime gun traces.
- v. **1999 – Report of Senator Charles Schumer, *Crime Guns Sold By High Crime Gun Dealers Quickly Change Hands and Are Rarely Used by Original Buyer of the Gun* (NOL, Ex. 78).**
  - Updates data from earlier Schumer report, identifying 140 high-trace FFLs nationwide. Also notes that only 13% of the crime guns were recovered from the original purchaser.
  - Two gun dealers in California, one in San Leandro and one in Fontana, each had 20 homicide guns traced back to their stores between 1996 and 1998.

- 1                   ○     The report provides more detail about 12 gun dealers in California with high  
2                             numbers of traces.
- 3       w.     **1999 – Dep't of the Treasury, Bureau of Alcohol, Tobacco and Firearms, and**  
4             **Dep't of Justice, *Gun Shows: Brady Checks and Crime Gun Traces* (NOL, Ex. 45).**
- 5                   ○     Outlines the problem of gun trafficking through gun shows. "A review of  
6                             ATF's recent investigations indicates that gun shows provide a forum for  
7                             illegal firearms sales and trafficking." *Id.* at 6.
- 8       x.     **1999 – Dep't of the Treasury and Dep't of Justice, *Gun Crime in the Age Group***  
9             ***18-20* (NOL, Ex. 46).**
- 10                  ○     Discusses the structure of the illegal market in firearms. "[M]any underage  
11                             gun users obtain firearms through illegal diversion from retail sources." *Id.*  
12                             at 3
- 13       y.     **2000 – Bureau of Alcohol, Tobacco and Firearms, *Commerce in Firearms in the***  
14             ***United States* (NOL, Ex. 49) and accompanying press release (NOL, Ex. 50).**
- 15                   ○     Describes abuse of FFL licensing procedures before statutory amendments in  
16                             1993. Many licensees would get license solely for illicit purposes. *Id.* at 1,  
17                             11-13.
- 18                   ○     1.2% of dealers (1,020 out of 83,200 FFLs and pawnbrokers) accounted for  
19                             57% of crime guns traced to dealers in 1998. Just over 450 dealers in 1998  
20                             had 10 or more traces with time-to-crime of 3 years or less. *Id.* at 2.
- 21                   ○     Analysis of crime gun traces can reveal, in combination with other  
22                             investigative techniques, both FFLs and non-FFLs actively engaged in  
23                             illegally transferring firearms to prohibited persons. *Id.* at 19. Since licensed  
24                             dealers have access to a large supply of firearms, they represent a significant  
25                             trafficking threat if they violate the law. *Id.*
- 26                   ○     Northeastern University/ATF study in 1995 identified concentration of  
27                             dealers. *Id.* at 21.
- 28                   ○     Identifies the following gun trafficking indicators: "multiple crime guns traced  
to an FFL or first retail purchaser; short time-to-crime for crime guns traced  
to an FFL or first retail purchaser; incomplete trace results, due to an  
unresponsive FFL or other causes; significant or frequently reported firearms  
losses or theft by an FFL; frequent multiple sales of handguns by an FFL or  
multiple purchases of firearms by a non-licensee, combined with crime gun  
traces; recovery of firearms with obliterated serial numbers... . concentration  
of an FFL's crime gun traces in a particular geographic area in another State."  
*Id.* at 22.
- Discusses lost and stolen guns as indicators of illegal trafficking. *Id.* at 26.  
Inventory errors are occurring at a high rate. Errors in inventory records are  
a serious problem. *Id.* at 28.
- Notes that in 1999, ATF inspectors conducted 155 firearms seminars. NSSF's  
sponsorship of "Don't Lie for the Other Guy" program on straw purchasing  
was not launched until July 2000. *Id.* at 29.

- Gives breakdown in concentration of traces among dealers. Of 83,272 retail gun dealers and pawnbrokers, more than 71,000 (85.7%) had no crime gun traces in 1998. Another 11,947 had only 1 trace. Only 2,253 FFLs had 5 or more traces. Collectively, they accounted for 71.7% of the total number of traces. *Id.* at A-23 (Table D.1).
- The size of ATF's inspection workforce has not changed significantly since ATF was established as a bureau of the Department of the Treasury in 1972. *Id.* at 17. Also discusses legal restrictions on ATF inspectors. *Id.* at 29.
- A random sampling of inspections of retail licensees in 1998 showed that 45% of pawnbrokers and 30% of other retail dealers were in violation of dealer requirements. For retail dealers that sold 50 or more firearms over the previous year, 50% were in violation. *Id.* at 30.
- Press release accompanying report announced that ATF would provide firearm manufacturers and importers, upon request, a list by serial number of the firearms they sold that were traced as crime guns during the previous year. This will enable the manufacturers and importers to police the distribution of the firearms they sell.

**z. 2000 – Bureau of Alcohol, Tobacco and Firearms, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (NOL, Ex. 51).**

- Discusses corrupt FFLs as major traffickers. *See also* pp. 12-16. Although corrupt FFLs were involved in the smallest proportion of trafficking investigations, given their access to a large number of firearms, they trafficked on average more than 350 firearms, making them the single highest source of trafficked guns. 38% of FFLs in trafficking investigations operated from retail stores, and 38% were pawn shops. *Id.* at x.
- Straw purchasing was the most common channel in firearms investigations. *Id.* at xi.
- Explains that ATF uses the terms "diversion" and "firearms trafficking" synonymously. *Id.* at 3.
- Provides numerous tables. Table 2 on sources of firearms trafficking. Table 3 on the volume of firearms diverted, by trafficking channel. Table 5 on the influence of FFL traffickers on the number of firearms trafficked.
- Notes that "while a trace of a crime gun may reveal that it was first sold at retail ten years before its recovery in crime, it is nevertheless possible that it was trafficked." *Id.* at 25.
- Explains why it is difficult to prosecute firearms traffickers and corrupt FFLs. *Id.* at 43.

**aa. 2000 – Bureau of Alcohol, Tobacco and Firearms, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999) National Report (including city reports for Los Angeles, Oakland, and San Jose, CA)* (NOL, Ex. 52).**

- Discusses the predominant role of new guns in crime. Guns entering marketplace between 1993 and 1999 represented 17% of the total nationwide supply of guns, but represented more than half of traced guns in 1999. This

1 finding confirms investigators' experience that illegal diversion is a significant  
2 aspect of gun crime. *Id.* at ix.

- 3 ○ Explains the value of ATF traces to the gun industry. "They inform federally  
4 licensed firearms dealers of crime gun patterns, allowing them to build  
5 sounder and safer businesses." *Id.* at 1.
- 6 ○ Discusses time-to-crime, multiple sales, and other indicators of gun  
7 trafficking.
- 8 ○ Makes an explicit connection between obliterated serial numbers and multiple  
9 sales. "[A]mong handguns both sold and traced in 1999, those recovered and  
10 traced with obliterated serial numbers were 2.3 times as likely to have been  
11 from a multiple sale (51 percent) as were all handguns together (22 percent).  
12 *Id.* at 40.

9 **bb. 2000 – Bureau of Alcohol, Tobacco and Firearms, *ATF Strategic Plan 2000-2005***  
10 **(NOL, Ex. 53).**

- 11 ○ Includes as one of the "Key External Factors Affecting Achievement of ATF's  
12 Goals": "Firearm industry actions – Enforcement efforts would benefit if the  
13 firearms industry takes affirmative steps to track weapons and encourage  
14 proper operation of Federal Firearms Licensees to ensure compliance with all  
15 applicable laws." *Id.* at 11.

14 **cc. 2001 – Dep't of Justice, *Gun Violence Reduction: National Integrated Firearms***  
15 ***Violence Reduction Strategy* (NOL, Ex. 54).**

- 16 ○ Report on National Strategy is joint effort of the U.S. Department of Treasury,  
17 U.S. Department of Justice, ATF, and local law enforcement. The report  
18 concludes:
  - 19 ○ "The firearms industry must do much more to help solve our country's  
20 firearms violence problem. Each gun manufacturer and distributor  
21 must do a better job of policing its own distribution chain to reduce  
22 the illegal supply of guns and keep them from falling into the hands of  
23 criminals, unauthorized juveniles, [etc.] .... We are actively  
24 encouraging firearms manufacturers to voluntarily improve their  
25 distribution controls ...." *Id.* at 6-7 (Executive Summary).
  - 26 ○ Corrupt dealers are a serious threat to public safety. *Id.* at 28.
  - 27 ○ "*Industry Self Policing*. The firearms industry can make a significant  
28 contribution to public safety by adopting measures to police its own  
distribution chain. In many industries, such as the fertilizer and  
explosives industries, manufacturers impose extensive controls on  
their dealers and distributors. Gun manufacturers and importers could  
substantially reduce the illegal supply of guns by taking similar steps  
to control the chain of distribution for firearms. To properly control  
the distribution of firearms, gun manufacturers and importers should:  
identify and refuse to supply dealers and distributors that have a  
pattern of selling guns to criminals and straw purchasers; develop a  
continual training program for dealers and distributors covering  
compliance with firearms laws, identifying straw purchase scenarios  
and securing inventory; and develop a code of conduct for dealers and

distributors, requiring them to implement inventory, store security, policy and record keeping measures to keep guns out of the wrong hands, including policies to postpone all gun transfers until NICS checks are completed." *Id.* at 34.

- "To assist industry efforts to keep guns from falling into the wrong hands, ATF will supply manufacturers that request it with information about crime gun traces of the manufacturer's or importer's firearms." *Id.*
- Explains the evolution in federal firearms laws and how ATF is hampered in combating gun trafficking. Appendix C.
- Includes the March 17, 2000 agreement by Smith & Wesson to reform its distribution practices. Agreement was signed by the U.S. Treasury Department. Appendix D.

dd. **2002 – Bureau of Alcohol, Tobacco and Firearms, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) National Report* (including city reports for Anaheim/Long Beach/Santa Ana, Los Angeles, Oakland, Salinas, San Jose, and Stockton, CA) (NOL, Ex. 56).**

- Notes that crime gun trace reports "inform federally licensed firearm dealers of crime gun patterns, allowing them to build sounder and safer businesses." *Id.* at 1.
- Report give analyses of crime gun traces, including time to crime, the significance of multiple sales and obliterated serial numbers, the concentration of traces among certain retail dealers.
- "One of the findings of the Crime Gun Trace Reports is that a large proportion of youth crime guns are quite new and most likely deliberately and illegally trafficked." *Id.* at 66.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 31st day of January, 2003, at Frederick, Maryland.

/s/ Joseph J. Vince, Jr.

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Joseph J. Vince, Jr.



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