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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

PLAINTIFFS' OPPOSITION TO CERTAIN
DEFENDANTS' MOTION FOR AN
ORDER PRECLUDING EVIDENCE THAT
DEFENDANTS' ALLEGED CONDUCT
HAS CAUSED ACQUISITION OF
FIREARMS BY CRIMINALS AND OTHER
PROHIBITED PERSONS AND MOTION
TO STRIKE

Date: August 2, 2002
Time: 8:30 a.m.
Place: Dept. 65

Hon. Vincent P. DiFiglia

7/22/02

TABLE OF CONTENTS

		Page
1		
2		
3		
4	I. Introduction	1
5	II. Defendants Are Not Entitled to Preclusion Sanctions	2
6	A. Plaintiffs Have Fulfilled Their Discovery Obligations	2
7	B. There Is No Legal Basis to Issue Preclusion Sanctions	5
8	III. Plaintiffs Need Not Prove Specific Incidents of Harm Resulting from Defendants' Unfair	
9	Business Practices to Establish Claims Under the Business & Professions Code and	
	Public Nuisance Law	6
10	A. Plaintiffs Are Entitled to Prevail Under the Bus. & Prof. Code upon Proof that	
11	Defendants Engaged in Unfair Business Practices	7
12	B. Plaintiffs Are Entitled to an Injunction upon Proof that Defendants Caused a	
	Public Nuisance	9
13	IV. Plaintiffs Will Prove that Defendants' Business Practices Facilitate the Criminal Gun	
14	Market, Constitute Unfair Business Practices, and Cause a Public Nuisance, Without	
	Relying on Individual Gun Incidents	11
15	A. Defendants' Facilitation of the Criminal Gun Market Constitutes an Unfair	
16	Business Practice and Warrants Liability Under Public Nuisance Law	12
17	B. Law Enforcement, Experts, and Defendants Themselves Recognize that	
18	Defendants Engage in Unfair Business Practices that Supply the Criminal	
19	Market	13
20	1. Defendants Utilize High-Risk Dealers to Sell Their Guns	18
21	2. Although Defendants Recognize the Need to Oversee Their	
22	Distribution, They Sell Guns Without a Code of Conduct or	
23	Reasonable Oversight Governing Downstream Sellers	21
24	3. Defendants Allow Dealers to Engage in Practices that the Industry	
25	Recognizes Contribute to Illegal Straw Purchases	25
26	4. Although Multiple Sales Supply the Criminal Market, Defendants	
27	Permit Their Dealers to Engage in Such Sales	27
28	5. Defendants Utilize Dealers Whose Inadequate Anti-Theft Measures	
	Cause Stolen Guns to Fuel the Criminal Market	28
	6. Defendants' Refusal to Sell Guns with Appropriate Safety Features	
	Enables Criminals to Use Guns	29
	7. Expert Testimony Will Confirm that Defendants' Unfair Business	
	Practices Cause Diversion of Guns to the Underground Market	30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. Conclusion 31

TABLE OF AUTHORITIES

CASES

Page

<i>Bakersfield v. Miller</i> , 64 Cal. 2d 93 (1966)	10
<i>Bank of the West v. Superior Ct.</i> , 2 Cal. 4th 1254 (1992)	8
<i>Cairns v. Franklin Mint Co.</i> , 24 F. Supp. 2d 1013 (C.D. Cal. 1998)	9
<i>Californians for Population Stabilization v. Hewlett-Packard Co.</i> , 58 Cal. App. 4th 273 (1997)	7
<i>Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.</i> , 20 Cal. 4th 163 (1999)	7
<i>Chern v. Bank of Am.</i> , 15 Cal. 3d 866 (1976)	8, 9
<i>Cnty. Assisting Recovery, Inc. v. Aegis Sec. Ins. Co.</i> , 92 Cal. App. 4th 886 (2001)	7
<i>Cottle v. Superior Court</i> , 3 Cal. App. 4th 1367 (1992)	5, 6
<i>County of San Diego v. Carlstrom</i> , 196 Cal. App. 2d 485 (1961)	10
<i>Day v. AT & T Corp.</i> , 63 Cal. App. 4th 325 (1998)	7
<i>Deyo v. Kilbourne</i> , 84 Cal. App. 3d 771 (1978)	5
<i>Freeman v. Time, Inc.</i> , 68 F.3d 285 (9th Cir. 1995)	9
<i>Juarez v. Boy Scouts of Am., Inc.</i> , 81 Cal. App. 4th 377 (2000)	5, 6
<i>Koll-Irvine Ctr. Prop. Owners Ass'n v. County of Orange</i> , 24 Cal. App. 4th 1036 (1994)	10
<i>McGinty v. Superior Ct.</i> , 26 Cal. App. 4th 204 (1994)	5
<i>Pate v. Channel Lumber Co.</i> , 51 Cal. App. 4th 1447 (1997)	5
<i>People ex rel. Van de Kamp v. Cappucio, Inc.</i> , 204 Cal. App. 3d 750 (1988)	8

	Page
1	
2	<i>People v. E.W.A.P., Inc.</i> ,
3	106 Cal. App. 3d 315 (1980) 8
4	<i>People v. Pac. Land Research Co.</i> ,
5	20 Cal. 3d 10 (1977) 9
6	<i>Prata v. Superior Ct.</i> ,
7	91 Cal. App. 4th 1128 (2001) 8
8	<i>R.S. Creative, Inc. v. Creative Cotton, Ltd.</i> ,
9	75 Cal. App. 4th 486 (1999) 4
10	<i>S. Bay Chevrolet v. Gen. Motors Acceptance Corp.</i> ,
11	72 Cal. App. 4th 861 (1999) 8
12	<i>Sauer v. Superior Court</i> ,
13	195 Cal. App. 3d 213 (1987) 5,6
14	<i>Saunders v. Superior Ct.</i> ,
15	27 Cal. App. 4th 832 (1994) 7, 8, 9
16	<i>Selma Pressure Treating Co., Inc. v. Osmose Wood Preserving, Inc.</i> ,
17	221 Cal. App. 3d 1601 (1990) 10, 11
18	<i>Stoiber v. Honeychuck</i> ,
19	101 Cal. App. 3d 903 (1980) 8
20	<i>Vallbona v. Springer</i> ,
21	43 Cal. App. 4th 1525 (1996) 4
22	<i>Williams v. Volkswagenwerk Aktiengesellschaft</i> ,
23	180 Cal. App. 3d 1244 (1986) 5
24	
25	STATUTES, RULES AND REGULATIONS
26	18 U.S.C.
27	§922(d) 11
28	
29	California Business and Professions Code
30	§17200 1, 7, 8
31	§17500 1, 7, 8, 9
32	California Civil Code
33	§3479 10
34	§3480 10
35	California Code of Civil Procedure
36	§2023 5
37	California Penal Code
38	§12072(a)(9)(A) 27

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25
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27
28

Page

California Rules of Court	
Rule 1541	31
Rule 1541(a)(4)	2

SECONDARY AUTHORITIES

<i>Restatement (Second) of Torts</i>	
§821B (1979)	10
W. Page Keeton, et al.,	
<i>Prosser and Keeton on the Law of Torts</i> , §90 (5th ed. 1984)	10

1 **I. Introduction**

2 Certain Defendants' Motion for an Order Precluding Evidence That Defendants' Alleged Conduct
3 Has Caused Acquisition of Firearms By Criminals and Other Prohibited Persons ("Defs.' Mot.") seeks
4 discovery sanctions that would preclude plaintiffs from introducing evidence on an issue central to this case.
5 To support their request, defendants misrepresent the nature and scope of the discovery requests at issue,
6 plaintiffs' responses, and the relevant orders entered by this Court. In fact, plaintiffs have complied fully
7 with the Court's orders and their discovery obligations. No basis exists to impose discovery sanctions.

8 Defendants' baseless accusations are a thinly disguised attempt to attack the sufficiency of plaintiffs'
9 claims. Defendants ask this Court to find, based solely on attorney affidavits, that "[t]here is no evidence
10 demonstrating that the manner in which criminals or other persons acquired any firearm manufactured or
11 sold by a defendant in this case was caused by the conduct of any defendant manufacturer or seller."¹ Not
12 only is this "finding" false, but it would arguably dispose of plaintiffs' case. No such ruling should be
13 considered short of summary judgment, upon a full record of fact and expert evidence, and a full airing of
14 the ultimate relevant legal issues that will determine defendants' liability under California law. It should not
15 be entertained backhandedly in a discovery motion.

16 Indeed, plaintiffs intend to offer at trial defendants' admissions, findings of law enforcement, as well
17 as expert testimony (to be revealed when expert discovery begins next month), statistical and other
18 evidence that prove that defendants have chosen to utilize the high-risk sellers and business practices that
19 they know, or should know, supply the criminal gun market and that their unfair business practices facilitate
20 a public nuisance.² This evidence amply supports imposing penalties under California Business and
21 Professions Code §§ 17200 and 17500 and an injunction under public nuisance law. Since plaintiffs do not
22 seek to recover damages attributable to individual criminal gun possessions, the evidence requested by
23 defendants (relating to how individual criminals came to possess guns) is beside the point.

24 Neither the Code nor public nuisance law requires that plaintiffs prove that defendants caused
25 specific criminal gun incidents, much less that defendants were complicit with specific illegal gun sales, as
26 defendants suggest. No authority supports defendants' proposal that plaintiffs be barred from introducing

27 ¹ Defs.' Proposed Order at 2.

28 ² Some of this evidence is filed as exhibits to the Notice of Lodgment, referred to herein as "Ex. ____."

1 at trial the evidence that plaintiffs have produced, and expert evidence they are not yet required to produce,
2 that prove that defendants' business practices cause criminal acquisition of guns. Defendants are not
3 entitled to any sanctions and certainly not the death-knell preclusion order they propose. The motion
4 should be denied.

5 Plaintiffs do believe that this Court, under Rule 1541(a)(4) of the California Rules of Court, can and
6 should "provide a method ... for the submission of preliminary legal questions that might serve to expedite
7 the disposition of the coordinated actions." The parties could benefit greatly from a ruling that decides the
8 often-recurring issue of whether plaintiffs must prove their case incident-by-incident and gun-by-gun, as
9 defendants argue, or, as plaintiffs demonstrate below, through defendants' admissions, law enforcement
10 findings, expert and other evidence that prove defendants jeopardize the safety of the People of California
11 by choosing to utilize the high-risk business practices that supply the criminal gun market. While a
12 determination of this issue is not necessary to deny defendants' motion, such a ruling would nonetheless
13 enable a more efficient resolution of this case.

14 **II. Defendants Are Not Entitled to Preclusion Sanctions**

15 **A. Plaintiffs Have Fulfilled Their Discovery Obligations**

16 In seeking the imposition of issue and evidence sanctions, defendants blatantly mislead this Court
17 by asserting that plaintiffs willfully and repeatedly violated this Court's Orders relating to the production of
18 incident reports and related acquisitional history for firearms previously identified by plaintiffs. In fact,
19 plaintiffs have complied with the Court's Orders by producing all responsive documents in their possession.

20 Under this Court's March 26, 2001 Order, plaintiffs were required to:

21 disclose documents in their possession responsive to Sturm Ruger Requests for Production
22 1, 3 and 4 which reflect how criminals and others acquired the firearms manufactured
23 and/or sold by defendants and *previously identified by plaintiffs* and whether the
24 manner of acquisition has a factual nexus to defendants' alleged conduct.³

25 The scope of production required by the Orders may be discerned from the motions that resulted in their
26 issuance. Defendant Sturm Ruger described the documents sought by its document requests Nos. 1, 3 and
27 4 as:

28 police department files in plaintiffs' possession relating to recovered firearms, including
incident reports and supplementary investigative material, and ... records and information

³ Defendants' NOL Ex. 2 (emphasis added).

1 received by plaintiffs from the Bureau of Alcohol, Tobacco and Firearms ("BATF") tracing
2 the acquisitional history of recovered firearms.⁴

3 That this discovery is limited to certain firearms previously identified by plaintiffs is further evidenced by the
4 July 13, 2001 Stipulation and Order, which required plaintiffs to produce "incident reports and related
5 acquisitional history" for certain identified firearms from the City of Los Angeles and County of Los Angeles
6 and by the "meet and confer" discussions on this issue, during which the parties agreed that plaintiffs would
7 produce the incident reports and related acquisitional history *only* for those firearms that plaintiffs had
8 previously identified in discovery. The Court recognized this limitation during the hearing on March 20,
9 2001, stating: "What I understood ... is that, number one, there was an agreement to limit the discovery to
10 certain firearms."⁵

11 Plaintiffs have produced exactly what the parties agreed upon and what was required under the
12 Court's Orders: incident and investigative reports and related acquisitional history for firearms previously
13 identified by plaintiffs. All plaintiffs other than the City of Los Angeles and the County of Los Angeles have
14 produced the incident reports and investigative files in their possession that relate to the firearms they
15 previously identified as having been recovered in their jurisdictions.⁶ The City and the County of Los
16 Angeles have provided a sampling of such documents, as required by the July 13, 2001 Stipulation and
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20 ⁴ Memorandum of Points and Authorities in Support of *Ex Parte* Motion For Order Compelling
21 Plaintiffs' Disclosure of Facts And Documents Relating To The Acquisitional History of Firearms
22 Recovered By Plaintiffs at 3 (filed March 13, 2001). Moreover, contrary to defendants' assertion (Defs.
23 Mot. at 3), plaintiffs expressed no confusion at the March 20, 2001 hearing regarding the type of
24 documents required to be produced under the Order. Plaintiffs merely sought at the hearing, as they had
25 in meet-and-confers with defendants, to obtain assurances that defendants be prevented from seeking to
26 expand the scope of the discovery requests at issue after plaintiffs searched and produced responsive
27 documents, thereby requiring plaintiffs to conduct repetitive searches in each of the jurisdictions. *See* Ex.
28 1 (Transcript of March 20, 2001 Hearing at 255-56) ("The remaining concern we have, Your Honor, is
that the defendants are asking for certain things now, but I don't have any assurances that they are not going
to come back and ask us to look for different things in the same places later on"); *see also* Plaintiffs'
Response and Opposition to Defendants' *Ex Parte* Application to Compel Plaintiffs' Disclosure of Facts
and Documents Relating to Acquisitional History of Firearms at 1-3.

⁵ Ex.1 at 260 (Transcript of March 20, 2001 Hearing).

⁶ *See* Declaration of Jonah H. Goldstein filed herewith ("Goldstein Decl."), ¶2.

1 Order.⁷ Although plaintiffs have consistently maintained that these documents have limited probative value,⁸
2 they have produced thousands of pages of incident and investigative reports,⁹ including documents relating
3 to the acquisitional history of these firearms, such as ATF trace information where available.

4 Although plaintiffs finished this production on May 24, 2002, defendants have not asserted, before
5 this motion, that plaintiffs violated the Court's Orders by failing to produce responsive documents.
6 Defendants now claim that plaintiffs intentionally violated the Court's Orders by "unilaterally cho[osing] the
7 documents they produced while acknowledging that they were not responsive."¹⁰ Defendants' assertion
8 is false. Plaintiffs have fully complied with this Court's Orders.

9
10 **B. There Is No Legal Basis to Issue Preclusion Sanctions**

11 There are two absolute prerequisites to imposing issue or evidence sanctions under Code of Civil
12 Procedure §2023: "there must be a failure to comply ... and ... the failure must be wilful [sic]."¹¹ "[T]he
13 purpose of discovery sanctions 'is not 'to provide a weapon for punishment, forfeiture and the avoidance
14 of a trial on the merits,'" but to prevent abuse of the discovery process and correct the
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19 ⁷ See Defendants' NOL Ex. 4 and Goldstein Decl., ¶2.

20 ⁸ During the June 19, 2001 hearing, plaintiffs' counsel made this fact obvious, stating:

21 I think the Court is familiar enough with police reports to know there is not much
22 information about acquisitional history of guns. All the material they get between now and
23 December 31 is going to be make work. I really believe that personally, but I understand
24 it is a case; they are entitled to discovery; the Court made a ruling, and we'll comply with
25 it.

26 Ex. 2 at 272 (Transcript of June 19, 2001 hearing).

27 ⁹ Goldstein Decl., ¶2.

28 ¹⁰ Defs.' Mot. at 12.

¹¹ *Vallbona v. Springer*, 43 Cal. App. 4th 1525, 1545 (1996) (unless otherwise noted, all emphasis is added and citations are omitted); *R.S. Creative, Inc. v. Creative Cotton, Ltd.*, 75 Cal. App. 4th 486, 496 (1999).

1 problem presented."¹² Issue and evidence preclusion sanctions are drastic measures, issued only when a
2 party uses the discovery process to deliberately stall, thwart, "play games," engage in "trial by ambush," or
3 otherwise prevent a party from gathering discoverable material or when there is a pattern of discovery
4 abuses.¹³ Defendants have made no showing of such abuses. On the contrary, plaintiffs have complied
5 with discovery.
6

7 Defendants' reliance on *Cottle v. Superior Court*, 3 Cal. App. 4th 1367, 1379-81 (1992), is
8 misplaced. In *Cottle*, the court upheld an exclusion order that was issued on the eve of trial upon a finding
9 that plaintiffs were "evasive," produced no evidence – including in their expert statements – regarding how
10 they were exposed to toxins produced by defendants and conceded that they could not "identify any injuries
11 caused by exposure to chemical substances."¹⁴ Defendants here acknowledge that the timing of the order
12 in *Cottle* was critical,¹⁵ but seek to misapply it to this case where there are no discovery abuses and fact
13 and expert discovery are not completed. Similarly, the preclusion order upheld in *Sauer v. Superior*
14 *Court*, 195 Cal. App. 3d 213, 218 (1987), was issued five days before trial and only after finding that
15 "plaintiff's attorney has not followed or even attempted to follow the rules of discovery" and there had been
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21 ¹² *McGinty v. Superior Ct.*, 26 Cal. App. 4th 204, 210 (1994).

22 ¹³ See, e.g., *Pate v. Channel Lumber Co.*, 51 Cal. App. 4th 1447, 1454-55 (1997) (precluding
23 evidence when defendant "'had played games with plaintiffs regarding documentation [defendant] knew
24 or should have known was relevant to [plaintiff's] inquiry'" and "had made an 'absolute and deliberate
25 attempt to thwart discovery for the purpose of gaining a tactical advantage at ... trial,'" and since the "misuse
26 of discovery procedures" was not discovered until trial concluding no other sanction would be appropriate).
27 See also *Juarez v. Boy Scouts of Am., Inc.*, 81 Cal. App. 4th 377, 389 (2000) (quoting *Williams v.*
28 *Volkswagenwerk Aktiengesellschaft*, 180 Cal. App. 3d 1244, 1245 (1986) ("The purpose of the
discovery rules is to 'enhance the truth seeking-function of the litigation process and eliminate trial strategies
that focus on gamesmanship and surprise.'"); *Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 781 (1978) (noting
that "our discovery laws were designed to prevent trial by ambush").

¹⁴ *Cottle* at 1372-75, 1381.

¹⁵ Defs.' Mot. at 10, n.14.

1 a "flagrant, inexcusable and protracted noncompliance" with a pretrial order specifically ordering the
2 production of records that were fundamental to plaintiff's claim.¹⁶

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4 Plaintiffs have cooperated in discovery and fully complied with this Court's Orders. There is no
5 threat of "trial by ambush," expert discovery has not begun, and trial is months away. There is no basis to
6 impose the draconian sanctions defendants request. The motion should be denied.¹⁷

7 **III. Plaintiffs Need Not Prove Specific Incidents of Harm Resulting from**
8 **Defendants' Unfair Business Practices to Establish Claims Under the Business**
9 **& Professions Code and Public Nuisance Law**

10 In addition to their mischaracterization of plaintiffs' responses to discovery, defendants erroneously
11 presume that plaintiffs can prevail on their claims only upon an incident-by-incident showing with respect
12 to each firearm recovered by plaintiffs' law enforcement officials from criminals and unauthorized
13 possessors.¹⁸ In fact, plaintiffs need prove only that defendants have engaged in unfair business practices
14 (to establish their claims under the Code) and that they have contributed to a potential danger to the public
15 (to prevail under public nuisance law).

16
17 For the reasons stated above, there is no basis to grant defendants' motion. This is true regardless
18 of whether plaintiffs must prove their claims on an incident-by-incident basis. However, a ruling as to
19 whether plaintiffs or defendants are correct on that issue should avoid further discovery disputes (of which
20 this motion is not the first) and make future proceedings more focused and efficient. Plaintiffs therefore
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24 ¹⁶ *Sauer*, 195 Cal. App. 3d at 220, 222. Likewise, the exclusion order in *Juarez* was issued
25 because plaintiffs' responses did not identify any particular documents or other evidence or witnesses, and
again they did not identify or produce the documentary basis for what little information was provided." *Juarez*, 81 Cal. App. 4th at 387.

26 ¹⁷ The motion should also be denied with respect to defendant distributors, who joined in the
27 manufacturers' motion, but do not assert that plaintiffs have failed to comply with any discovery they have
propounded.

28 ¹⁸ *See, e.g.,* Defs.' Mot. at 7, 9.

1 request that the Court exercise its authority under C.R.C. 1541(a)(4) to resolve this question. Below,
2 plaintiffs demonstrate that an incident-by-incident analysis is not required to prove their case.

3
4 **A. Plaintiffs Are Entitled to Prevail Under the Bus. & Prof. Code upon
5 Proof that Defendants Engaged in Unfair Business Practices**

6 California Bus. & Prof. Code §§17200 and 17500, and the case law construing them, make clear
7 that defendants may be penalized for engaging in unlawful and unfair business practices. There is no
8 requirement that plaintiffs prove that a specific exercise of the practice caused a specific injury. Plaintiffs
9 need not prove their case through an incident-by-incident analysis.

10 Section 17200 prohibits "unfair competition," which is broadly defined to "include any unlawful,
11 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any
12 act prohibited by Chapter 1 (commencing with Section 17500)...."¹⁹ An unfair practice is one whose harm
13 to the victim outweighs its benefits,²⁰ based on the practice's "impact on its alleged victim, balanced against
14 the reasons, justifications and motives of the alleged wrongdoer."²¹ A practice may also be deemed unfair
15 if it "offends an established public policy or ... is immoral, unethical, oppressive, unscrupulous or
16 substantially injurious to consumers."²²

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23 ¹⁹ "[T]he section was intentionally framed in its broad, sweeping language, precisely to enable judicial
24 tribunals to deal with the innumerable 'new schemes which the fertility of man's invention would contrive.'
25 *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 181 (1999); Bus.
26 & Prof. Code §17200.

27 ²⁰ *Day v. AT & T Corp.*, 63 Cal. App. 4th 325, 332 (1998); *Saunders v. Superior Ct.*, 27 Cal.
28 App. 4th 832, 839 (1994).

²¹ *Californians for Population Stabilization v. Hewlett-Packard Co.*, 58 Cal. App. 4th 273, 286
(1997).

²² *Cnty. Assisting Recovery, Inc. v. Aegis Sec. Ins. Co.*, 92 Cal. App. 4th 886, 894 (2001).

1 The Code imposes no separate or additional "causation" requirement.²³ To state a claim under the
2 act "one need only show that 'members of the public are *likely* to be deceived'" or injured.²⁴ Plaintiffs are
3 certainly not required to show, incident-by-incident, how they were injured, as "a section 17200 violation,
4 unlike common law fraud, can be shown even if no one was actually deceived, relied upon the fraudulent
5 practice, or sustained any damage."²⁵ As the Court of Appeal noted in finding that a "trial court used the
6 wrong standard in focusing on issues of proof regarding individual consumers," "there is no need to examine
7 each consumer transaction to establish a violation of section 17200."²⁶ Defendants' intent is also irrelevant,
8 as "[t]he statute imposes strict liability. It is not necessary to show that the defendant intended to injure
9 anyone."²⁷ Further, there is no support for defendants' assertion that plaintiffs must prove "that any
10 manufacturer knew of a dealer's intent to commit a criminal act or was otherwise complicit in the criminal
11 conduct."²⁸
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16 ²³ See *Saunders*, 27 Cal. App. 4th at 839 ("plaintiff suing under section 17200 does not have to
17 prove he or she was directly harmed by the defendant's business practices" where certified shorthand
18 reporters brought action alleging unfair business practices in which group of reporters entered into exclusive
19 contract to report depositions taken by lawyers for certain insurance companies); *Stoiber v. Honeychuck*,
20 101 Cal. App. 3d 903, 927 (1980) (section 17200 does not require proof of a competitive injury where
21 tenants brought claims against former landlord and rental agents concerning dilapidated and unsafe
22 condition of rented premises). Where the defendants' conduct was actionable under section 17200 because
23 it was an unlawful violation of some other statute—including statutes prohibiting maintenance of a public
24 nuisance—courts have also made clear that no proof of injury is required. *People ex rel. Van de Kamp*
25 *v. Cappuccio, Inc.*, 204 Cal. App. 3d 750, 760 (1988); *People v. E.W.A.P., Inc.*, 106 Cal. App. 3d 315,
26 319-20 (1980).

27 ²⁴ *Bank of the West v. Superior Ct.*, 2 Cal. 4th 1254, 1267 (1992) (quoting *Chern v. Bank of Am.*,
28 15 Cal. 3d 866, 876 (1976) (citing section 17500)).

29 ²⁵ *Prata v. Superior Ct.*, 91 Cal. App. 4th 1128, 1146 (2001).

30 ²⁶ *Id.* at 1143-44. Courts may "order restitution without individualized proof of deception, reliance,
31 and injury if necessary to prevent the use or employment of an unfair practice." *Id.* at 1144.

32 ²⁷ *S. Bay Chevrolet v. Gen. Motors Acceptance Corp.*, 72 Cal. App. 4th 861, 877 (1999).

33 ²⁸ Defs.' Mot. at 7. See also *id.* ("In the absence of knowledge or complicity on the part of the
34 manufacturer, there can be no basis on which to conclude that acquisition of firearms from criminal sellers
... was caused by a manufacturer's conduct.")

1 Similarly, section 17500 requires that plaintiffs show that the general public is "likely to be deceived"
2 by defendants' advertisements, based on how a "reasonable consumer" would have interpreted the
3 advertisement.²⁹ "Intent of the disseminator and knowledge of the customer are both irrelevant."³⁰ Plaintiffs
4 need not prove that defendants' actions caused injury to a particular person. "[O]nly the violation of [the]
5 statute is necessary to justify injunctive relief and civil penalties."³¹
6

7 Plaintiffs may prevail by showing that defendants' business practices are unlawful or unfair. They
8 need not prove they – or any specific individual – were "directly harmed by the defendant's business
9 practices."³²
10

11 **B. Plaintiffs Are Entitled to an Injunction upon Proof that Defendants**
12 **Caused a Public Nuisance**

13 This Court may issue an injunction upon proof that defendants have contributed to a public nuisance
14 without proof of how specific criminals came to possess guns. Under California law, a public nuisance
15 includes "[a]nything which is injurious to health, or is indecent or offensive to the senses, or an obstruction
16 to the free use of property, so as to interfere with the comfortable enjoyment of life or property...."³³ A
17 public nuisance, by its nature, has large-scale, aggregate effects.³⁴ Plaintiffs are not required to show that
18 an individual injury has occurred, only that a substantial danger exists.³⁵ For example, the storage of
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21 ²⁹ *Cairns v. Franklin Mint Co.*, 24 F. Supp. 2d 1013, 1037 (C.D. Cal. 1998), quoting *Freeman*
22 *v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995).

23 ³⁰ *Chern*, 15 Cal. 3d at 876; *see also Cairns*, 24 F. Supp. 2d at 1037.

24 ³¹ *People v. Pac. Land Research Co.*, 20 Cal. 3d 10, 18 n.7 (1977).

25 ³² *Saunders*, 27 Cal. App. 4th at 839.

26 ³³ Cal. Civ. Code §3479.

27 ³⁴ Cal. Civ. Code §3480 (public nuisance affects "an entire community or neighborhood, or any
28 considerable number of persons").

³⁵ *Restatement (Second) of Torts*, §821B cmt. g (1979) ("The obstruction of a public highway is
a public nuisance, although no one is travelling [sic] upon the highway or wishes to travel on it at the time.").

1 explosives or "harboring a vicious dog" can be a public nuisance, whether or not an explosion or bite has
2 occurred.³⁶ California courts have firmly established that proof of a hazard or danger is sufficient for a
3 public nuisance claim.³⁷ Plaintiffs will prove that defendants have put the health and safety of California
4 communities at risk by facilitating the criminal gun market. This is sufficient to support an injunction against
5 defendants' conduct.

7 Defendants fail to recognize that plaintiffs have brought their public nuisance claims as public entities
8 on behalf of the people of the state. Proof of particularized injury to plaintiff is required only if a public
9 nuisance action is brought by a private party rather than a public entity.³⁸ Defendants also overlook the fact
10 that plaintiffs seek only injunctive relief on their nuisance claim, and "for an injunction [to be awarded,] harm
11 need only be threatened and need not actually have been sustained at all."³⁹

13 It is well-established that a public nuisance may be shown without evidence that specific persons
14 were injured. The nuisance is established by the risk-creating conduct alone. For example, in *Selma*
15 *Pressure Treating Co., Inc. v. Osmose Wood Preserving, Inc.*, 221 Cal. App. 3d 1601 (1990), the
16 plaintiff alleged that defendants' recommended disposal practices for chemical waste "might threaten the
17 safety of the underlying water supply" because of "the dangerous propensities of the waste chemicals."⁴⁰

21 ³⁶ W. Page Keeton, et al., *Prosser and Keeton on the Law of Torts*, §90, at 644 (5th ed. 1984);
22 see, e.g., *Bakersfield v. Miller*, 64 Cal. 2d 93, 99-102 (1966) (building is public nuisance if it is shown
to pose sufficient degree of danger to public).

23 ³⁷ See, e.g., *County of San Diego v. Carlstrom*, 196 Cal. App. 2d 485, 491 (1961) ("[n]o one has
24 the right to inflict unnecessary and extreme danger to the life, property and happiness of others" and that
"[t]he greater the number of people threatened, the greater becomes the need for abatement correction").

25 ³⁸ *Koll-Irvine Ctr. Prop. Owners Ass'n v. County of Orange*, 24 Cal. App. 4th 1036, 1039-40
26 (1994) (allegation that fuel storage tanks posed "severe and unnecessary risk" and threatened "potential
disaster" would be sufficient to state public nuisance claim if brought by public entity).

27 ³⁹ *Restatement*, §821B cmt. i.

28 ⁴⁰ *Selma Pressure Treating Co.*, 221 Cal. App. 3d at 1620.

1 The Court found these were "sufficient allegations of fact showing [defendant] created or assisted in the
2 creation of a public nuisance."⁴¹

3
4 To require plaintiffs to prove defendants' contribution to the public nuisance of illegal guns only
5 through evidence connecting defendants to specific illegal guns and shootings would not only be contrary
6 to law, it would effectively reward defendants for their misconduct. As defendants concede, the nature of
7 the illegal market makes it inherently difficult to track the path of particular guns.⁴² These evidentiary
8 hurdles are heightened by defendants' failure to monitor and supervise their downstream sales, as well as
9 by the fact that participants to illegal gun transactions have an interest in secrecy because they are guilty of
10 federal crimes.⁴³ Defendants seek to use the secrecy inherent in the movement of particular guns into the
11 criminal market to insulate themselves from accountability for supplying that market. This tactic is
12 inconsistent with the law of public nuisance.
13
14

15 **IV. Plaintiffs Will Prove that Defendants' Business Practices Facilitate the**
16 **Criminal Gun Market, Constitute Unfair Business Practices, and Cause a**
17 **Public Nuisance, Without Relying on Individual Gun Incidents**

18 Plaintiffs will prove that defendants are liable under the Cal. Bus. & Prof. Code and public nuisance
19 law with defendants' admissions, expert analyses, law enforcement findings, and other evidence that
20 demonstrate that defendants' practices facilitate the supply of guns to the criminal market. While plaintiffs
21 may offer examples of criminals or traffickers obtaining specific guns as a result of manufacturers' conduct,
22 such proof is neither required nor is "fundamental" to their claims. Plaintiffs can prevail without a "gun-by-
23 gun" analysis.
24

25
26 ⁴¹ *Id.*

27 ⁴² Defs.' Mot. at 7 ("Detection of covert criminal behavior poses significant challenges to law
28 enforcement even with its authority, resources and presence in the community.").

⁴³ *See, e.g.*, 18 U.S.C. §922(d) (prohibiting straw purchases).

1 **A. Defendants' Facilitation of the Criminal Gun Market Constitutes an**
2 **Unfair Business Practice and Warrants Liability Under Public Nuisance**
3 **Law**

4 Defendants know that many of their guns are sold by unscrupulous or irresponsible gun dealers and
5 in high-risk sales practices that supply the criminal market, and that by selling guns without features that
6 prevent unauthorized use, they enable criminals to use stolen guns, another source of supply for the criminal
7 market. Nonetheless, defendants choose to continue to engage in these unreasonable, dangerous business
8 practices that supply the criminal market. The unfair business practices engaged in by defendants have at
9 least three components:
10 least three components:

- 11 • Selling guns without requiring adherence to a code of responsible conduct: Defendants
12 should require all downstream sellers to use responsible business practices to prevent "high
13 risk" sales practices, including barring multiple sales, screening for and avoiding suspect or
14 straw purchases, and implementing anti-theft security measures.
- 15 • Selling guns without monitoring performance of individual distributors and dealers with
16 respect to indicators of possible high-risk conduct and without sanctioning those who
17 continue to supply large numbers of guns traced to crime: Defendants should obtain
18 information about their downstream sellers, including numbers of crime guns sold, multiple
19 sales, thefts, repeat customer sales, investigations, indictments, etc., and they should refuse
20 to supply "high risk" dealers.
- 21 • Selling guns without feasible safety features to prevent unauthorized use: Defendants should
22 sell guns with internal locks or other safety features that would prevent criminals from using
23 stolen guns and should market their guns in a manner that does not exacerbate their risks.

24 **B. Law Enforcement, Experts, and Defendants Themselves Recognize that**
25 **Defendants Engage in Unfair Business Practices that Supply the**
26 **Criminal Market**

27 The United States Department of Justice has recognized that defendants' business practices cause
28 criminal gun acquisition, and it has conveyed its conclusion and proposed remedies to defendants. In a
29 major public report entitled *Gun Violence Reduction: National Integrated Firearms Violence*
30 *Reduction Strategy*, the Justice Department called on gun manufacturers to "self-police" their distribution

1 chain, stating they "could substantially reduce the illegal supply of guns" by instituting controls on
2 downstream sellers. The Justice Department stated:

3
4 The firearms industry can make a significant contribution to public safety by
5 adopting measures to police its own distribution chain. In many industries, such as the
6 fertilizer and explosives industries, manufacturers impose extensive controls on their dealers
7 and distributors. Gun manufacturers and importers could substantially reduce the illegal
8 supply of guns by taking similar steps to control the chain of distribution for firearms. To
9 properly control the distribution of firearms, gun manufacturers and importers should:
10 identify and refuse to supply dealers and distributors that have a pattern of selling guns to
11 criminals and straw purchasers; develop a continual training program for dealers and
12 distributors covering compliance with firearms laws, identifying straw purchase scenarios
13 and securing inventory; and develop a code of conduct for dealers and distributors,
14 requiring them to implement inventory, store security, policy and record keeping measures
15 to keep guns out of the wrong hands, including policies to postpone all gun transfers until
16 NICS [National Instant Criminal Background Check System] checks are completed.⁴⁴

17
18 The Justice Department went on to explain that the federal Bureau of Alcohol, Tobacco and
19 Firearms ("ATF"), the Treasury Department, and the Justice Department would encourage and assist the
20 gun industry in preventing criminal acquisition of guns:

21
22 To assist industry efforts to keep guns from falling into the wrong hands, ATF will
23 supply manufacturers and importers that request it with information about crime gun traces
24 of the manufacturer's or importer's firearms. The Department of Treasury and the
25 Department of Justice are continuing to work with responsible members of the firearms
26 industry to encourage voluntary measures, such as a code of conduct and comprehensive
27 training for dealers, to ensure that guns are not stolen or sold to criminals or straw
28 purchasers.⁴⁵

29 The ATF has stated that "[e]nforcement efforts would benefit if the firearms industry takes affirmative steps
30 to track weapons and encourage proper operation of Federal Firearms Licensees to ensure compliance

31
32
33
34 ⁴⁴ Ex. 3 at 34 (U.S. Department of Justice, *Gun Violence Reduction: National Integrated
35 Firearms Violence Reduction Strategy* (2001)) ("*Gun Violence Reduction*"). Indeed, recently Wal-
36 Mart implemented one of these proposals, announcing that it would not complete sales until background
37 checks were completed. *See, e.g.*, Ex. 4 (Eric Lichtblau, *Wal-Mart Tightens Gun Policy Business*, L.A.
38 Times, July 3, 2002, at A1). However, even though the FBI has found that buyers whose background
39 checks take longer than 24 hours are 20 times more likely to be felons or other prohibited purchasers,
40 defendants still facilitate criminal acquisition by not requiring dealers to complete background checks before
41 sales.

42
43 ⁴⁵ Ex. 3 at 34 (*Gun Violence Reduction*).

1 with all applicable laws."⁴⁶ ATF has specifically encouraged defendants to utilize trace data to control their
2 distribution network. For example, an ATF Special Agent in Charge at the National Tracing Center
3 Division informed defendant Taurus that it could determine whether "there is an unusually high number of
4 Taurus firearms being traced to certain Federal firearms licensees (FFLs)" and suggested that in such an
5 instance Taurus "look at their business practices more carefully."⁴⁷ Taurus has not done so.⁴⁸ Despite
6 these strong recommendations from federal law enforcement to alter gun industry practices that result in
7 criminal acquisition of guns, defendants have implemented none of these steps.
8

9
10 ATF has recognized that the criminal gun market is supplied, to a great extent, by the unreasonable,
11 high-risk business practices utilized by defendants. ATF has found that straw purchases, corrupt dealers,
12 multiple sales of guns, thefts from dealers, and gun shows are all major sources of supply for the criminal
13 gun market.⁴⁹ These methods of diversion from retail sources within defendants' distribution networks have
14

15 ⁴⁶ Ex. 5 at 11 (Bureau of Alcohol, Tobacco and Firearms, *2000-2005 Strategic Plan* (2000)). See
16 also Ex. 6 (Bureau of Alcohol, Tobacco and Firearms, *Crime Gun Trace Reports (1999) National*
17 *Report* (2000)) (traces "inform federal licensed firearms dealers of crime gun patterns, allowing them to
build sounder and safer businesses").

18 ⁴⁷ Ex. 7 at 3 (Letter from Forest G. Webb, ATF Special Agent in Charge, National Tracing Center
Division, to Simon Bloom, Esq., Taurus Int'l Mfg., Mar. 23, 2000).

19 ⁴⁸ Ex. 8 at 218-24 (Aug. 21-22, 2001, Deposition of Robert Morrison in *Boston v. Smith &*
20 *Wesson*) ("Morrison Depo."); Ex. 9 (Letter from Simon H. Bloom, Taurus to Forest G. Webb, ATF
21 Special Agent in Charge, National Tracing Center Division, Apr. 11, 2000). Similarly, Glock has never
22 analyzed its trace data or even considered doing so because it feels that such data "wouldn't tell us
anything." Ex. 10 at 131-32 (Jan. 10, 2002, Deposition of Paul Jannuzzo in *Boston v. Smith & Wesson*)
("Jannuzzo Depo.").

23 ⁴⁹ See, e.g., Ex. 11 (*Federal Firearms Licensing: Hearing before the Subcomm. on Crime and*
24 *Criminal Justice of the House Judiciary Committee*, 103d Cong. (1993)) ("1993 Hearings") (discussing
25 corrupt dealers, multiple sales, straw purchasing, and gun shows); Ex. 12 (Bureau of Alcohol, Tobacco
26 and Firearms, *1994 Firearms Enforcement Investigative Report* (1995)) (identifying problems with
27 corrupt dealers and gun thefts); Ex. 13 (Glenn Pierce, et al., *The Identification of Patterns in Firearms*
28 *Trafficking: Implications for Focused Enforcement Strategies* (Northeastern University 1995))
(highlighting concentration of crime gun traces among federal firearms dealers); Ex. 14 (Bureau of Alcohol,
Tobacco and Firearms, *Safety and Security Information for Federal Firearms Licensees* (1998))
(discussing the risk of theft from dealers); Ex. 15 (Bureau of Alcohol, Tobacco and Firearms/U.S. Dep't
of Justice, *Gun Shows: Brady Checks and Crime Gun Traces* (1999)) (identifying problems with gun
shows); Ex. 16 (U.S. Dep't of the Treasury/U.S. Dep't of Justice, *Gun Crime in the Age Group 18-20*
(1999)) (discussing trafficking to youths); Ex. 6 (*Crime Gun Trace Reports*) (discussing multiple sales and

1 been analyzed and explained by ATF, Congress, and other government agencies in reports and testimony
2 available to defendants over the last 30 years.⁵⁰ Several of these reports have specifically addressed gun
3 trafficking in and into California.⁵¹

4
5 In addition to the vast number of federal reports explaining how firearms are diverted from
6 defendants' distribution systems into the underground market, ATF sends trace requests to defendants
7 when their guns are recovered in crime, continually informing them that their guns are supplying the criminal
8 market.⁵² Defendants can also utilize trace information to determine whether a gun had a short "time-to-
9 crime" (the time between the sale of a gun and its use or recovery in crime), which ATF has found to be
10 an indicator that a gun was likely trafficked.⁵³ From 1988 to 2000 alone, tens of thousands of trace

11
12 other aspects of gun trafficking); Ex. 17 (Bureau of Alcohol, Tobacco and Firearms, *Commerce in*
13 *Firearms in the United States* (2000)) (identifying the concentration of crime gun traces among dealers);
14 Ex. 18 (Bureau of Alcohol, Tobacco and Firearms, *Following the Gun: Enforcing Federal Laws*
15 *Against Firearms Traffickers* (2000)) (noting the volume of guns traced through straw purchasing and
16 corrupt dealers).

17 ⁵⁰ See, e.g., Ex. 19 (*Firearms Legislation: Hearings before the Subcomm. on Crime, House*
18 *Judiciary Committee*, 94th Cong. (1975)) ("1975 Hearings") (discussing problems with multiple sales,
19 straw purchasing, and gun trafficking); Ex. 20 (H.R. Rep. No. 94-1103 (1976)) (seeking to restrict multiple
20 sales); Ex. 21 (Bureau of Alcohol, Tobacco and Firearms, *Project Identification: A Study of Handguns*
21 *Used in Crime* (1976)) (discussing interstate trafficking); Ex. 22 (Steven Brill, Police Foundation, *Firearm*
22 *Abuse: A Research and Policy Report* (1977)) (discussing trafficking in new guns and time-to-crime); Ex.
23 23 (Bureau of Alcohol, Tobacco and Firearms, *Operation Snapshot* (1993)) (explaining the high
24 percentage of dealers with recordkeeping violations and other problems).

25 ⁵¹ See, e.g., Ex. 24 (Bureau of Alcohol, Tobacco and Firearms, *Sources of Crime Guns in*
26 *Southern California* (1995)); Ex. 25 (Julius Wachtel, *Sources of Crime Guns in Los Angeles,*
27 *California*, 21 Policing: An Int'l J. of Police Strategies & Mgmt. 220 (1998)); Ex. 26 (Bureau of Alcohol,
28 Tobacco and Firearms, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Analysis Reports:*
The Illegal Youth Firearms Market in 17 Communities (1997)) (including data on Inglewood and
Salinas); Ex. 27 (Bureau of Alcohol, Tobacco and Firearms, *Crime Gun Trace Analysis Reports: The*
Illegal Youth Firearms Market in 27 Communities (1999)) (including Inglewood, Los Angeles, and
Salinas); Ex. 6 (*Crime Gun Trace Reports*) (including Los Angeles, Oakland, Salinas, San Jose).

⁵² ATF has traced well over one million crime guns since 1988, and for the past several years it has
been tracing them at a rate of over 200,000 per year. However, only a minority of major metropolitan
areas in the United States trace all crime guns, and a high percentage of crime guns are never recovered
by law enforcement. Accordingly, traced guns are only the tip of the iceberg that is the crime problem
created by the illegal gun market. News reports also illustrate the widespread use of guns in crime in
California and elsewhere. See also Ex. 28 (Affidavit of Robert I. Hass, Feb. 20, 1996, in *Hamilton v.*
Accu-Tek, No. 95 CV 0049 (JBW) (E.D.N.Y.)).

⁵³ See Ex. 6 at 24-33 (*Crime Gun Trace Reports*).

1 requests put defendants on notice that they had sold crime guns. For example, during that time period
2 Colt's received over 69,000 traces, Sturm Ruger received over 85,000, and Smith & Wesson totaled over
3 140,000.⁵⁴ Thousands of these crime guns had short time-to-crime, indicative of trafficking.⁵⁵
4

5 Defendants themselves have recognized that their practices facilitate the criminal acquisition of guns.

6 Smith & Wesson's former Senior Vice-President of Marketing and Sales stated that:

7 [Smith & Wesson] and the industry ... are ... aware ... that the black market in
8 firearms is not simply the result of stolen guns but is due to the seepage of guns into the
9 illicit market from multiple thousands of unsupervised federal firearms licensees. In spite
10 of their knowledge, however, the industry's position has consistently been to take no
independent action to insure responsible distribution practices....

11 [None] of the principal U.S. firearms manufacturers and wholesale distributors ...
12 to my knowledge, take additional steps, beyond determining the possession of a federal
13 firearms license, to investigate, screen or supervise the wholesale distributors and retail
outlets that sell their products to insure that their products are distributed responsibly.⁵⁶

14 Gun industry insiders have also criticized the industry's refusal to take responsibility for its
15 contribution to the underground market. In an article drafted for *Shooting Sports Retailer*, Robert
16 Lockett, the National Alliance of Stocking Gun Dealers' 1994 Dealer of the Year, called on manufacturers
17 and distributors to "wake-up" and control their distribution system, including requiring that distributors and
18 dealers "adhere to some strict guidelines."⁵⁷
19
20

21 ⁵⁴ See Declaration of Brian J. Siebel filed herewith ("Siebel Decl."), ¶5.

22 ⁵⁵ For example, even though time-to-crime could only be determined for a small percentage of the
23 Ruger guns traced nationwide from 1988 through 2000, several thousand of these had time-to-crime under
24 3.5 years, and even under 1.5 years, including several hundred guns recovered in California in less than 3.5
years, many with time-to-crime under 1.5 years. Siebel Decl., ¶5.

25 ⁵⁶ Ex. 28 ¶¶20, 21 (Hass Aff.).

26 ⁵⁷ Ex. 29 (Robert Lockett, *The Implications of New York City*, Shooting Sports Retailer (1999)
27 (emphasis in original)). Lockett wrote, "I've been told INNUMERABLE times by various manufacturers
28 that they 'have no control' over their channel of distribution.... IF YOU DO NOT KNOW WHERE AND
HOW YOUR PRODUCTS ARE ULTIMATELY BEING SOLD – YOU SHOULD HAVE KNOWN
OR ANTICIPATED THAT THEY WOULD BE ILLEGALLY SOLD AND SUBSEQUENTLY
MISUSED. Let's just get down and dirty. We manufacture, distribute, and retail items of deadly force."

1 Defendants have conceded that it is their responsibility to prevent criminal acquisition of guns. In
2 1995, Robert Delfay, then-head of defendant National Shooting Sports Foundation ("NSSF") and Sporting
3 Arms and Ammunition Manufacturers' Institute ("SAAMI"), two major industry trade groups, stated "that
4 it was pretty much SAAMI's opinion that, while the crime problem is largely created by criminals and not
5 by guns, guns are involved, and it is the responsibility of the manufacturers, distributors and retailers of
6 firearms to attempt to keep them out of the hand of criminals."⁵⁸

7
8 Although defendants exercise control over their distribution partners when their financial interests
9 are at stake, defendants have either refused to implement any reasonable reforms of their conduct or have
10 done far too little, too late when action is needed to protect public safety by preventing criminal acquisition
11 of guns.⁵⁹ Each aspect of defendants' unfair business practices has been recognized as a cause of the
12 criminal gun problem.
13
14

15 **1. Defendants Utilize High-Risk Dealers to Sell Their Guns**

16 Defendants have been aware for years that many of the gun dealers ("federal firearms licensees"
17 or "FFLs") through whom defendants sell their guns engage in unscrupulous practices that supply the
18 criminal gun market. The serious problem of corrupt dealers supplying the criminal market was highlighted
19

20
21 ⁵⁸ Ex. 30 at 112 (June 18, 2002, Deposition of Robert T. Delfay) ("Delfay Depo."); Ex. 31 (SAAMI 1721-26).

22 ⁵⁹ Defendant manufacturers sell through a series of distributors and/or dealers with whom they have
23 direct contractual relations setting the terms under which sales take place. *See, e.g.*, Ex. 10 at 157
24 (Jannuzzo Depo.) (Glock distributor agreements are non-negotiable). *See also, e.g.*, Ex. 33 (Distributor
25 Agreements BACO(CA) 2552; RSR0120-RSR0123, RSR0129-RSR0133, RSR0152; SW00008219-
26 SW00008222, SW00014893-SW00014900). Defendants screen distributors and/or dealers for
27 creditworthiness, but not for distribution safety. *See, e.g.*, Ex. 8 at 61-70 (Morrison Depo.); Ex. 40 at 44-
28 55 (Nov. 13, 2001, Deposition of Hermann Kloetzer in *Boston v. Smith & Wesson*) ("Kloetzer Depo.").
None makes any effort to determine how many crime guns have been traced through that distributor and/or
dealer, nor seeks any explanation for those traces. Defendants also employ internal sales staff and/or sales
representatives to visit most, if not all, of the dealers who sell their guns and use them to provide sales
information and training on how to fire their guns, but sales representatives do not train on how to prevent
straw purchases or report that certain dealers are associated with high-risk practices. *See, e.g.*, Ex. 40
at 119-30 (Kloetzer Depo.).

1 in public Congressional hearings in 1993, when then-ATF Director Higgins testified that criminals obtained
2 guns through corrupt dealers, noting one dealer who diverted 6,000 to 10,000 handguns to the black
3 market.⁶⁰ In the same hearings, a prominent member of the gun industry, Bill Bridgewater, Executive
4 Director of the National Alliance of Stocking Dealers, confirmed that the main source of crime guns was
5 unscrupulous gun dealers, noting that even Hell's Angels and other gangs obtain FFLs to supply guns to
6 their comrades.⁶¹

7
8 A review of trace and multiple sales information (that defendants possess and/or could and should
9 have required dealers to provide to them) reveals that many of defendant manufacturers' crime guns that
10 were recovered in California were sold by high-risk dealers and distributors. For example, among crime
11 guns that were recovered and traced from 1988 to 2000, defendant distributor Ellett Brothers sold more
12 than 9,000 crime guns and defendant distributor Southern Ohio Gun Distributors ("Southern Ohio") sold
13 more than 6,000 crime guns, hundreds of which were recovered in California.⁶² Many of these crime guns
14 were sold with short time-to-crime, indicative of trafficking.⁶³

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20 ⁶⁰ Ex. 11 at 19-20 (1993 Hearings).

21 ⁶¹ *Id.* at 86-100. *See also* Ex. 18 (*Following the Gun*) (indicating that even a small number of
22 corrupt dealers can funnel huge numbers of firearms into the underground market). Public reports dating
23 since at least 1995 have noted that a small percentage of dealers sell most crime guns. Ex. 13 (*The*
24 *Identification of Patterns in Firearms Trafficking*); *see also* Ex. 17, *especially* at A-23 (*Commerce*
25 *in Firearms*) (finding that found that 11.8% of retail dealers (and 14.3% of all dealers, including
26 pawnbrokers) sell 100% of crime guns; 1% of retailers (1.2% of all dealers) sell over 50% of crime guns;
one-tenth of one percent of retail dealers (99 dealers) sell 30.4% of crime guns; for all dealers, .2% (132)
sell 27.2% of crime guns).

27 ⁶² Defendants Ellett Brothers and Trader Sports alone each sold over 700 crime guns traced and
28 recovered in California between 1995 and 2001. Siebel Decl., ¶5.

⁶³ For example, during the same period, Ellett Brothers sold more than 220 traced guns with time-to-
crime less than 3.5 years and more than 110 traced guns with time-to-crime less than 1.5 years; defendant
Trader Sports sold more than 170 traced guns with time-to-crime less than 3.5 years and more than 75
traced guns with time-to-crime less than 1.5 years. Siebel Decl., ¶5.

1 Newspaper articles published in California and national newspapers give further indication that
2 defendants knew or, at a minimum, recklessly disregarded the fact that they utilize corrupt dealers who fuel
3 the criminal market, including the following reports:
4

- 5 • Defendant B & E Guns of Cypress, California, sold guns for years despite repeatedly
6 violating federal laws, transferring more than 9,000 guns without keeping records,
7 supplying guns to felons, juveniles, foreign nationals, and a suspected trafficker. Two
8 hundred B & E guns have been seized in criminal investigations in the United States,
9 including in a 1994 killing in Los Angeles. B & E continued to sell guns even after its
10 owner, Robert Komor, had his license revoked and was sentenced to prison (his wife
11 applied for and was issued a new license).⁶⁴
- 12 • Sean Twomey, using a falsified firearms license, purchased more than 1,100 guns,
13 obliterated their serial numbers to prevent them from being traced, and sold them illegally
14 in the San Francisco Bay area. Nearly fifty of these guns were recovered in connection
15 with crimes, including drug dealing, robbery, drive-by shootings, and at least three
16 homicides. Although Twomey's license was obviously falsified and he had no California
17 dealer's license, defendant Southern Ohio and another distributor delivered all the guns he
18 requested to his apartment, no questions asked. After he was convicted, Twomey told
19 USA Today that "It was very easy. ... They could care less how many guns I ordered."⁶⁵
- 20 • John Thompson, a licensed West Covina gun dealer, created false records to hide the
21 transfers of 116 firearms to unknown buyers, at least nine of which were linked to crimes
22 in the Los Angeles area, including two homicides. Thompson also armed a violent gang
23 with four silencer-equipped machine guns and 15 semiautomatic pistols. Eventually,
24 Thompson was convicted of firearms charges.⁶⁶
- 25 • Over a four-month period in 1995, Slims Gun Shop in Riverside sold 253 handguns and
26 rifles to four Los Angeles County residents in straw purchases. Within 20 months of the
27 purchases from Slims, 37 of the guns had been recovered in crimes, including at least four
28 homicides.⁶⁷

23 ⁶⁴ See Ex. 34 (Myron Levin, *Corrupt Dealers Expose Weakness in Gun Laws Crime*, L.A. Times,
24 June 1, 2000, at A1).

25 ⁶⁵ See Ex. 35 (Laura Parker, *'It was easy': Confessions of a Gun Trafficker*, USA Today, Oct.
26 28, 1999, at 1A); Ex. 36 (Seth Rosenfeld, *East Bay Gun Ring Biggest in Nation*, S.F. Examiner, May
27 29, 1999, at A1); Ex. 37 (*Bay Area Datelines*, S.F. Examiner, Oct. 6, 1999, at A6); and Ex. 38 (Peter
28 Slevin, *Gun Dealer Verification Loophole Shut*, Wash. Post, Sept. 24, 2000, at A9).

⁶⁶ See Ex. 34 (*Corrupt Dealers Expose Weakness in Gun Laws Crimes*).

⁶⁷ *Id.* Eventually one member of the straw purchasing ring was convicted.

1 Despite these and many more publicized cases of corrupt dealers who sell defendants' guns,
2 defendants purport to believe that every gun dealer "is doing the best he can to uphold the law to the best
3 of his ability,"⁶⁸ and they continue to supply any licensed gun dealers with guns to sell without attempting
4 to screen or investigate them to determine if they engage in high-risk sales practices or have a pattern of
5 selling crime guns.⁶⁹ Even after sellers have been indicted or videotapes of them engaging in straw
6 purchases have been aired on national television, defendants have continued to supply them.⁷⁰ No
7 defendant ever refused to sell guns to B & E or other dealers because of their business practices. No
8 defendant attempted to find out if dealers engage in any responsible—or even legally required—practices.
9 Defendant American Shooting Sports Council ("ASSC") bemoaned the loss of "basement" dealers.⁷¹
10 Defendant NSSF, during a meeting with ATF representatives, offered to "look for ways to help identify
11 problem dealers,"⁷² but has not done so. Each of these defendants chose to continue to utilize corrupt
12 dealers and did not take steps to prevent their guns from supplying the criminal market.

16 **2. Although Defendants Recognize the Need to Oversee Their**
17 **Distribution, They Sell Guns Without a Code of Conduct or**
18 **Reasonable Oversight Governing Downstream Sellers**

20 ⁶⁸ Ex. 8 at 127 (Morrison Depo.). Morrison stated that while it was possible that there were a few
21 irresponsible dealers, he had not known of any in his three decades in the gun business, and until he was
22 informed of any, he would "stick up for every dealer out there."

23 ⁶⁹ See, e.g., Ex. 32 at 307-13 (Sept. 11, 2001, Deposition of Stephen Louis Sanetti), Ex. 39 (SR
12734).

24 ⁷⁰ See, e.g., Ex. 10 at 123 (Jannuzzo Depo.); Ex. 8 at 366-68 (Morrison Depo.); Ex. 40 at 170-71
25 (Kloetzer Depo.). Only Smith & Wesson chose to terminate supplies to certain Chicago-area dealers
26 whose straw purchases were telecast nationally. See, e.g., Ex. 41 (Devnon Spurgeon and Paul M. Barrett,
Chicago's Shots in 'Operation Gunsmoke' Marked by Misfires, S. D. Union-Trib., May 13, 2000, at
ZS3) (surveillance video of the sting "appeared repeatedly on local and national television" and CBS's *60*
Minutes ran two segments on the sting in 1999).

27 ⁷¹ Ex. 42 (ASSC 783-86).

28 ⁷² See Ex. 30 at 162 (Delfay Depo.); Ex. 43 (NSSF 13852-53).

1 Defendants have recognized that they can and should control their distribution system to stem the
2 tide of guns flowing to the criminal market. In 1993, defendant NSSF's Doug Painter, in response to an
3 ATF report on trafficking that "raise[d] a very serious question about the potential for illegal firearms
4 transactions through ostensibly 'legal' FFL channels," suggested that the industry consider adopting
5 measures "as an important step in better regulating the distribution of its products and as a means to
6 minimizing the possibility of illegal transactions through unscrupulous FFL holders."⁷³ Painter's proposals
7 were rejected in October 1993 by the Chairman of NSSF and its Executive Director, and Painter was told
8 to "file for future reference."⁷⁴ Painter never looked at another ATF study again.⁷⁵

11 Defendant SAAMI recognized that defendants' practice of going no farther than the law requires
12 was inadequate to prevent guns from flowing to the criminal market. A series of documents from 1994 and
13 1995 called for implementing a "Responsible Firearms Retailer Code of Practice" that asked dealers to
14 pledge to "go beyond" federal and state regulations and impose additional "standards of responsible
15 firearms and ammunition retailing," including not selling to suspected "straw purchasers." This "Code" was
16 drafted, but was never implemented.⁷⁶ Also at this time, SAAMI recognized the problem of "straw man"

19 ⁷³ Ex. 43 (NSSF 13898-900).

20 ⁷⁴ *Id.* At the same time, a field representative for defendant Colt's proposed to his supervisor: "If
21 we're [sic] serious about eliminating the 'FFL Holder-Non-Storefront Dealer,' we could do this by
22 establishing an 'Authorized Colt Dealer' network. Now, I don't mean selling direct to the dealer, but
23 maintain our current sales to distributors, but they could 'only' sell Colt's to the Authorized Colt Dealers....
24 This sounds almost too simple, what am I missing?" Ex. 44 (Aug. 25, 1994 fax from Gene Chrz to Rob
25 Silinski).

23 ⁷⁵ Ex. 45 at 153 (Nov. 5, 2001, Deposition of Douglas Painter) ("Painter Depo."). Painter's
24 supervisor, Robert Delfay, then-Executive Director of NSSF, rejected Painter's memo without ever looking
25 at the ATF report that spurred it and did not look at any other ATF reports until after this lawsuit was filed
in 1999. Ex. 30 at 55-73 (Delfay Depo.).

26 ⁷⁶ See Ex. 30 at 98 (Delfay Depo.), Ex. 46 (May 13, 1994 fax from Robert Delfay to May 11
27 SAAMI Meeting Participants), Ex. 31 (SAAMI 3346-47). At about the same time, SAAMI considered
28 but never implemented the creation of a "SAAMI Safety Board." Ex. 43 (NSSF 9221-24). Recently, the
National Association of Firearms Retailers, a division of NSSF, developed a weaker Code of Responsible
Business Conduct (Ex. 43, NSSF 14183), but even that has not been implemented. Ex. 30 at 102 (Delfay
Depo.).

1 transactions in a brochure entitled "A Responsible Approach to Public Firearms Ownership and Use" that
2 indicated "'SAAMI members pledge to sell our products to only legitimate retail firearms dealers'" because
3 "we feel *such action would result in fewer of our products ending up in the hands of unethical*
4 *dealers*."⁷⁷ No defendant implemented this proposal. A few years later, a nearly identical SAAMI
5 document did not mention the idea.⁷⁸

7 In 1997, NSSF recognized the inadequacy of gun manufacturers' practice of utilizing any FFL to
8 sell guns, without screening or standards. NSSF's Richard Feldman proposed that the gun industry create
9 a "certified dealer" program with videos that would train gun dealers to sell guns responsibly and avoid
10 straw purchases. The industry declined.⁷⁹

12 The ability of defendant gun manufacturers to control their distribution practices to prevent criminal
13 acquisition and use of guns was made clear in March 2000 when defendant Smith & Wesson, in a
14 settlement of litigation with the United States Department of Housing and Urban Development and other
15 governmental plaintiffs, agreed to reform its distribution and design practices, including (a) distributing its
16 guns only through authorized dealers who met certain terms and conditions, far exceeding statutory
17 requirements, (b) monitoring its dealers to determine if they were violating the agreement, and (c) ceasing
18 to supply dealers who sell a disproportionate number of crime guns.⁸⁰ Even before the agreement, Smith
19
20

21 ⁷⁷ Ex. 39 (SR 1038) (emphasis added).

22 ⁷⁸ Ex. 31 (SAAMI 50-61).

23 ⁷⁹ Although the industry cited expense (\$721,000) as the reason for inaction, a few years later the
24 industry spent about \$3 million dollars on a televised ad campaign that represented mayors who had sued
25 gun makers as tearing up the American flag. Ex. 30 at 261 (Delfay Depo.). NSSF also objected to a
26 dealer training video proposed by the International Association of Chiefs of Police. See Ex. 43 (NSSF
27 7854-62, 13845-48). Finally, as part of the Don't Lie for the Other Guy program, discussed below and
28 implemented after this suit was filed, the industry agreed to let ATF fund a dealer training video at a cost
of only \$60,000. Ex. 30 at 122 (Delfay Depo.).

⁸⁰ Among other terms, Smith & Wesson agreed to only sell its guns through authorized dealers and
distributors who abide by set terms and conditions governing to whom they can sell guns, who can sell guns,
and where its guns can be sold. Under the agreement, a dealer or distributor could only sell Smith &

1 & Wesson implemented some restrictions on its retailers' conduct and informed them that it might terminate
2 sales to dealers who did not agree to refrain from making sales to "straw purchasers" or to anyone who the
3 dealer had reason to believe made a false or misleading statement.⁸¹ Smith & Wesson later terminated
4 several dealers for breaching their Code's terms. No one else in the industry followed these reforms.⁸²
5 Indeed, there is some indication that there may have been concerted action by Smith & Wesson's
6 competitors to refrain from implementing similar reforms.⁸³
7
8

9 Defendants have also recognized that because illicit sales are prevalent at gun shows, it is necessary
10 to implement restrictions to prevent gun show sales to criminals and juveniles. In its settlement, Smith &
11 Wesson agreed not to allow its guns to be sold at gun shows that do not require background checks on
12

13 Wesson guns if they agreed to, among other things: only sell Smith & Wesson guns to persons who have
14 passed a background check, regardless of how long the check takes, and to persons who have passed a
15 certified firearms safety course or exam; require employees to attend annual training and pass a
16 comprehensive exam on how to recognize suspect sales and promote safe handling and storage; not sell
17 a disproportionate number of crime guns; implement specific security procedures to prevent gun thefts; not
18 sell multiple guns until 14 days have passed after the first gun is sold; maintain an electronic record of crime
19 gun traces and report them to the manufacturer each month; not sell weapons attractive to criminals, such
20 as those with large capacity magazines or semi-automatic assault weapons, even if they are legal. Smith
21 & Wesson also agreed not to market guns particularly attractive to juveniles or criminals and not to
22 advertise near schools, high crime zones, and public housing. Ex. 3, App. D (*Gun Violence Reduction*).
23 Subsequent to signing this Agreement, Smith & Wesson entered into a consent decree with the City of
24 Boston that incorporated a modified agreement. Although many of these terms were not implemented, they
25 were feasible.

26 ⁸¹ See Ex. 47 (SW 6485-86); Ex. 48 (David B. Ottaway and Barbara Vobejda, *Gun Manufacturer*
27 *Requires Dealers to Sign Code of Ethics*, Wash. Post, Oct. 22, 1999, at A11).

28 ⁸² Although refusing to follow these reforms, manufacturers readily admit that they are feasible. For
example, Glock admits that, if it chose to do so, it could take numerous steps that it does not currently take
to reduce its sales of crime guns. Concerning ATF traces, Glock admits that it could use trace data to
determine which models of Glock guns are most often traced, and it could analyze ATF trace data to
determine which distributors are responsible for guns being traced. Ex. 10 at 272 (Jannuzzo Depo.).
Glock concedes it could restrict sales of its guns to only authorized distributors and dealers, terminate sales
to dealers who sell a disproportionate number of guns used in crime, require authorized dealers not to sell
guns to anyone who has not taken a certified firearms safety course, and require its authorized dealers to
implement specific security procedures to prevent gun thefts. *Id.* at 266-68.

⁸³ One U.S. Repeating Arms Co. document entitled "Gun Manufacturers' Position on KeyGun [sic]
Control Issues" (dated May 15, 2000) has the heading: "Why We Stand United Not to Sign the S&W
Agreement." Ex. 49 (USRAC 652-54). See also Ex. 50 at 5A (John Christoffersen, *Inquiry Opens Into*
Gun Firms, (Ft. Lauderdale) Sun-Sentinel, Apr. 6, 2000) (reporting that "[p]rosecutors in at least six
states are investigating whether the gun industry is illegally trying to punish Smith & Wesson for agreeing
to make its weapons more childproof").

1 all purchases.⁸⁴ No other defendants have implemented these or similar proposals, and Smith & Wesson
2 does not appear to enforce them.

3
4 The gun industry has also recognized the need for retailers to educate gun purchasers, but
5 defendants have not required such action. In January 1995, a vice president for gun manufacturer
6 Remington proposed that SAAMI and/or NSSF have retailers encourage safe gun use, storage and care,
7 with dealers offering customers training or instructional coupons.⁸⁵ This proposal was not implemented.⁸⁶
8
9 In November 1996, Painter of NSSF recommended, *inter alia*, that SAAMI establish a Safety Committee
10 (also proposed two years earlier) "to coordinate and evaluate the wide range of issues, both technical and
11 educational, that pertain to the safe and responsible use and storage of firearms and ammunition."⁸⁷ He
12 specified that the Committee could "research relative to the effectiveness of specific safety programs" and
13 "[r]eview and assess technical and other product developments...."⁸⁸ These steps were not undertaken.⁸⁹
14

15 **3. Defendants Allow Dealers to Engage in Practices that the**
16 **Industry Recognizes Contribute to Illegal Straw Purchases**
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21 ⁸⁴ See Ex. 3, App. D (*Gun Violence Reduction*). Earlier, Sturm Ruger recognized the dangers of
22 dealers who sell only at gun shows and in 1984 adopted a policy to sell only to distributors selling to dealers
23 with regular places of business where products are displayed to the public. Ruger explained that through
24 such a policy, "the industry and shooting public will be better served." Ex. 39 (SR 22232).

25 ⁸⁵ Ex. 31 (SAAMI 746-47).

26 ⁸⁶ Only now, after seven years and multiple lawsuits charging the industry with irresponsible
27 distribution practices, is the industry developing a safety video that was the subject of the 1994 SAAMI
28 meeting and in the 1995 Remington letter. Ex. 45 at 180; Ex. 7 (Painter Depo.).

⁸⁷ Ex. 43 (NSSF 9221-24).

⁸⁸ *Id.*

⁸⁹ Ex. 45 at 60-69 (Painter Depo.).

1 For decades, defendants have been aware that their dealers, intentionally or negligently, supply the
2 criminal market through straw purchases (that is, sales intended for someone other than the buyer).⁹⁰
3 Defendants concede that "ATF estimates there are no less than 14,000 illegally diverted firearms that are
4 acquired by strawman purchases each year."⁹¹ Defendants recognize that gun dealers can implement sales
5 practices that prevent straw purchases. Nonetheless, they did not implement any program to prevent straw
6 purchases until 2000, after they were sued in this and other municipal suits,⁹² and they still do not require
7 responsible practices.
8

9
10 The program implemented by NSSF in 2000, "Don't Lie for the Other Guy," is a clear recognition
11 by the gun industry that defendants' business practices facilitate the criminal acquisition of guns through
12 straw purchases. The premise of "Don't Lie" is "to significantly reduce strawman purchases by informing
13 and educating both retailers and firearms purchasers" and "to better enable retailers to identify potential
14 strawman purchases and encourage them to go beyond the letter of the law when selling a firearm."⁹³
15 NSSF states that dealers "contribute[] to a possible illegal transaction" when they do not refuse to sell guns
16
17

18 ⁹⁰ Straw purchases have been common knowledge in the industry since at least the 1970s. Ex. 8 at
19 177 (Morrison Depo.). Congressional hearings from 1975 also discussed straw purchases, multiple sales,
20 and interstate trafficking of firearms. Ex. 19 (1975 Hearings). ASSC meeting minutes from April 1989
21 indicate ATF was making straw purchasing a "priority." Ex. 42 (ASSC 180). ATF newsletters to FFLs
22 discussed straw purchases at least as early as 1989. Ex. 51 (TI 1316-20). *See also* Ex. 52 (FFL
23 Newsletter, 1992 Vol. 1). Further, in public Congressional hearings in 1993, ATF Director Stephen
24 Higgins testified how criminals obtained guns by 'lying and buying' and straw purchases. Ex. 11 at 19
(1993 Hearings). A Sturm Ruger employee even made straw purchases for prohibited purchasers in his
motorcycle club. Ex. 39 (SR 19394-95). Yet Trade Association witnesses Robert Delfay, Doug Painter,
John Badowski and Chris Dolnack claimed that they did not learn of straw purchasing until recently. *See*
Ex. 30 at 124 (Delfay Depo.); Ex. 45 at 156-58 (Painter Depo.), Ex. 53 at 32-33 (Nov. 29, 2001,
Deposition of John Badowski in *Boston v. Smith & Wesson*); Ex. 54 at 39-42 (Dec. 18, 2001, Deposition
of Christopher Dolnack).

25 ⁹¹ Ex. 55 (SIG(BOS) 2941-59 at 2953 (NSSF's "Don't Lie For The Other Guy," citing Ex. 18,
26 *Following The Gun*)).

27 ⁹² In 1998, about two years prior to NSSF supporting the Don't Lie program, Smith & Wesson
developed a detailed training syllabus, but only for sales associates of Smith & Wesson-owned retail
outlets. *See* Ex. 47 (SW 45617-38, SW 14929, SW 14933-41).

28 ⁹³ Ex. 55 at SIG(BOS) 2953.

1 to customers who, upon questioning about their background and intentions with the gun, arouse
2 suspicions.⁹⁴ Under "Don't Lie," NSSF makes materials available to dealers to instruct and educate them
3 about how to detect and prevent straw purchasers, such as:
4

5 It is not enough, however, to simply have your customer provide identification, fill
6 out the required forms and undergo the criminal background check. You are required to
7 verify that the individual buying the firearm is indeed the actual purchaser.⁹⁵

8 * * *

9 If the Purchaser Acts Suspicious:

10 The key is to engage the customer and ask enough questions to draw out
11 information on their background and intentions. If suspicions arise, it is more prudent to
12 *follow the precautionary principle of politely refusing the sale* to protect yourself
13 from the risk of contributing to a possible illegal transaction. It's not just good business.
14 It's your responsibility.⁹⁶

15 The materials go on to guide dealers through potential straw purchase scenarios and recommend
16 particular questions to ask customers.⁹⁷ Remarkably, defendants do not require dealers to follow "Don't
17 Lie" or any other sales regimen to screen for or prevent straw purchases,⁹⁸ even though they recognize
18 failure to follow such a regimen may "contribute" to illegal sales.

19 **4. Although Multiple Sales Supply the Criminal Market,**
20 **Defendants Permit Their Dealers to Engage in Such Sales**
21
22

23 ⁹⁴ *Id.* at 2948.

24 ⁹⁵ *Id.* at 2945.

25 ⁹⁶ *Id.* at 2948 (emphasis in original).

26 ⁹⁷ *Id.*

27 ⁹⁸ *See, e.g.*, Ex. 8 at 177-80 (Morrison Depo.), Ex. 56 at 345-48 (Nov. 7, 2001, Deposition of
28 Jeffrey K. Reh) ("Reh Depo."); Ex. 40 at 227-30 (Kloetzer Depo.) *See also, e.g.*, Ex. 33 (Distributor
Agreements).

1 For years, Congress and ATF have considered multiple sales of handguns to be high-risk, with
2 much greater likelihood than individual firearm purchases of being involved in gun trafficking.⁹⁹ Indeed, it
3 is common sense that an individual who wishes to buy five, ten, twenty, fifty, one hundred or more handguns
4 is almost certainly not buying those guns for his personal use, but rather to illegally sell them.¹⁰⁰ For that
5 reason, California has banned multiple sales, and several other states have as well.¹⁰¹ Congress considered
6 legislation in the mid-1970s to ban multiple sales, but instead imposed reporting requirements.¹⁰² At
7 Congressional hearings in 1975, then-ATF Director Davis recognized that a multiple sale of, for example,
8 thirty handguns, "is an indication that [the purchaser] is probably reselling them in violation of Federal
9 law."¹⁰³ However, most states place no limits on the number of handguns that can be purchased, leaving
10 it up to the gun industry to prevent these unreasonable sales.

11 Defendant Beretta's President, Ugo Beretta, conceded that manufacturers should not supply dealers
12 who do not screen for and refuse to engage in suspect multiple sales.¹⁰⁴ He believes that it is "common
13 sense" that dealers should not engage in these and other suspicious transactions.¹⁰⁵ Mr. Beretta was under
14 the mistaken belief that his companies make sure that their dealers employ these "common sense"

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21 ⁹⁹ See, e.g., Ex. 6 at 40 (*Crime Gun Trace Reports*) (discussing link between multiple sales and
22 obliterated serial numbers).

23 ¹⁰⁰ A legitimate multiple sale, such as for a police department, can easily be determined by screening.

24 ¹⁰¹ Cal. Penal Code Sec. 12072(a)(9)(A) (effective Jan. 1, 2000); Ex. 57 (Md. Ann. Code, Art. 27,
25 Sec. 442A; Va. Code Sec. 18.2 – 308.2:2; S.C. Code, Section 23-31-140(C)).

26 ¹⁰² Ex. 19 (1975 Hearings).

27 ¹⁰³ *Id.* at 389.

28 ¹⁰⁴ Ex. 58 at 44-45 (Jan. 25, 2002, Deposition of Ugo Gusalli Beretta).

¹⁰⁵ *Id.* at 31-37.

1 practices;¹⁰⁶ in fact, they do not. Beretta, like the other defendants, allows its dealers to sell to individual
2 customers as many guns as the law allows, no questions asked (other than those in the federal form).¹⁰

3
4 **5. Defendants Utilize Dealers Whose Inadequate Anti-Theft
Measures Cause Stolen Guns to Fuel the Criminal Market**

5 The gun industry has also long known that criminals obtain guns from thefts, including from gun
6 dealers.¹⁰⁸ ATF has informed defendants and all other FFLs that stolen guns help supply the underground
7 market, finding in one report that they made up "about a quarter of the trafficking investigations."¹⁰⁹ ATF
8 has specifically warned defendants of the risk of thefts from gun stores.¹¹⁰ ATF data suggest that some
9 dealers have grossly inadequate anti-theft measures (or improperly classify guns as stolen), for only a tiny
10 percentage of dealers account for most thefts; in 1996, for example, 1.3% of dealers accounted for all
11 thefts, and only .27% of dealers had multiple thefts.¹¹¹ Defendants have been specifically informed by law
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16 ¹⁰⁶ *Id.* at 37-39.

17 ¹⁰⁷ Ex. 56 at 2161.12-171.5 (Reh Depo.). *See also* Ex. 10 at 227-28 (Jannuzzo Depo.) (Glock never
18 tried to obtain information regarding multiple sales from its dealers and would not be interested to know
19 if any of its dealers had sold many Glock guns to the same purchaser). The industry also opposes "one gun
a month" laws that ban multiple sales in other states. *See, e.g.,* Ex. 59 (Deposition of Stephen Sanetti,
Hamilton v. Accu-Tek, Ex. 57) (SAAMI opposed restricting multiple sales).

20 ¹⁰⁸ *See, e.g.,* Ex. 8 at 140-41 (Morrison Depo.). Manufacturers also have specific information about
21 thefts. For example, in 1985, Ruger learned that an employee stole approximately 31 guns from a factory
over several years. Ex. 39 (SR 24516-26).

22 ¹⁰⁹ Ex. 18 at 41 (*Following the Gun*). A 1993 ATF report entitled *Operation Snapshot* found
23 recordkeeping or other violations at 34% of FFLs, which is often an indication of larger problems. Ex. 43
(NSSF 13898-900) (calling for pro-active reforms in response to *Operation Snapshot* that were shelved
24 by the industry).

25 ¹¹⁰ For example, a 1996 FFL newsletter reported increased thefts. Ex. 60 (FFL Newsletter, 1996
Vol. 1).

26 ¹¹¹ *See* Ex. 61 (Gov't Acct'g Office, *Federal Firearms Licensees: Various Factors Have*
27 *Contributed to the Decline in the Number Of Dealers* (1996)) (stating number of FFLs); Ex. 62 (Aug.
17, 1998, Letter from John R. Freeman, Analyst, Crime Gun Analysis Branch, ATF, to Matt Newton,
28 Research Associate, Center to Prevent Handgun Violence) (reporting number of thefts and multiple thefts
from FFLs).

1 enforcement as to security measures that dealers should take to prevent thefts.¹¹² Manufacturers could and
2 should learn whether they are supplying problem dealers simply by requiring dealers to notify them of thefts
3 (as dealers are required by law to notify law enforcement). Defendants should refuse to supply dealers who
4 do not have reasonable anti-theft measures and refuse to supply problem dealers. Nonetheless, defendants
5 do not require their dealers to implement any minimum security precautions, as Smith & Wesson agreed
6 to do in its settlement.¹¹³ No defendant has refused to supply dealers whose anti-theft measures are
7 inadequate or who cannot account for "lost" guns.
8
9

10 **6. Defendants' Refusal to Sell Guns with Appropriate Safety**
11 **Features Enables Criminals to Use Guns**

12 Defendants also recognize that they can implement design changes that will reduce the threat posed
13 by their inadequate distribution system. Publicly-available information has long indicated that guns are
14 frequently obtained by unauthorized users, including by people who obtain stolen guns.¹¹⁴ For that reason,
15 safety features, such as integral locks, that prevent unauthorized use and greatly reduce the value and
16 "usefulness" of stolen guns in the underground market have been developed for at least ninety years.¹¹⁵
17 Even though these devices were known and feasible, for years defendant gun manufacturers refused to
18 implement them. Since being sued by these and other municipalities for their failure, some manufacturers
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23 ¹¹² Ex. 14 (*Safety and Security Information for Federal Firearms Licensees*).

24 ¹¹³ Ex. 3, App. D (*Gun Violence Reduction*).

25 ¹¹⁴ See, e.g., Ex. 63 (Marilyn Heins, et al., *Gunshot Wounds In Children*, 64 Am. J. Pub. Health 326
26 (1974)); Ex. 64 (Garen Wintemute, et al., *When Children Shoot Children: 88 Unintended Deaths in California*, 257 JAMA 3107 (1987)).

27 ¹¹⁵ See Ex. 65 (examples of known safety features to prevent unauthorized use of guns, including 1910
28 patent of gun with user-recognition device, 1943 patent of key-operated gun safety, 1984 gun magazine review of pistol that "prevents unauthorized persons from firing or cycling the gun").

1 have begun to use internal locks,¹¹⁶ but they are still not seriously attempting to develop user-recognition
2 features that would be even more effective.

3
4 Manufacturers should have been including internal locks in all guns well over a decade ago.
5 Defendants also should have made serial numbers tamper-resistant, which they have resisted unless forced
6 to by statute. Their failure to take these actions have contributed to the threat posed by unauthorized and
7 criminal possession of guns.

8
9 **7. Expert Testimony Will Confirm that Defendants' Unfair**
10 **Business Practices Cause Diversion of Guns to the Underground**
11 **Market**

12 Although expert discovery has not begun, plaintiffs can state that they will present expert testimony
13 that will confirm that defendants engage in unfair business practices and cause a public nuisance – the
14 criminal gun market. Experts will provide detailed analyses of thousands of ATF trace requests provided
15 to defendants over the years that illustrate the patterns and frequency of crime guns being diverted into the
16 criminal gun market from defendants' distribution networks. Experts will also testify how defendants place
17 the People of California at risk by engaging in business practices such as selling guns without reasonable
18 safeguards to reduce the risk of diversion into the criminal market. Experts will detail measures defendants
19 should have implemented that would reduce the threat to Californians, including obtaining information from
20 downstream sellers and other sources to evaluate and monitor their sales practices; requiring distributors
21 and dealers, as a condition of continued supply of firearms, to be in certified compliance with universal
22 precautions regarding safe business practices; and providing sanctions for sellers who fail to comply or who
23 continue to supply significant numbers of crime guns.
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28 ¹¹⁶ See, e.g., Ex. 66 at 45 (Apr. 16, 2002, Deposition of Joseph J. Zajk) (believes Smith & Wesson, Springfield Armory, Taurus and Glock now include integral locks in some guns).

1 **V. Conclusion**

2 Plaintiffs have complied with discovery. Defendants' motion for sanctions should therefore be
3 denied.
4

5 Defendants' liability under the Business & Professions Code and public nuisance law does not rest
6 on evidence of individual illegal gun possessions. Under Rule 1541, this Court should rule that plaintiffs are
7 not required to prove their case on a gun-by-gun or incident-by-incident basis.
8

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Respectfully submitted,

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(*People, et al. v. Arcadia Machine & Tool, Inc., et al.*)
 San Francisco Superior Court No. 303753
 Los Angeles Superior Court No. BC210894
 Los Angeles Superior Court No. BC214794

1. That I am and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested in the within-entitled matter, and that my business address is 401 B Street, Suite 1700, San Diego, California 92101.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of July, 2002, at San Diego, California.

Kathy Scoville