

ALEXANDER W. BOOTH, JR.
CORPORATION COUNSEL
Jersey City Law Department
City Hall-280 Grove Street
Jersey City, New Jersey 07302
Telephone (201) 547-5229

DENNIS A. HENIGAN
BRIAN J. SIEBEL
ALLEN ROSTRON
Brady Center To Prevent Gun Violence
1250 Eye Street, N.W.,
Washington, D.C. 20005
Telephone (202) 289-7319

Attorneys for Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO. HUD-L-

CITY OF JERSEY CITY,

Plaintiff,

v.

SMITH & WESSON Corp., BERETTA
U.S.A., Corp., COLT'S MFG. Corp.,
BROWNING ARMS Corp., GLOCK
Corp., HI-POINT FIREARMS Corp., B.L.
JENNINGS Inc., BRYCO ARMS Corp.,
PHOENIX ARMS Corp., STURM RUGER
& CO. Corp., TAURUS FIREARMS Corp.,
DAVIS INDUSTRIES, Inc., CASO'S
GUN-A-RAMA, Inc., RAY'S SPORTS
SHOP, Inc., AMERICAN SHOOTING
SPORTS COUNCIL, Inc., NATIONAL
SHOOTING SPORTS FOUNDATION,
Inc., SPORTING ARMS AND
AMMUNITION MANUFACTURERS'
INSTITUTE, Inc., and DOES 1-50,

Defendants.

:
: Civil Action

:
: **COMPLAINT**

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Plaintiff, City of Jersey City, having its principal place of business at City Hall, 280 Grove Street in the City of Jersey City, County of Hudson and State of New Jersey, by way of Complaint against the defendants, says:

A. NATURE OF THE ACTION

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

6. Each of the defendants' herein conduct, create, maintain, and contribute to a public nuisance in Jersey City because it is injurious to health and significantly interferes with the public's health, safety, peace, and comfortable enjoyment of life or property, and because it is conduct which defendants knew or should have known to be of a continuous and long-lasting nature that produces a permanent and long-lasting significant negative effect on the rights of the public.
7. The vast majority of handguns used to commit crimes in Jersey City and throughout the country, are purchased or otherwise diverted from licensed dealers in a wide and ever changing array of schemes - including sham or "straw" purchases, multiple sales, and diversions by corrupt dealers - designed to supply guns to an illegitimate secondary market of felons, juveniles, and other dangerous individuals who could not legally purchase guns on their own.
8. Defendants not only know that this diversion takes place, but they also depend upon it to increase their profits.
9. Defendants have the ability to dramatically reduce the flow of handguns to this illegitimate secondary market by implementing readily available precautionary measures, but have negligently, recklessly, or willfully chosen not to do so, and instead, rely upon and exploit this illegitimate market as a steady and lucrative source of profit.
10. Defendants affirmatively rely upon the reasonably foreseeable laxness of dealers, and employees, and the ingenuity of criminals to ensure that thousands of handguns find their way to their expected place in the illegitimate secondary market.

11. In order to facilitate this strategy, defendants have erected a veil of deniability between themselves and the distributors, dealers and salespersons.
12. Defendants negligently avoid monitoring distributors, dealers and salespersons.
13. Defendants fail to provide adequate training or guidance to distributors, dealers and salespersons.
14. Defendants fail to curtail shipments or sales to distributors, dealers or purchasers who supply handguns to the illegitimate secondary market.
15. Defendants fail to ascertain which of their distributors, dealers or salespersons are supplying guns to criminals.
16. Defendants know and depend upon their willful and unreasonable failure to take steps necessary to prevent thousands of profitable handguns from distribution to their expected illegitimate buyers and users.
17. Defendant distributors and dealers are active in the aforesaid described enterprise set forth in paragraphs one through 16 hereinabove.
18. Defendant dealers conveniently look the other way while sales are made to straw purchasers or under circumstances where the dealer knows or should reasonably foresee that the guns will thereafter be diverted into the illegal secondary market reaching illegal buyers who will use the guns in crime in Jersey City.
19. From the perspective of the defendants, the aforesaid strategy has been a resounding success.
20. The production and sale of thousands of handguns for indirect but predictable

sale in the illegitimate secondary market has resulted in substantial economic gain to the defendants.

21. As a result of the aforesaid conduct of the defendants, the City of Jersey City and its citizens have suffered irreparable and irremediable harm, to wit: dozens of lives are lost and numerous others are injured each year in crimes committed with handguns supplied by the defendants in this scheme.

22. As a result of the defendants' conduct, the City is required to spend millions of dollars to investigate and prosecute crimes committed with handguns supplied by the defendants in the aforesaid scheme.

23. As a result of defendants' conduct, the City of Jersey City will incur millions of dollars in emergency services and other costs in responding to the crisis of violence in Jersey City wrongfully cause by defendants.

24. Defendants have knowingly adopted a strategy which allows them to sell thousands of handguns to criminals at enormous cost to the City of Jersey City and its citizens, and to carry on their lucrative business at the expense of the City of Jersey City and its residents.

25. As a direct and proximate result of the defendants' wrongful actions, not only has a public nuisance been caused in Jersey City, but the plaintiff has also been seriously damaged because it has had to expend large sums of money to investigate crime, prevent crime, transport and treat the injured and those who have died, and support the victims of gun violence.

26. As a result of defendants' wrongful acts and omissions, the City of Jersey City has lost revenue and has suffered substantial decreases in property values.

27. For the aforesaid reasons, by this action, plaintiff seeks injunctive and compensatory relief as set forth herein below.

B. PARTIES

28. The City of Jersey City is a body politic existing under the laws of the State of New Jersey, and located in the County of Hudson and State of New Jersey.

29. The following defendants, in paragraphs 30 through 47, manufacture, distribute or sell handguns that are found and used in the City of Jersey City on an on-going and continuous basis, or that comprise a significant percentage of the annual total number of all handguns manufactured, distributed or sold in the United States, or are trade associations comprised of such entities.

30. Defendant BERETTA U.S.A. Corp. (hereinafter "Beretta USA"), is a corporation organized and existing under the laws of the State of Maryland with its principal place of business at 17601 Beretta Dr., Accokeek, Maryland. This defendant's guns have been associated with criminal conduct in Jersey City.

31. Defendant B.L. JENNINGS Corp. (hereinafter "Jennings"), is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada. This defendant has distributed guns that have been associated with criminal conduct in Jersey City.

32. Defendant BROWNING ARMS Corp. (hereinafter “Browning”), is a corporation organized and existing under the law of the State of Utah with its principal place of business at One Browning Place, Morgan, Utah. This defendant’s guns have been associated with criminal conduct in Jersey City.

33. Defendant BRYCO ARMS Corp. (hereinafter “Bryco”) is a corporation organized and existing under the laws of the State of California with its principal place of business in California. This defendant’s guns have been associated with criminal conduct in Jersey City.

34. Defendant COLT’S MFG Corp. (hereinafter “Colt’s), is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business at 545 New Park Avenue, Hartford, Connecticut. This defendant’s guns have been associated with criminal conduct in Jersey City.

35. Defendant DAVIS INDUSTRIES, INC. (hereinafter “Davis”), is a corporation organized and existing under the laws of the State of California with its principal place of business at 15150 Sierra Bonita Lane, Chino, California. This defendant’s guns have been associated with criminal conduct in Jersey City.

36. Defendant GLOCK, Corp. (hereinafter “Glock”) is a corporation organized and existing under the laws of the State of Georgia with its principal place of business at 6000 Highlands Parkway, Smyrna, Georgia. This defendant’s guns have been associated with criminal conduct in Jersey City.

37. Defendant HI-POINT FIREARMS (hereinafter “Hi-Point”) is a corporation

organized and existing under the laws of the State of Ohio with its principal place of business at 5990 Philadelphia Drive, Dayton, Ohio. This defendant's guns have been associated with criminal conduct in Jersey City.

38. Defendant PHOENIX ARMS Corp. (hereinafter "Phoenix") is a corporation organized and existing under the laws of the State of California with its principal place of business at 1420 S. Archibald Avenue, Ontario, California. This defendant's guns have been associated with criminal conduct in Jersey City.

39. Defendant SMITH & WESSON Corp. (hereinafter "Smith & Wesson"), is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business at One Lacey Place, Southport, Connecticut. This defendant's guns have been associated with criminal conduct in Jersey City.

40. Defendant STURM, RUGER & COMPANY (hereinafter "Sturm Ruger") is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business at One Lacey Place, Southport, Connecticut. This defendant's guns have been associated with criminal conduct in Jersey City.

41. Defendant TAURUS FIREARMS Corp. (hereinafter "Taurus"), is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 16175 NW 49th Avenue, Miami, Florida. This defendant's guns have been associated with criminal conduct in Jersey City.

42. Defendant CASO'S GUN-A-RAMA Inc. (hereinafter "Caso's Gun-A Rama"), is a corporation organized and existing under the laws of the State of New Jersey with its

principal place of business at 176 Danforth Ave., Jersey City, New Jersey. This defendant has sold guns that have been associated with criminal conduct in Jersey City.

43. Defendant RAY'S SPORTS SHOP Inc. (hereinafter "Ray's Sports Shop"), is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business at 559 Highway 22, North Plainfield, New Jersey. This defendant has sold guns that have been associated with criminal conduct in Jersey City.

44. Defendant AMERICAN SHOOTING SPORTS COUNCIL, INC.(hereinafter ("ASSC")), is a tax-exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Georgia with its principal office in Georgia. ASSC is an industry trade association composed of gun manufacturers and sellers, including some or all of the defendant manufacturers.

45. Defendant NATIONAL SHOOTING SPORTS FOUNDATION, INC. (hereinafter "NSSF") is a tax-exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut with its principal office in Connecticut. NSSF is an industry trade association composed of gun manufacturers and sellers, including some or all of the defendant manufacturers.

46. Defendant SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC. (hereinafter "SAAMI"), is a tax-exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut with its principal office in Connecticut. SAAMI is an industry trade association composed of gun manufacturers and sellers, including some or all of the

defendant manufacturers.

47. Does 1-50, inclusive, are business entities, the status of which are currently unknown. Does 1-50 manufactured, distributed or sold handguns that are or were possessed within the City of Jersey City, or are trade associations whose membership includes those some of those entities. Plaintiffs allege that each of the fictitiously named Does 1-50 are responsible in some manner for the violations alleged herein.

C. JURISDICTION

48. This Court has jurisdiction over this action and the parties hereto. The within jurisdiction is the proper venue under Rule 4:3-2(a) because the action is brought by a municipality located in Hudson County, because the cause of action arose in Hudson County, and because the City of Jersey City resides in Hudson County.

D. SPECIFIC FACTUAL ALLEGATIONS

49. The widespread availability and misuse of handguns by juveniles, felons, and other unauthorized users is a national problem of immense proportions and is known to the defendants.

50. Gun violence is the second leading cause of injury-related death in the United States.

51. In 1999, almost 29,000 people were killed with firearms. Of these, approximately 3,365 were children aged 19 and under.

52. In addition, based on 1997 data, approximately 64,000 individuals are treated

annually in hospital emergency rooms for non-fatal firearm injuries.

53. The cost of shootings to cities like Jersey City is staggering.

54. It is estimated that nationally, gun-related violence costs taxpayers more than \$4.5 billion dollars per year.

55. Most injuries and deaths from shootings are caused by handguns.

56. One of the most serious problems facing Jersey City, as with most major cities in the United States, is the high level of violent crime committed with handguns.

57. Between 1996 and 1997, there were 42 murders, more than 2,430 robberies, and more than 2,325 aggravated assaults in Jersey City, a significant percentage of which were committed with handguns.

58. In addition, the Jersey City Police Department has seized hundreds of crime guns over the past several years.

59. Over the past several years, handguns recovered in Jersey City crime were made or sold by each of the manufacturer, distributor, and dealer defendants named in this action.

60. Thousands of additional guns used in crime in Jersey City during this period have not yet been recovered.

61. The foregoing staggering toll of handgun violence and crime is fueled by the easy movement of handguns from the defendants to unauthorized and illegal users through an illegal secondary handguns market.

62. Surveys have consistently shown how easily juveniles and convicted criminals

can obtain firearms, to wit:

- a. One survey showed that approximately 29% of 120th grade boys and 23% of 7th grade boys have at one time carried a concealed handgun.
- b. A different survey of high school students and incarcerated juveniles reported that 32% of respondents asked adults to buy guns on their behalf.
- c. Another survey found that approximately 60% of children between the ages of 10 and 19 said they could acquire a gun should they want one, with 15% having carried a gun with them in the last 30 days.
- d. A survey of adult prisoners showed that 70% felt they could easily obtain a firearm upon their release.

63. Tracing of crime guns manufactured, distributed and sold by defendants by the Federal Bureau of Alcohol, Tobacco and Firearms (hereinafter also referred to as “ATF”) confirms that juveniles, felons, and other unauthorized users can easily obtain firearms for crime.

64. A 1998 ATF study of 27 major urban centers throughout the United States, including Jersey City, which analyzed more than 75,000 guns traced to crime over a one-year period reported that more than 11% of guns picked up in crime have been possessed by children under age 18.

65. The same 1998 ATF tracing study indicated that more crime guns are seized from persons in the next age group up - youths who are 18, 19 or 20 years old than from any other three year age group, adult or juvenile.

66. According to the 1998 ATF study, more than 26% of crime guns in the 27 cities were seized from children under 21 who cannot legally purchase handguns under federal or state law.

67. A 1999 ATF study found that 16% of the recovered crime guns in Jersey City were associated with juveniles, and 48% were associated with youths, with both proportions higher than national averages.

68. The same 1999 ATF study concluded that “a large proportion of youth crime guns are quite new and most likely deliberately and illegally trafficked.”

69. ATF tracing of trafficked crime guns found that more than 45% of the weapons seized were illegally possessed by convicted felons:

- a. Large percentages of these guns have been used in assaults, robberies, homicides, and other violent crimes.
- b. More than 80% of the firearms seized in crime have been handguns.
- c. In Jersey City, according to the 1999 ATF data, more than 88% of traced guns are handguns.

70. According to a 2000 ATF report on gun trafficking, “[v]irtually every crime gun in the United States starts off as a legal firearm.”

71. The ease with which guns, in particular, large number of handguns are moved into the illegitimate marketplace is demonstrated by the short time between retail sale and criminal misuse (known as “time-to-crime”).

72. ATF tracing data indicates that from 32% to 47% of firearms traced to crime in

urban centers across America, including Jersey City, have been bought from retail dealers less than three years earlier, which is a strong indication that the firearm has been illegally trafficked.

73. ATF data also indicates that nationally 15% of crime guns were purchased from retail dealers in the prior twelve months.

74. For certain types of firearms, such as semiautomatic pistols, this time-to-crime is even more rapid, with the shortest time-to-crime period reported being one day.

75. Defendant manufacturers are responsible for manufacturing and/or selling of a significant percentage of the crime handguns recovered in Jersey City.

76. The flow of defendants' handguns into the unlawful market and into the hands of unauthorized and irresponsible persons, including youth under age 21 and convicted felons in Jersey City, has occurred in numerous ways, including but not limited to those methods listed in paragraphs 77 through 97 hereinbelow.

77. Defendants knew or should have known of the foregoing methods of illegal diversion and could reasonably have easily taken action to control and prevent the diversion.

78. Defendants intentionally, willfully, and negligently failed to take action to control and prevent the diversion.

79. Thousands of guns have flowed into the unlawful market directly through federal firearms licensed dealers within defendant manufacturers' distribution systems, with the flow generally concentrated in a small number of dealers.

- a. While federally licensed firearms dealers comprised less than 10% of recent ATF trafficking investigations, they were associated with the highest mean number of illegally diverted firearms per investigation -- over 350 -- and were associated with the largest overall number of diverted firearms -- over 40,000.
- b. ATF data indicates that in 1998 1.2% of federally licensed firearms dealers accounted for “well over” 50% of successful crime gun traces.
- c. A report by a United States Senator revealed that between 1996 and 1998, a mere one-tenth of one percent of all federally licensed gun dealers, manufacturers and distributors, accounted for almost 20% of all successful ATF crime gun traces.

80. Thousands of guns have flowed into the unlawful market by an illegal method of diversion called “straw purchasing,” wherein the purchaser buys the gun from a licensed dealer for a person who is not qualified to purchase the firearm under federal and state laws and regulations, such as a person under 21 or convicted felon.

- a. In one recent law enforcement study, more than 50% of the firearms subject to firearm trafficking investigations had been acquired as part of a straw purchase.
- b. Many straw purchases occurred under circumstances which indicated or should have indicated to the firearm seller that a “straw purchase” was being made.

- c. New ATF data indicates that when the identity of both individuals is known, about 89% of crime gun possessors are not the original purchaser of the gun, further suggesting that straw purchasing is rampant at gun stores.

81. Thousands of guns have been diverted into the unlawful market after first being part of “multiple sales” wherein the purchaser buys more than one gun at a time or over a short period of time from a licensed dealer with the intention of later selling or transferring the gun to a person who is not legally qualified to purchase firearms under federal and state regulations, such as a person under 21 or convicted felon.

- a. Many multiple sales by defendants have occurred under circumstances that indicated or should have indicated to the firearm seller that the handguns being purchased were destined for the unlawful market via a straw purchase.
- b. The connection between multiple sales and crime guns is also established with new ATF data which indicates that 22% of traced crime guns first sold in 1999 were part of a multiple sale.
- c. Among all traced handguns, those originally purchased in multiple sales transactions were particularly likely to have obliterated serial numbers.

82. Defendants intentionally, wilfully and negligently have failed and continue to fail to take any action to curb multiple sales regardless that they reasonably knew or should have known that guns purchased in this manner are likely to flow into the illegitimate

handguns market.

83. For many years defendants have sold thousands of handguns to “kitchen table” dealers, *i.e.*, federally licensed firearm dealers who do not sell firearms from a retail establishment.

- a. A 2000 ATF report indicates that 56% of a random sample of federally licensed firearms dealers are kitchen table dealers.

84. Many of the “kitchen table” dealers, although federally licensed, have sold handguns without completing background checks on purchasers or complying with other reporting requirements, or have otherwise diverted guns into the illegal marketplace.

85. Defendants knew or should have known of the “kitchen table” dealers’ illegal practices and reasonable steps that said dealers could take or have taken to avoid the occurrence of these illegal practices.

86. Defendant “kitchen table” dealers intentionally, wilfully and negligently failed to take action to prevent said illegal practices, but instead have wrongfully and unreasonably continued to supply the dealers with handguns for the purpose of maximizing their profits.

87. Thousands of handguns have also reached the unlawful market after having been stolen from retail dealers and from other federal firearm licensees who failed to provide adequate security of their premises.

88. Notwithstanding the foreseeability of the foregoing occurrences, defendants intentionally, wilfully and negligently failed to take any action to ensure that persons

distributing their dangerous products had or would implement readily available and reasonably affordable adequate security measures to prevent thefts of handguns from retail dealers and from other federal firearm licensees.

89. Thousands of firearms diverted to crime have had their serial numbers obliterated to prevent tracing of the firearm by law enforcement as activities which have been useful to criminals who seek to eliminate the tracks of their crimes.

90. Defendant manufacturers have knowledge of the aforesaid problem, as well as the ease with which serial numbers can be obliterated.

91. Defendant manufacturers intentionally, wilfully and negligently failed to take any action to make their serial numbers tamper proof, notwithstanding the availability of technology to have done so.

a.. A 1998 ATF study of 27 major urban centers found, on average, that more than 11% of the guns traced to crime had obliterated serial numbers.

92. Handguns also move across state boundaries into cities such as Jersey City.

93. Defendants should reasonably have known that handguns move state access boundaries into cities such as Jersey City.

a. Recent ATF studies of crime guns seized in Jersey City indicated that approximately 85% of these guns were originally sold at retail outside of New Jersey.

94. Handguns are also foreseeably diverted to crime through gun shows.

95. Defendants knew or should reasonably have known that firearm sellers do not

perform a background check on prospective purchasers of handguns directed to crime through gun shows.

- a. One recent federal study showed that in 314 investigations involving gun trafficking through gun shows, felons were part of more than 46% of the transactions, with more than 54,000 firearms being diverted into the illegal marketplace.

96. The defendants knew or should reasonably have known that their products would fall and have fallen into the hands of unauthorized and irresponsible persons, including persons under the age of 21 and felons convicted of criminal activity in Jersey City.

97. A large proportion of crime guns recovered from unauthorized and irresponsible individuals are new and have most likely been deliberately and illegally trafficked.

- a. In more than two-thirds of the firearms trafficking investigations reviewed in one study known to defendants, improperly transferred firearms were shown to have been subsequently involved in additional crimes, a high percentage of which were violent crimes.

98. The foregoing criminal activity has damaged Jersey City and injured and killed its citizens.

99. Strong evidence of unlawful gun trafficking, often by specific dealers, is readily available to and often received by defendant gun manufacturers.

100. ATF collects and disseminates to defendant gun manufacturers information

describing crime gun patterns through crime gun tracing.

- a. ATF's 1999 National Report in crime gun tracing informs firearms manufacturers of crime gun patterns "allowing them to build sounder and safer businesses."
- b. The foregoing information, according to ATF, allows for identification of concentrations of crime guns from particular dealers.
- c. A 2000 Report by the United States Department of Justice, entitled Gun

Violence Reduction: National Integrated Firearms Violence Reduction

Strategy, states:

The firearms industry must do much more to help solve our country's firearms violence problem. Each gun manufacturer and distributor must do a better job of policing its own distribution chain to reduce the illegal supply of guns and keep them from falling into the hands of criminals, unauthorized juveniles, and other prohibited persons.

- d. In the 2000 Report, the Department of Justice stresses:

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

101. Defendants intentionally, wilfully and negligently failed to take any action to curb the unlawful gun trafficking which causes a foreseeable and unreasonable threat to the safety and welfare of Jersey City's citizens.
102. The harm caused to Jersey City and its citizens by handgun violence is widely publicized, is a matter of common knowledge and has been known to defendants.
103. Gang-related shootings and other shooting incidents are regularly reported in the Jersey Journal, the Hudson Reporter, the Urban Times, and other local and national media.
104. The aforesaid public information confirms that juveniles and convicted felons are readily obtaining and using handguns manufactured, distributed and sold by defendants to harm Jersey City and its residents.
105. That a substantial percentage of the handguns used to inflict the harm to Jersey City and its citizens by gun violence are obtained through the illegitimate secondary market is widely publicized, a matter of common knowledge, and has been known to defendants since the development of the illegitimate secondary market.
- a. Firearm tracing reports on crime guns prepared by ATF for Jersey City and other urban centers across the United States are publicly available, and various of these can be accessed over the internet.
106. Many of the aforesaid reports have been and continue to be known to defendants.
107. Defendants knew or should have known that a substantial percentage of the

handguns manufactured, distributed and sold by them and used to inflict the harm to Jersey City and its citizens by handgun violence are obtained through the illegitimate secondary market.

108. Defendants knew or should have known that specific guns they manufactured and/or sold have been traced to crime.

109. The ATF has contacted defendants in conducting traces of crime guns.

110. The ATF trace reports provide each manufacturer and distributor defendant with ongoing notice regarding the number of guns being used in crimes.

- a. From January 1, 1995 through December 31, 2000, the number of guns traced by ATF as part of criminal investigations was approximately 1,000,000, with about 200,000 or more guns now traced each year.

111. These ongoing traced guns are a fraction of the guns recovered in criminal investigations by law enforcement over those years.

112. Nearly all of the traces begin with ATF contacting the firearm's manufacturer and providing it with the serial number of the gun being traced, the identity of the manufacturer providing ATF the name of the distributor to whom the gun was sold, and the date of the sale,

113. The trace requests serve as a reminder to defendants that their distribution system is supplying an overwhelming number of guns into an unlawful market in Jersey City and elsewhere leading directly to firearms violence and crime, and are also a means by which defendants could determine which distributors and dealers in their distribution

systems are sources of excessive numbers of crime guns.

114. Notwithstanding the foregoing notices, defendants intentionally, wilfully and negligently failed to take reasonable steps to modify or oversee their distribution system to prevent the diversion of firearms into the unlawful market and, thereafter, into Jersey City.

115. The ATF tracing data has been continuously distributed to defendants, important aspects of which are in defendants' possession or control.

- a. According to a report issued by a United States Senator, the ATF tracing data shows that a very high percentage of crime guns that have been successfully traced have been funneled through a small set of federally licensed dealers.
- b. The Senator's report indicates that each of the foregoing federally licensed dealers sold more than 50 guns used in crime in 1998, and over the period 1996-98, these dealers were the source of almost 35,000 crime guns, an average of more than 250 crime guns per dealer.
- c. The ATF tracing data also indicates that a third of the crime guns successfully traced to the foregoing federally licensed dealers were sold within one year of the crime, and half of the guns were traced to crimes within two years of the original sale.
- d. The ATF data indicates that more than 87% of the crime guns were recovered from someone other than the original purchaser, reasonably

establishing that most of these guns were likely deliberately and illegally trafficked into crime.

- e. Robert Hass, the former Senior Vice-President of Marketing and Sales for defendant Smith & Wesson, said in a sworn statement concerning gun manufacturers' failure to promote responsible practices by distributors and dealers:

The company [Smith & Wesson] and the industry as a whole are fully aware of the extent of the criminal misuse of firearms. The company and the industry are also aware that the black market in firearms is not simply the result of stolen guns but is due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal firearms licensees. In spite of their knowledge, however, the industry's position has consistently been to take no independent action to insure responsible distribution practices, to maintain that the present minimal federal regulation of federal firearms licensees is adequate and to call for greater criminal enforcement of those who commit crimes with guns as the solution to the firearm crime problem....I am familiar with the distribution and marketing practices of the [sic] all of the principal U.S. firearms manufacturers and wholesale distributors and none of them, to my knowledge, take additional steps, beyond determining the possession [of] a federal 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.

- f. In 1999, Robert Hass's statement was echoed by Robert Lockett, a firearms dealer named the 1993 Dealer of the Year by the National Alliance of Stocking Gun Dealers, in an article published in Shooting Sport Retailer, a firearms industry trade magazine. The article stated, in part:

I've been told INNUMERABLE times by various manufacturers that they "have no control" over their channel of distribution. I've been told INNUMERABLE times that once a firearm is sold to a distributor, there is no way a manufacturer can be held responsible for the legal transfer and possession of a firearm....

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....Your arguments of yesterday regarding lack of accountability were pretty flimsy. Today, they are tenuous at best. Tomorrow, they are not going to indemnify you. We are going to have to get a whole lot better - and fast - of being in control of our distribution channel.

116. Notwithstanding the ATF data, defendants have failed and continue to fail to take meaningful, reasonable and available steps to control their chain of distribution to curb the diversion of their handguns into the illegitimate secondary market.

117. Defendants have or should have known that by their failure to take meaningful, reasonable and available steps to control their chain of distribution to curb the diversion of their handguns into the illegitimate secondary market created an unreasonable risk of harm to Jersey City and its citizens.

118. Defendants, could have, through means within their control, prevented handguns they manufacture, market, distribute, and sell from flowing into the illegitimate market and into the hands of unauthorized and irresponsible persons, thereby causing harm to plaintiffs.

119. For example, defendants could have taken, but have failed to take, the following

reasonably available steps to control the distribution and sale of their handguns to substantially restrict or impede the unlawful flow of handguns into Jersey City:

- a. Adequately investigate or screen the distributors and dealers through which defendants distribute and sell firearms;
- b. Adequately monitor, supervise, regulate, and standardize their distributors' and dealers' methods of distributing and selling firearms;
- c. Conduct research, or heed existing research, that would have allowed them to better monitor and control the flow of firearms to the unlawful secondary market, and then implement the recommended preventive strategies;
- d. Establish a tighter and more direct distribution system in which defendants remain in control of the distribution of their lethal products;
- e. Adequately train and encourage their distributors and dealers to act lawfully and responsibly to ensure compliance with federal, state, and local laws;
- f. Direct and encourage their distributors and dealers to refuse to sell firearms under circumstances where the distributor or dealer knows or should know that the firearms will likely not be used for the purchaser's personal use or otherwise will likely not be used for legal purposes;
- g. Require their distributors and dealers to refuse to sell more than one handgun per month to any person not holding a federal firearms license,

and to track sales to enforce this restriction;

- h. Require their distributors and dealers to sell only to “stocking dealers,” *i.e.*, retailers who stock guns for sale from retail stores, and refrain from selling guns over the Internet, at gun shows, or to “kitchen table” dealers;
- i. Require their distributors and dealers to certify their compliance with all firearms laws and regulations, and to provide documentation of their sales employees’ and agents’ eligibility to sell guns;
- j. Require their distributors and dealers to carry a specified minimum amount of liability insurance coverage at all times;
- k. Refrain, and require their distributors and dealers to refrain, from using any incentive sales practice that reward a salesperson or a purchaser based on sales or purchase volume;
- l. Require their distributors and dealers to meet reasonable, specified security requirements to prevent theft of firearms;
- m. Require their distributors and dealers to maintain computerized inventory tracking programs containing detailed information about the acquisition and disposition of every gun, and subject their distributors and dealers to audits of their inventory and to sanctions for any firearms for which the distributor or dealer cannot account;
- n. Require their distributors and dealers to maintain records of trace requests to the manufacturer of each firearm traced;

- o. Maintain records of trace requests that they receive from law enforcement, and track and analyze where and when in the commercial distribution chain the gun may have been diverted to crime, and take preventive measures to reduce such diversions;
- p. Institute and promulgate effective training, monitoring, and sanctions practices to enforce these requirements, including terminating or otherwise effectively disciplining distributors and dealers whom they know or should know distribute firearms into the unlawful market or in an illegal or unsafe manner; and,
- q. Train all salespersons as to the laws and regulations regarding handgun sales and the objective indicators of unqualified purchasers and illegal sales.

120. ATF has concluded that preventing the illegal supply of firearms to prohibited persons, including juveniles and adult felons, is necessary to reduce violent crime in Jersey City.

121. Defendant manufacturers and distributors have the ability to require and to enforce responsible distribution practices by requiring their dealers to enter into agreements under which the dealers may be suspended or terminated for failure to adhere to specified business practices.

122. Defendant Smith & Wesson reportedly sent an ethical practices agreement (hereinafter the "Agreement") to each of its 3,500 registered dealers indicating that any dealer that did not sign and return the Agreement by the end of 1999 would lose stocking

dealer status.

123. The Agreement requires that each dealer maintain a *bona fide* store premise, be familiar and comply with all laws and regulations governing firearm sales, employ trained sales personnel who will adhere to all legal requirements, and refrain from making sales to “straw purchasers” or any other person that the dealer has reason to believe made a false or misleading statement.

124. The Agreement allows Smith & Wesson to terminate or suspend a stocking dealer’s rights if the dealer’s business practices are called into question.

125. The provisions of the Agreement indicate that gun manufacturers can take reasonable steps to prevent, reduce, and eliminate negligent distribution practices by their dealers.

126. On March 17, 2000, Smith & Wesson entered into a settlement agreement, (hereinafter the “Settlement Agreement”) with two states and several federal government agencies, all of which agreed either to discontinue or forego litigation against the manufacturer.

- a. The Department of Justice, commenting on the Settlement Agreement, stated in its 2000 Report that it “illustrates that common sense distribution and safety measures are practical and can be embraced by the gun industry as a matter of responsible business practice.”

127. The Settlement Agreement has numerous requirements designed to address and remedy the negligent, reckless and willful conduct described in this Complaint.

128. The Settlement Agreement requires Smith & Wesson, *inter alia*, to sell only to authorized dealers who adhere to a stringent code of conduct; to allow dealers to release guns only to purchasers who have cleared a NICS background check, even if the check takes longer than the current legal standard 3 business days; to allow dealers to immediately release only one gun to an individual purchasing multiple guns and wait 14 days before providing the others; to require dealers to maintain an electronic record of crime gun traces and report them to Smith & Wesson every month; to implement design changes to firearms to prevent theft and misuse; and to terminate sales to any dealer who sells a disproportionate number of guns used in crime.

129. Smith & Wesson's willingness to be bound by the terms of the Settlement Agreement demonstrates the feasibility of the changes and remedies proposed by the City of Jersey City in this Complaint.

130. In addition to the injuries caused by defendants' willful, deliberate, reckless, and negligent distribution of their dangerous products, the unsafe design of defendants' guns results in additional injuries to Jersey City. At all pertinent times, it was reasonably foreseeable that defendants' guns would fall into the hands of unauthorized users.

Defendants' failure to incorporate feasible technology to prevent unauthorized and prohibited users, including juveniles and felons, from accessing and firing their guns also results in homicides and other crimes committed by those users, a number of which occur in Jersey City.

131. Gun manufacturers are best positioned to conduct research and development to

correct the design of their products to increase safety and decrease access by minors and criminals. Defendants have been aware of the need for design features which would inhibit straw purchases, the re-use of stolen weapons and accidental discharges by unauthorized users. Nevertheless, defendants have failed to research, develop, and implement existing technology to safeguard the public.

132. At the time defendants manufactured, distributed, promoted, or sold these guns, defendants knew or should have known of the unreasonable danger of these guns. Defendants were also aware of, and had available to them, safety devices which would prevent or decrease these dangers, including internal locks and technology to “personalize” the firearm to prevent unauthorized misuse. However, defendants have failed to implement existing technology to remedy these deficiencies in their firearms.

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

- a. Marketing and distributing handguns without exercising reasonable supervision or control over distributors, dealers and salespersons;
- b. Marketing, distributing and selling handguns in such a way that it is reasonably foreseeable that they would be acquired by unauthorized and irresponsible persons, including youth under the age of 21 and felons;

- c. Unreasonably causing and/or permitting handguns to be marketed and distributed to unauthorized and irresponsible persons, including young people incapable of appreciating the dangers and hazards of these products, as well as felons;
- d. Failing to implement reasonable controls to regulate the distribution and sale of handguns, including even failing to investigate the background and business practices of the distributors, dealers and retail sellers of handguns;
- e. Failing to take reasonable efforts to ensure that handguns are not acquired by unauthorized and irresponsible persons, including persons under 21 and convicted felons;
- f. Failing to adequately train agents, servants and employees concerning the proper precautions needed to be taken in the distribution and sale of handguns; and
- g. Failing to develop and implement the means to prevent their guns from being fired by unauthorized users.

134. Defendants' wrongful conduct undermines the laws, regulations, and/or public policies of the City of Jersey City, State of New Jersey and the federal government, which, *inter alia*, restrict who may purchase, own, or carry handguns and other firearms, and require specific permitting procedures limiting access to deadly weapons.

135. Defendants' wrongful conduct has caused the City of Jersey City to suffer economic injury as a result of increased spending on, among other things, law

enforcement, emergency rescue services, increased security at public buildings, pensions, disability benefits, unemployment benefits, higher jail costs, and intervention programs.

136. As a result of defendants' wrongful conduct, Jersey City has further been damaged by lower tax revenues and substantially lower property values.

COUNT I

(PUBLIC NUISANCE)

137. The plaintiff incorporates herein by reference paragraphs 1 through 136 as set forth above.

138. Defendants' ongoing wrongful conduct relating to their creation, promotion, support and supply of an illegitimate secondary market for handguns has created, maintained, and contributed to a public nuisance in the City of Jersey City.

139. Defendants' ongoing wrongful conduct relating to manufacturing and supplying firearms that do not incorporate reasonably available means to prevent unauthorized access and misuse has also contributed to a public nuisance in Jersey City.

140. Thousands of handguns that defendants directly, or indirectly, wrongfully supplied to the illegitimate handgun market are thereafter used and possessed in connection with criminal activity in Jersey City.

141. As a result of the easy availability and continued use in crime of many of these handguns after they enter the Jersey City, Jersey City has been damaged.

142. As a result of the easy availability and continued use in crime of many of these handguns after they enter the Jersey City, Jersey City residents have been and will continue to be killed and injured by these handguns.

143. Residents of Jersey City will continue to fear for their health, safety and welfare and will be subjected to conduct that interferes with the comfortable enjoyment of their life and property.

144. By their conduct, defendants have intentionally, wilfully and wrongfully breached the law and spirit of the New Jersey Constitution, which states that, “All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.” N.J.S.A. Const. Art. 1.

145. Defendants have intentionally, negligently and wrongfully interfered with the rights of the citizens of Jersey City to be free from avoidable injury and death, have caused damage to the public health, the public safety and general welfare of the residents of the City of Jersey City, and have wrongfully caused the plaintiff to incur substantial and unreasonable costs in support of the health, safety and welfare of its citizens and in attempting to abate.

146. The presence of numerous illegitimately possessed and used handguns in Jersey City caused by defendants proximately results in significant costs to Jersey City to enforce the law, arm its police force and to treat the victims of handguns.

147. By defendants intentional, wilful and wrongful conduct, Jersey City has suffered and continues to suffer substantial economic barriers due directly to the nuisance created and maintained by defendants including but not limited to severe devaluation of the City’s real property and the property of Jersey City’s citizens.

148. By the defendants’ intentional, wilful and wrongful failure to stem the flow of handguns into the illegitimate handguns market and abate the nuisance, by limiting access

to the handguns from criminals and juveniles, the defendants have and continue to fail to save lives, prevent injuries and make the City of Jersey City a safer place in which to live.

WHEREFORE, plaintiff demands judgment against defendants as follows:

1. Granting preliminary and permanent injunctive relief requiring defendants to implement reasonable standards and training regarding their own distribution of handguns, as well as the conduct of the gun dealers and distributors to whom they distribute handguns, for the purpose of eliminating or substantially reducing the illegal secondary market that currently exists in Jersey City and elsewhere.
2. Reimbursement of the expenses it has incurred in efforts to abate the public nuisance created, fostered and contributed to by defendants, including actual costs and attorneys fees.
3. Monetary damages sufficient to compensate Jersey City for the damages caused by the defendants' wrongful marketing, distribution and sale of handguns.
4. Punitive damages as to each and every defendant in a sufficient amount to punish and deter their conduct that intentionally and/or recklessly has damaged Jersey City and endangered the citizens of Jersey City.
5. Assessment of liability to each and every defendant, manufacturer, retailer, and distributor for all damages that cannot be attributed to a particular source, for all funds expended by Jersey City as a result of the public nuisance regarding handguns that exists in the City of Jersey City, including but not limited to, police and law enforcement services, additional security in and upon public facilities, emergency medical services,

pension benefits, disability benefits, workers' compensation benefits, and losses in tax revenues and property values.

6. Counsel fees and costs; and,

7. Such other relief as the Court shall deem to be equitable and just.

ALEXANDER W. BOOTH, JR.
CORPORATION COUNSEL
Jersey City Law Department
City Hall-280 Grove Street
Jersey City, New Jersey 07302
Telephone (201) 547-5229

DENNIS A. HENIGAN
BRIAN J. SIEBEL
ALLEN ROSTRON
Brady Center To Prevent Gun Violence
1250 Eye Street, N.W.,
Washington, D.C. 20005
Telephone (202) 289-7319

Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all issues to triable pursuant to **R.** 4:35-1
and **R.** 1:8-1.

ALEXANDER W. BOOTH, JR.
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City Hall-280 Grove Street
Jersey City, New Jersey 07302
Telephone (201) 547-5229

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Brady Center To Prevent Gun Violence
1250 Eye Street, N.W.,
Washington, D.C. 20005
Telephone (202) 289-7319
Attorneys for Plaintiff

CERTIFICATION PURSUANT TO R. 4:5-1

The matter in controversy is not the subject of a pending arbitration proceeding. No other action or arbitration proceeding is contemplated. At this time I know of no other party who should be joined in this action

I hereby certify that the forgoing statements by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

ALEXANDER W. BOOTH, JR.
CORPORATION COUNSEL
Jersey City Law Department
City Hall-280 Grove Street
Jersey City, New Jersey 07302
Telephone (201) 547-5229

DENNIS A. HENIGAN
Brady Center To Prevent Gun Violence
1250 Eye Street, N.W.,
Washington, D.C. 20005
Telephone (202) 289-7319

Attorneys for Plaintiff

Dated: February 20, 2002

City of

JERSEY CITY

Law Department

280 Grove Street

Jersey City, N.J. 07302

Fax (201) 547-5230

(201) 547-5229

November 29, 2001

Clerk of the Superior Court

Old Courthouse

583 Newark Avenue

Jersey City, New Jersey 07306

Re: City of Jersey City v. Smith & Wesson Corp., et al

Dear Sir:

Enclosed are an original and one copy of Complaint of the City of Jersey City, with the Case Information Statement attached thereto.

Please file the original and return a filed copy in the envelope provided.

Please charge the filing fee to the account of the Jersey City Law Department, Account #0048701.

Very truly yours,

ALEXANDER W. BOOTH, JR.
Corporation Counsel

AWB/fd

Enc.