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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

GHOST GUNNER FIREARMS CASES

Included actions:

30-2019-01111797-CU-PO-CJC *Cardenas v. Ghost Gunner, Inc. dba GhostGunner.net, et al.*

CIV-DS-1935422 *McFadyen, et al. v. Ghost Gunner, Inc., dba GhostGunner.net, et al.*

JCCP No. 5167

Superior Court of California
County of Orange
Case No. 30-2019-01111797-CU-PO-CJC

Superior Court of California
County of San Bernardino
Case No. CIV-DS-1935422

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO VENDOR-DEFENDANTS' UNIQUE DEMURRER

Date: May 6, 2022
Time: 9:00 a.m.
Dept.: CX 104
Judge: Hon. William D. Claster

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INTRODUCTION

Defendants Ghost Firearms, LLC, MYF Technical Solutions, LLC, and Thunder Guns, LLC (the "Vendor-Defendants") argue in their Unique Demurrer that they cannot "be subjected to a market share liability theory, as a matter of law, because that doctrine only applies to *manufacturers* of products, not mere vendors, like them." Memorandum of Points and Authorities In Support Of Vendor-Defendants' Unique Demurrer ("MP&A") at 4. No California court has even addressed whether only manufacturer defendants can be subject to market share liability, much less has any court held that market share liability apportionment can only be applied to manufacturers. Instead, Vendor-Defendants advance a logical fallacy – all cited market share liability cases involved manufacturer defendants, therefore the doctrine must be limited in application to manufacturers. But this appeal to ignorance cannot suffice to sustain the present demurrer.

Perhaps in tacit acknowledgement that no cases support their central argument, Vendor-Defendants also argue that the "justification" for application of a market share theory of liability does "not applying it to non-manufacturers." MP&A at 8. This, too, is wrong. The California Supreme Court argued in the seminal case recognizing market share liability, *Sindell v. Abbott Laboratories*, 26 Cal. 3d 588, 610 (1980), "in an era of mass production and complex marketing methods the traditional standard of negligence was insufficient to govern the obligations of manufacturer to consumer, so should we acknowledge that some adaptation of the rules of causation and liability may be appropriate in these recurring circumstances." Vendor-Defendants do not maintain that a legal precedent or statute prohibits application of market share liability to vendors; instead, the predicate for Vendor-Defendants' flawed theory is their assertion that market share liability has primarily been applied to manufacturers and not to mere vendors. However, suppliers have never been excluded from liability under the market share theory of liability. Further, the "forceful arguments" the *Sindell* court and following cases considered in establishing market share liability as a viable theory in California support application of the theory against the Vendor-Defendants under the facts plead in this action. Here, the Vendor-Defendants are just as liable to Plaintiffs as the manufacturer defendants, as they similarly

marketed and sold the products at issue, which they knew were highly attractive to dangerous individuals, without taking any precaution to prevent selling them to such dangerous individuals. As such, this Court should deny Vendor-Defendants' Unique Demurrer.

RELEVANT FACT SUMMARY AND CASE HISTORY

Plaintiffs incorporate by reference the relevant fact summary and case history as outlined in Plaintiffs' Opposition to Defendants' Demurrer to Plaintiffs' Complaints (the "Global Demurrer"). Briefly, Plaintiffs in this case were injured in a shooting massacre that occurred in Tehama County, California on November 13-14, 2017. McFadyen Compl., ¶ 13; Cardenas Compl., ¶ 13. Kevin Neal, a mentally disturbed resident of California who was barred from possessing firearms, went on a shooting rampage using weapons he assembled from gun parts/kits manufactured, advertised, and sold by one or more of the Defendants. *Id.* Neal acquired these weapons as a result of Defendants' negligent manufacturing, marketing, and supplying of these ghost gun parts/kits with the intention or clear foresight that they would be sold to such dangerous individuals, as they understood the untraceable products were highly attractive to such dangerous individuals and took no precautions to avoid selling to such individuals. McFadyen Compl., ¶¶ 7, 49, 91; Cardenas Compl., ¶¶ 7, 35, 85. Plaintiffs have stipulated that for purposes of this demurrer only, they do not dispute that the Vendor-Defendants did not manufacture ghost gun kits/parts, but instead only sold them.

LEGAL STANDARD

"[I]t is well settled that a general demurrer admits the truth of all material factual allegations in the complaint," *Alcorn v. Anbro Engineering, Inc.*, 2 Cal. 3d 493, 496, (1970) and should be denied unless the court finds a "failure to state facts constituting a cause of action." *Berger v. Cal. Ins. Guarantee Ass'n*, 128 Cal. App. 4th 989, 1006 (2005). Likewise, on demurrer, courts also "consider matters which may be judicially noticed." *Serrano v. Priest*, 5 Cal. 3d 584, 591 (1971). To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged. *Ace Am. Ins. Co. v. Fireman's Fund Ins. Co.*, 2 Cal. App. 5th 159, 179 (2016). A reviewing court must "draw[] inferences favorable to the plaintiff, not the defendant." *Perez v.*

Golden Empire Transit Dist., 209 Cal. App. 4th 1228, 1238 (2012). The complaint must be read "as a whole and each part must be given the meaning that it derives from the context wherein it appears." *Zakk v. Diesel*, 33 Cal. App. 5th 431, 446 (2019). Moreover, the allegations "must be liberally construed with a view to substantial justice between the parties." *Id.* at 446-47 (quoting *Gressley v. Williams*, 193 Cal. App. 2d 636, 639 (1961)). A demurrer should not be sustained where the complaint alleges facts that state a cause of action under "any possible legal theory," *Haro v. Ibarra*, 180 180 Cal. App. 4th 823, 830 (Cal. App. 2d Dist. 2009), including a good faith, novel theory. *See Smith v. County of Kern*, 20 Cal. App. 4th 1826, 1834-35 (1993) (finding error in lower court sustaining the demurrer on allegations that were based on a theory of first impression). Even where a demurrer is sustained, the plaintiff should be freely given leave to amend. *City of Torrance v. S. California Edison Co.*, 61 Cal. App. 5th 1071, 1091 (2021).

ARGUMENT

A. No Court Has Excluded Vendors from Market Share Liability

Vendor-Defendants make the bold, yet entirely unsupported claim that "California courts restrict market share liability to manufacturers." MP&A at 4. Notably, Vendor-Defendants cannot cite to a single California case wherein a court held market share liability can only apply to negligent ***manufacturers*** and not to negligent wholesalers, suppliers, vendors, and distributors ("vendors"). Instead, Vendor-Defendants rely on the flawed proposition that because the handful of cases they rely on happened to involve manufacturer defendants, application of the market share liability doctrine must be limited to manufacturers.

However, none of the cases relied on by Vendor-Defendants examined the issue of whether categories of defendants, other than manufacturers, could be liable under a market share theory. For example, Vendor-Defendants argue that "[t]he language used in *Sindell* . . . makes it clear" that "the sparingly-used [sic] [market share liability] doctrine is only intended to apply to the makers of manufacturers of the product at issue." MP&A at 5. But the only named defendants in *Sindell* were manufacturers (perhaps because the distributors and suppliers of the DES medication at issue were individual pharmacies and physicians that would have been too numerous to identify). Nonetheless, the *Sindell* Court indicated that market share liability could

also apply to tortious suppliers and vendors of the DES products. *See e.g.*, 26 Cal. 3d at 611–12 ("we hold it to be reasonable in the present context to measure the likelihood that any of the defendants ***supplied*** the product which allegedly injured plaintiff by the percentage which the DES ***sold*** by each of them for the purpose of preventing miscarriage bears to the entire production of the drug sold by all for that purpose.") (emphasis added). Indeed, the California Supreme Court's stated reasons for adopting a market share liability doctrine in *Sindell* are not predicated uniquely on the qualities of manufacturers, but also include considerations of the defendants' marketing techniques, relative ability to disprove responsibility vs. the plaintiffs, and the percentage of the products sold by each. *Id.* at 611-613. Thus, the *Sindell* Court discussed the application of market share liability for supplying and selling as well as for manufacturing.

Vendor-Defendants next misleadingly cite a smattering of quotes about "makers" and "manufacturers" to give the false impression that market share liability only applies to manufacturers. MP&A at 5-6. Defendants quote *Wheeler v. Raybestos-Manhattan*, 8 Cal. App. 4th 1152, 1155 (1992) as stating:

> From *Sindell* came the new theory of market share liability only available against the **makers** of a 'fungible product' which cannot be traced to a specific **producer**' and only applicable if plaintiff joins a 'substantial share' of the **makers** of the product.

MP&A at 5 (emphasis in memorandum). But this is simply summarizing a description of the accused defendants in *Sindell* who were, as noted, manufacturers (plus suppliers and vendors). 26 Cal. 3d at 611-613. Notably, Vendor-Defendants omit the relevant facts of the *Wheeler* case itself, where each of the named defendants was a "manufacturer[], or is arguably a successor in interest to a manufacturer of, brake products." 8 Cal. App. 4th at 1154. This is an important distinction since, contrary to Vendor-Defendants' assertion that market share liability only applies to manufacturers, a successor in interest to a manufacturer of brake products would not necessarily have itself manufactured the relevant products. Indeed, manufacturers typically make their products for sale and thus are nearly almost always *both* manufacturers *and* vendors.

Similarly, Vendor-Defendants' irrationally emphasize the word "manufacturers" in summarizing the *Sindell* case as described in *Cottle v. Super. Ct.*, 3 Cal. App. 4th 1367, 1404-05

(1992), yet skip over the word "marketed" (suggesting sales) in the very same quote. *See* MP&A at 5) (quoting *Cottle* as stating market share liability applies where "several ***manufacturers*** produced and marketed the same injurious product."). More misleadingly, Vendor-Defendants cite *Kennedy vs. Baxter Healthcare Corp.*, 43 Cal. App. 4th 799, 812 (1996) as using the word "makers" when describing *Sindell*, *see* MP&A at 5, but entirely omit the fact that the *Kennedy* plaintiffs had sued "manufacturers, distributors, and sellers of latex gloves" under a market share liability theory. 43 Cal. App. 4th at 803.

Indeed, suppliers and vendors have been named as defendants under a market share liability theory in multiple published cases, yet there is not a single instance in which a defendant argued that only manufacturers could be liable, much less is there a case that was decided on those grounds. *See e.g., Ferris v. Gatke Corp.*, 107 Cal. App. 4th 1211, 1214, 1224 (2003) (sustaining demurrer on entirely different grounds where market share liability was pled against defendant manufacturers, suppliers, and/or distributors of asbestos); *Rutherford v. Owens-Illinois, Inc.*, 16 Cal. 4th 953, 957 (1997), *as modified on denial of reh'g* (Oct. 22, 1997) (market share liability applies where "the defendant ***manufactured*** or ***sold*** defective asbestos-containing products") (emphasis added); *Magallanes v. Super. Ct.*, 167 Cal. App. 3d 878, 881 (1985) (plaintiff alleged, *inter alia*, that in "***manufacturing*** and ***distributing*** the DES, the defendants acted with conscious disregard of the rights and safety of the general public") (emphasis added).

In fact, contrary to Vendor-Defendants' unfounded assertion, California courts have suggested that market share liability can apply to vendors. For example, in *Edwards v. A.L. Lease & Co.*, 46 Cal. App. 4th 1029, 1032 (1996), the appellants filed an action for property damage against wholesalers of defective residential drain pipe where the manufacturers were known, but the identity of the wholesaler/distributor of the pipe was not. The Court of Appeals, in assessing the applicability of market share liability to the plaintiff's claim, emphasized that, "[i]n a product liability action, every supplier in the stream of commerce or chain of distribution, from manufacturer to retailer, is potentially liable." *Id*. at 1033. Ultimately, the *Edwards* court determined market share liability was inapplicable because the appellants in that case knew "who manufactured the defective pipe, [knew] who supplied the defective components from which it

was manufactured, and also [knew] the general contractor or builder who constructed their homes" and consequently, "appellants [had] identifiable defendants, and [were] not otherwise without a remedy." *Id*. at 1034. The exact opposite is true here: Plaintiffs do not know who manufactured, distributed, or sold the precise gun kits/parts that were used to assemble the semi-automatic rifles used in the massacre. Just as in *Sindell*, Vendor-Defendants – who negligently targeted prohibited persons and failed to take reasonable safety measures before selling their ghost gun kits/parts – are in a far better position than plaintiffs to prove that the parts they sold were not used in the shooting.

Vendor-Defendants reliance on *Sindell* for using the term "manufacturers" is thus no more than a pedestrian observation of the particular type of defendants at issue in that particular case. Nothing in *Sindell* limits the application of market share liability to manufacturers; to the contrary, *Sindell* discusses the applicability of the doctrine to suppliers based on sales. No case has held that the market share liability theory can only apply to manufacturers, but many have accused non-manufacturer defendants without any court dismissing the claim on that basis.

B. Vendor-Defendants' Out of State Cases Likewise Do Not Preclude Application of Market Share Liability to Non-Manufacturers

Vendor-Defendants next rely on non-California precedent to argue that "other states' courts have outright rejected or heavily criticized market share liability theory," and that those "that have entertained it, consistently consider it a manufacturer-specific doctrine." MP&A at 6-8. And, once again, the cases Vendor-Defendants rely upon do not limit the applicability of market share liability to manufacturer defendants.

Just as they did with respect to the California cases they cite, Vendor-Defendants do nothing more than traverse quotations describing the facts of *Sindell* or the uncontroversial fact that the defendants in the cited cases happened to include manufacturers. MP&A at 6-7. For example, in *Smith v. Eli Lilly & Co.*, 137 Ill. 2d 222 (1990), the Illinois Supreme Court decided whether "in a negligence and strict liability cause of action, Illinois should substitute for the element of causation in fact a theory of market share liability when identification of the manufacturer of the drug that injured the plaintiff is not possible." 137 Ill. 2d at 226. In *Smith*,

just like in *Sindell,* the plaintiff had sued manufacturers of the drug DES. *Id.* However, unlike *Sindell,* the Illinois Supreme Court rejected market share liability as a theory of causation. *Id.* at 267-68. The Illinois Court's decision did not address whether market share liability could apply to non-manufacturers since it concluded that it should not apply to *any* kind of defendants. *Id.*[1]

The same is true for Vendor-Defendants' citation to *Sutowski v. Eli Lilly & Co.,* 696 N.E.2d 187, 197 (Ohio, 1998). *See* MP&A at 6. *Sutowski,* like *Smith*, rejected the doctrine of market share liability outright. 696 N.E.2d at 193. However, the *Sutowski* defendants included non-manufacturers: "each of the named defendants is either a manufacturer, ***a distributor***, or ***a parent or successor corporation to a manufacturer or distributor***, of DES." *Id.* at 187. The *Sutowski* court rejected the market share liability doctrine on the basis that it was an unfair expansion of causation, not because non-manufacturers were among the named defendants. *Id.* at 189.[2]

Vendor-Defendants take similar liberties with the federal cases they rely upon. For example, they claim that Georgia "banned market share liability" and "went even further and pointed out that there is no indication that market-share liability as a doctrine applies to product sellers." MP&A at 7 (quoting *Williamson v. Walmart Stores, Inc.*, Case No. 14-CV-97 (CDL) (M.D. Ga. Apr. 8, 2015). In point of fact, citing a Georgia statute, the *Williamson* court held that "Georgia does not recognize market-share liability." *Id.* at *20. The plaintiff nonetheless argued that market share liability could apply to sellers because the relevant Georgia statute only applied to manufacturers. *Id.* at *21. While the court agreed that sellers were not covered by the statute,

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[1] The quote from *Smith* that Vendor-Defendants rely on ("market share liability would cause major issues because it would 'surely broaden **manufacturers'** liability exposure because they will need to insure against losses arising from the products of others in the industry as well as their own'"), MP&A at 6 (quoting 137 Ill.2d at 261), merely discusses one reason why it was wrong to expand market share liability to the accused defendants *in that particular case* (who happened to be manufacturers of DES).

[2] Vendor-Defendants also cite *Celotex Corp. v. Copeland,* 471 So. 2d 544 (Fla. 1985) and *Skipworth by Williams v. Lead Indust. Ass'n*, 547 Pa. 224, 230 (1997), for the proposition that market share liability only applies to manufacturers when, in reality, these two cases simply rejected the application of market share liability in those states. The *Skipworth* court stated, "The market share liability theory provides an exception to the general rule that a plaintiff must establish that the defendant proximately caused his or her injury." *Id.* at 230-31.

it nonetheless found that sellers could not be subject to market share liability because, under Georgia law, "a product seller only has a duty to warn of product dangers if the seller undertakes a duty to advise the buyer on the product's safety or if the 'seller is aware of a danger either not communicated by the manufacturer's warning or substantively different from the dangers the manufacturer has included in a warning label.'" *Id.* Unlike Georgia, California recognizes market share liability, and as discussed above, the theory applies to Vendor-Defendants under the facts as pled.

Out of state and federal authority are not binding precedent on the present cases. Moreover, the out of jurisdiction cases cited by Vendor-Defendants generally hold against adopting market share liability and do not squarely address the issue here, *i.e.*, whether vendors can be subject to market share liability under California law. Accordingly, Vendor-Defendants' demurrer should be denied.

C. The Reasons California Recognized Market Share Liability Support Application to Vendor-Defendants

Vendor-Defendants claim that the *Sindell* court's rationale for "allowing application of the controversial market share liability doctrine to DES was that 'the manufacturer is in the best position to discover and guard against defects in its products and to warn of harmful effects." MP&A at 8 (citing *Sindell*, 26 Cal. 3d at 611). According to Vendor-Defendants, ghost gun kit/part vendors are not in a position to guard against defects and warn of harmful effects. MP&A at 8. Vendor-Defendants provide an incomplete accounting of the *Sindell* court's rationale for adopting market share liability and, furthermore, are wrong that vendors cannot guard against defects or warn of harmful effects.

In discussing its reasons for recognizing market share liability, the California Supreme Court noted that "the most persuasive reason" for doing so was that "as between an innocent plaintiff and negligent defendants, the latter should bear the cost of the injury." *Sindell*, 26 Cal. 3d at 611. In particular, the *Sindell* court noted that market share liability should apply where the "plaintiff is not at fault in failing to provide evidence of causation and although the absence of such evidence is not attributable to the defendants either," their ***marketing conduct*** "played a

significant role in creating the unavailability of proof." *Id.* This reasoning applies as much to vendors of ghost gun kits/parts as it does to manufacturers. Indeed, Plaintiffs have pled that, rather than take steps to keep ghost guns out of the hands of prohibited persons, Defendants have instead "intentionally targeted" "criminals and other dangerous individuals" with their marketing campaigns while failing to take reasonable steps to avoid supplying prohibited California residents with dangerous assault weapons. McFadyen Compl., ¶¶ 70, 85; Cardenas Compl., ¶¶ 54, 69. Thus, Plaintiffs' claims as pled satisfy *Sindell*'s main rationales for market share liability.

The California Supreme Court's rationale for the expansion of the alternative liability doctrine to incorporate a market share theory of liability in *Sindell* was not that the defendants were *manufacturers per se* (as Vendor-Defendants imply), but instead was that the defendants had some control over putting the dangerous product into the open market. 26 Cal. 3d at 611. Indeed, the *Sindell* court further noted that each defendant was ". . . in the best position to discover and guard against defects in its products and to warn of harmful effects; thus, holding it liable for defects and failure to warn of harmful effects will provide an incentive to product safety." *Id.* Thus, while the *Sindell* defendants happened to be manufacturers of a defective product, the California Supreme Court's decision to apply the market share theory of liability did not hinge on the manufacturers' status as such.

Just as the rationale for applying a market share theory of liability in *Sindell* was that the burden of proving non-liability should fall to the alleged tortfeasor defendants whose products are by design dangerous and difficult to trace to the source, so it is, too, in the present cases. Plaintiffs are innocent victims of a deranged individual who was negligently entrusted with the components to readily assemble AR-15 style weapons he should never legally have had access to under state or federal law. McFadyen Compl., ¶ 58; Cardenas Compl., ¶ 74. Vendor-Defendants have each intentionally marketed, advertised, and sold dangerous ghost gun kits over the internet without requiring background checks and compounded the dangerous nuisance they created by ensuring that the guns made from their gun kits lacked serial numbers that would enable the victims to trace the source of the gun parts back to the precise vendor and manufacturer. *See, e.g.*, McFadyen Compl., ¶ 91; Cardenas Compl., ¶ 75. Vendor-Defendants know that by not

requiring a serial number or a background check to purchase their inherently dangerous ghost gun kits, they have made their products attractive to felons and others who are prohibited from possessing firearms, such as people convicted of domestic violence. McFadyen Compl., ¶ 7; Cardenas Compl., ¶ 7. Vendor-Defendants' lack of care when selling components that allow a purchaser who has not had to pass a background check to assemble an untraceable, unregistered AR-15 style semi-automatic rifle in 30 minutes or less makes the application of market share liability particularly appropriate here.

Specifically, Plaintiffs allege that each of the Vendor-Defendants negligently marketed, advertised, and supplied dangerous products to prohibited individuals, without taking reasonable precautions to prevent their dangerous wares from falling into the wrong hands. *See e.g.*, McFadyen Compl., ¶¶ 7, 49, 91; Cardenas Compl., ¶¶ 7, 35, 85. Just as in *Sindell*, the manufacturers and vendors of the ghost gun kits used by Neal were "in the best position to discover and guard against" the harm their reckless conduct caused. For example, the manufacturers could have included serial numbers on their gun kit parts to ensure that the assembled weapons would be traceable to a particular manufacturer and purchaser. *See* McFadyen Compl., ¶ 85; Cardenas Compl., ¶ 69.

Likewise, the vendors could have required background checks and marketed their ghost gun kits to lawful firearms owners instead of promoting sales to prohibited users by touting the virtues of the government not being able to "take 'em, if they don't know you've got 'em." McFadyen Compl., ¶ 73; Cardenas Compl., ¶ 57. Indeed, on the present facts, the vendors, not the manufacturers, are arguably in the best position to ensure their gun kits do not fall into the wrong hands since they could prohibit sales to states that have assault weapons bans and run background checks. *See, e.g.*, McFadyen Compl., ¶ 85; Cardenas Compl., ¶ 69. And, just as in *Sindell*, holding both manufacturers and vendors liable here is appropriate since they are together "in the best position to discover and guard against defects in its products and to warn of harmful effects" and thus holding them liable for their negligence will provide an incentive for product safety. *Sindell*, 26 Cal. 3d at 611. Market share is especially applicable to the ghost gun kit/part vendors as one of the aspects of Vendor-Defendants' wrongful conduct is their circumvention of

gun laws by advertising their guns as untraceable and outside the state and federal background check apparatus.

Separately, Vendor-Defendants allege that the vendor market is too difficult to determine, and therefore, applying market share liability to ghost gun kit vendors is impractical. MP&A at 8. This argument ignores Plaintiffs' allegations that they have sued a substantial share of the relevant market. *See, e.g.,* McFadyen Compl., ¶¶ 105-107, 110 ("DEFENDANTS, in aggregate, were responsible for manufacturing and/or selling a substantial percentage of all "ghost gun" parts/kits enabling assembly of AR-15 style "ghost gun" rifles which entered into California leading up to and during November 2017"); Cardenas Compl., ¶¶ 91-93, 96 (same).

Further, the issue of the size and scope of the relevant market is inherently a fact issue that is inappropriate for demurrer. *Exec. Landscape Corp. v. San Vicente Country Villas IV Ass'n,* 145 Cal. App. 3d 496, 499 (1983) (a demurrer tests the pleadings alone, not extrinsic matters or evidence not on the face of the pleading or that "cannot be properly inferred from the factual allegations of the complaint."). Moreover, Plaintiffs have pled that the Defendants comprise a "substantial portion" of the relevant market, *see, e.g.*, McFadyen Compl., ¶ 105; Cardenas Compl., ¶ 89, and those allegations must be accepted as true for purposes of demurrer. *Alcorn v. Anbro Eng'g, Inc.*, 2 Cal. 3d 493, 496, (1970) (all material factual allegations in the complaint should be taken in the light most favorable to the plaintiff on demurrer).

Further, *Sindell* itself clearly stated that the determination of whether the plaintiff joined a "substantial" share of the market is necessarily a complicated inquiry that is not suited to resolution on a demurrer. 26 Cal. 3d at 613 ("We are not unmindful of the practical problems involved in defining the market and determining market share, but these are largely matters of proof which properly cannot be determined at the pleading stage of these proceedings."). As such, it would be improper for this Court to dismiss the Vendor-Defendants on the issue of whether Plaintiffs joined a substantial share of the vendors on demurrer.

The allegations in the Complaints fall squarely within the type of circumstances that motivated the *Sindell* court to adopt the market share liability doctrine in California. Plaintiffs are innocent and blameless for being unable to identify the precise defendants who sold ghost gun

kits/parts to Neal. Conversely, Defendants intentionally sold dangerous firearm components into California without taking reasonable safety measures and in violation of California and federal law, which justifies shifting the burden of proving that they could not have sold to Neal before the spree killing.

CONCLUSION

The market share theory of liability was recognized to address cases where the burden of proving precisely who among many possible negligent tortfeasors is responsible for the plaintiffs' injuries is more readily born by those tortfeasors. The Vendor-Defendants intentionally marketed and sold their ghost gun kits/parts knowing they would likely fall into the hands of a felon, domestic abuser, mentally ill person, or all of the above. In fact, the Vendor-Defendants targeted those prohibited buyers by emphasizing the lack of background checks and serialization of their products. In contrast, the Plaintiffs were totally innocent bystanders who were victimized by the Vendor-Defendants' negligence and avarice. As such, the market share theory of liability should apply and the Vendor-Defendants' Unique Demurrer should be denied.

Dated: March 9, 2022

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