

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,

Plaintiff,

-against-

Index No. 451972/2022

ARM OR ALLY, LLC; BLACKHAWK
MANUFACTURING GROUP, INC., A/K/A 80
PERCENT ARMS, INC. OR 80 PERCENT ARMS;
SALVO TECHNOLOGIES, INC., A/K/A 80P
BUILDER OR 80P FREEDOM CO.; BROWNELLS,
INC., A/K/A BROWNELLS OR BOB BROWNELL'S;
GS PERFORMANCE, LLC, A/K/A GLOCKSTORE OR
GSPC; INDIE GUNS, LLC; KM TACTICAL;
PRIMARY ARMS, LLC; RAINIER ARMS, LLC; AND
ROCK SLIDE USA, LLC,

Motion Sequence 1

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF NEW YORK'S MOTION
FOR A PRELIMINARY INJUNCTION
AGAINST ONGOING GHOST GUN COMPONENT SALES**

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The People of the State of New York (“New York”), by their attorney Letitia James, Attorney General of the State of New York, respectfully submit this Memorandum of Law and the accompanying Affidavits of Andrew Boss, Kenneth Morales, Paul Matthews, Peter Schottenfeld, Chad Shelmidine, and Richard LeBlond, with accompanying exhibits, in support of their motion for a preliminary injunction against ongoing sales of ghost-gun-related products by Defendants Arm or Ally, LLC; Brownells, Inc.; Salvo Technologies, Inc., doing business as “80P Builder;” Indie Guns LLC; Rainier Arms, LLC; and Rock Slide USA, LLC (collectively, the “Preliminary Injunction Defendants”).

PRELIMINARY STATEMENT

New York brings this motion for a preliminary injunction to stop the continuing influx of unfinished frames and receivers flowing into New York, and the corresponding flood of deadly, untraceable ghost guns made from them. This motion is directed against only the Preliminary Injunction Defendants – the six companies confirmed to be actively continuing the illegal sale of these prohibited products into New York State. Each of the six sold at least one unfinished handgun frame to undercover investigators from the Office of the Attorney General and/or the New York City Sheriff’s Office within the last three months, and then shipped the frame into New York, Kings, or Bronx County, in violation of both State and City law. See Penal Law §§ 265.63, 265.64; N.Y. City Admin. Code § 10-314. Because the Preliminary Injunction Defendants’ products allow recipients to make working firearms without any background check, serial number, or record of the weapon’s existence, they are particularly attractive to persons with prior convictions or who cannot obtain a license to possess a firearm legally, which is why the Preliminary Injunction Defendants specifically market their products as a way to avoid applicable federal laws. The damage from the Preliminary Injunction Defendants’ illegal business practices is both real and ongoing: as extensively documented in New York’s

Complaint, the Defendants' customers have been implicated in extensive criminal activity, from possession by a felon to gun trafficking, domestic violence, assaulting a police officer, and murder.

A preliminary injunction is necessary to put a stop to these ongoing illegal shipments, and to mitigate the violence committed with the untraceable weapons made from them. New York is highly likely to succeed on the merits of this case – the products sold by the Preliminary Injunction Defendants are unquestionably illegal, and they have already been caught selling them to undercover investigators. New York is not required to demonstrate irreparable harm when seeking injunctive relief to enjoin illegal acts, but even if that analysis were required the violence committed with the Preliminary Injunction Defendants' products would more than meet the standard, as would the concomitant effects on law enforcement and public health. The balance of the equities will similarly support an injunction: the prejudice to New York comes in the form of ongoing violence committed with untraceable weapons, while the impact on the Preliminary Injunction Defendants amounts to a prohibition from engaging in conduct already forbidden by law.

STATEMENT OF FACTS

A. The Defendants' Unfinished Frames and Receivers, and the Ghost Guns Made From Them

Frames and receivers are the core parts of a firearm: a frame is the lower part of a handgun, which forms the structure that “upper” parts such as the trigger, slide, and barrel are attached to, while a receiver is the central part of a rifle or shotgun, to which parts like the barrel or stock are connected. See Affidavit of Andrew Boss (the “Boss Aff.”) ¶¶ 3-4. “Unfinished” frames and receivers, such as those the Preliminary Injunction Defendants sold to State and City law enforcement, are almost exactly identical to “finished” frames and receivers, but require two

or three additional holes to be drilled and a small amount of material to be filed down, generally just a few millimeters of plastic. See id. The entire process can be done in under an hour with basic hand tools and does not require any specialized technical ability; according to Defendant Brownells, “an 80% frame can be finished into a firearm in just minutes.” Press Release, Brownells, Brownells Announces Exclusive Polymer80 Frames (October 11, 2017).¹

The Preliminary Injunction Defendants sell their products with the intention that their customers will convert them into working firearms, and even take steps to assist them in doing so: Ranier Arms’ page marketing an AR-15-compatible receiver links to a PDF of milling instructions,² while Brownells offers video instructions on finishing a Glock-compatible pistol frame, and a telephone support line where customers can ask for assistance.³ They also sell their products inside a “jig,” a plastic housing for the frame that guides the user’s tools through the simple steps required to finish the product; in the words of Defendant 80 Percent Arms, the jigs “make it ridiculously easy for a non-machinist to finish their [handgun frame] in under 1 hour with no drill press required.”⁴ A formerly “unfinished” frame or receiver is functionally identical to a frame or receiver that would normally have to be sold through a federally-licensed gun store, and can be made into a fully-working firearm with the addition of a few commercially-available parts. See Boss Aff. ¶¶ 10-11.

This process is designed to be a workaround to avoid federal gun serialization, recordkeeping, and background check requirements. Based on the pretense that a nominally “unfinished” frame or receiver is meaningfully distinct from an actual frame or receiver – despite

¹ Available at <https://www.theoutdoorwire.com/story/1507676814jseq2774930>.

² See <https://www.armorally.com/shop/polymer80-ar15-80-lower-receiver-kit-rl556v3/> (last visited July 6, 2022).

³ See <https://www.brownells.com/guntech/how-to-build-a-polymer80-for-a-glock-174-pistol/detail.htm?lid=17513> (last visited July 6, 2022).

⁴ See <https://www.80percentarms.com/80-lowers/> (last visited June 28, 2022).

the minimal differences between the two, and the near-certainty that the customer will make the trivial alterations necessary to “finish” the product – the Preliminary Injunction Defendants sell them directly to New York consumers over the internet, without verifying the customer’s identity, license status, or fitness to possess a deadly weapon. See Affidavit of Chad Shelmidine (the “Shelmidine Aff.”) ¶¶ 3-5; Affidavit of Sergeant Richard LeBlond ¶¶ 4-5. Critically, the Preliminary Injunction Defendants sell their unfinished frames and receivers without the serial numbers required by federal law to be engraved on every frame or receiver sold in the United States. See LeBlond Aff. ¶¶ 4-5; Affidavit of Paul Matthews (the “Matthews Aff.”) ¶ 6; Affidavit of Peter Schottenfeld (the “Schottenfeld Aff.”) ¶ 5; cf. 18 U.S.C. § 923(i); 26 U.S.C. § 5842.

The lack of serialization means that there is no record of the gun’s existence and no ability for law enforcement to trace its origin when it is recovered in connection with a crime, leading to the popular name for these weapons: “ghost guns.” See Boss Aff. ¶ 11. This untraceability, combined with the Defendants’ practice of selling their products without conducting a background check, renders their products particularly attractive to criminals and others who could not obtain a gun through legal channels. Cf. United States v. Mazzarella, 614 F.3d 85, 95 (3d Cir. 2010) (“Because a firearm with a serial number is equally effective as a firearm without one, there would appear to be no compelling reason why a law-abiding citizen would prefer an unmarked firearm. These weapons would then have value primarily for persons seeking to use them for illicit purposes.”). The Preliminary Injunction Defendants tout the lack of compliance with registration requirements, with an eye toward appealing to the illicit market.⁵

⁵ See, e.g., <https://www.armorally.com/shop/polymer80-ar15-80-lowerreceiver-kit-rl556v3/> (last visited June 23, 2022) (“No FFL Required!”); Press Release, “Brownells Announces Exclusive Polymer80 Frames,” (Oct 11, 2017), available at <https://www.theoutdoorwire.com/story/1507676814jseq2774930> (products can be used “to make instant

Because of the dangerousness of these products, New York State prohibits the sale or possession of unfinished receivers, Penal Law §§ 265.63-64, as well as the ghost guns made from them. Penal Law §§ 265.60-61. Selling unfinished frames and receivers into the five boroughs is also illegal under the law of New York City. N.Y. City Admin. Code § 10-314. And the Preliminary Injunction Defendants' sale to customers who cannot legally possess weapons implicates federal prohibitions on possession by felons, state prohibitions on possession of handguns without a license, and federal law prohibiting possession of weapons without a serial number. See, e.g., Penal Law §§ 265.01(1), 265.02(1), 265.20(3); 18 U.S.C. §§ 922(g); 26 U.S.C. 5842(a), 5842(b). Despite all these prohibitions, any one of which would be sufficient to render their conduct illegal, the Preliminary Injunction Defendants sold their illicit products into New York State anyway.

B. The Evidence of The Defendants' Illicit Sales

1. The Defendants' Sales to Undercover Investigators

The first and most direct evidence of the Preliminary Injunction Defendants' illegal business practices is the fact that they were caught red-handed. From May 3 to June 22, 2022, each of the Preliminary Injunction Defendants delivered one or more unfinished frames or receivers to locations in Manhattan, Brooklyn, or the Bronx. See Schottenfeld Aff. ¶¶ 3-4 & Ex. A; Matthews Aff. ¶¶ 3-5 & Exs. A & B; LeBlond Aff. ¶ 4. Each delivery was in fulfillment of an online purchase made under a fictitious identity by investigators from either the Office of the Attorney General or the New York City Sheriff's Office.⁶ See id. These purchases demonstrate

custom handguns at home," "can be finished into a firearm in just minutes," and "can be shipped straight to a customer's home without an FFL"); <https://indieguns.com/pf940c-black-frame-kit-for-g19-g23-g32/> (selling an unfinished frame with key features including its "blank serialization plate").

⁶ In specific, Defendants Arm or Ally, Brownells, and Indie Guns sent frames in fulfillment of undercover purchases by the Office of the Attorney General, see Matthews and Schottenberg Affs., while Defendants Arm or Ally, Rainier Arms, 80P Builder, Rock Slide USA, and Indie Guns all sent frames in fulfillment of undercover purchases by the New York City Sheriff's Office. See LeBlond Aff.

that the Preliminary Injunction Defendants' shipments of these illegal frames and receivers is ongoing, and that the tide of unfinished frames and receivers – and the ghost guns made from them – will continue if it is not enjoined.

The ease with which these purchases were made using fictitious identities also demonstrates that the Preliminary Injunction Defendants make no effort at verifying their customers' suitability to possess a firearm, and the utter lack of any controls that would prevent their products from being possessed or used unlawfully. None of the companies performed a background check on the undercover purchasers, nor did they verify whether their customers had a license to own a handgun. See LeBlond Aff. ¶ 5; Shelmidine Aff. ¶ 5. And in the case of Defendant Arm or Ally, even the inadequate controls the company claimed to have turned out to be a sham; although the company's website said that "NY residents must send copy of valid state-issued Driver's License," see <https://www.armorally.com/shop/polymer80-pf9ss-g43-pistolframe-kit/> (last visited June 28, 2022), they did not actually require investigators to do so. Shelmidine Aff. ¶ 6.

2. The Evidence in the Defendants' Shipping Records

The Preliminary Injunction Defendants' ongoing sale of unfinished frames and receivers into New York State – and the persistent illegality of their conduct – is also demonstrated by shipping records obtained from common carriers by the Office of the Attorney General. As detailed in the accompanying Affidavit of Kenneth Morales (the "Morales Aff."), the Preliminary Injunction Defendants have collectively shipped over 47,000 packages directly to New York consumers, without going through a Federal Firearms Licensee. Id. ¶¶ 7-9. Many of the recipients went on to commit crimes with ghost guns.

For instance, Defendants Arm or Ally and Brownells both sent packages to a man named

Rene Loyola at an address on East 6th Street in Manhattan. See id. ¶ 11. A few weeks ago, the NYPD executed warrants on Loyola’s home and storage unit, finding approximately \$20,000 worth of ghost guns and parts, including more than 30 frames and receivers. See Press Release, New York County District Attorney, D.A. Bragg, D.A. Gonzalez and NYPD Announce Takedown of Ghost Gun Arsenal (May 25, 2022).⁷ Similarly, Defendant Brownells sent at least seven packages to a man named Edison Cruz at an apartment on Anderson Avenue in the Bronx. See Morales Aff. ¶ 12. On May 3, Cruz used a ghost gun to open fire into a bodega, striking three people and killing one. See Joe Marino, et al., Fast-food worker obsessed with ‘ghost guns’ killed one, injured two others in Bronx shooting: cops, New York Post, May 3, 2022.⁸ According to the *Post*, the NYPD recovered “an operable shotgun, two ‘ghost’ Polymer 80 handgun receivers, manufacturing tools, and Glock parts” after searching Cruz’ residence; a police source described him as “the poster child for [the dangerousness of] ghost guns.” Id.

Defendant Brownells sent five packages to a man named Matthew Gerwitz in Tonawanda, NY, just north of Buffalo. See Morales Aff. ¶ 14. Gerwitz used a ghost gun to carry out a drive-by shooting, and when police came to investigate, he opened fire, striking a detective multiple times. See Maki Becker, DA: Suspect in police shooting accused of using ‘homemade’ guns in attacks, The Buffalo News, July 28, 2021.⁹ The Erie County District Attorney described the weapon used in the drive-by as “a homemade, off-the-internet nine-millimeter” and noted that Gerwitz had a “little gun shop in his house.” Id. And Defendants Brownells and Rainier Arms both sent packages to a man named Ricardi Kiem in Rosedale,

⁷ Available at available at <https://www.manhattanda.org/d-a-bragg-d-a-gonzalez-and-nypd-announce-takedown-of-ghost-gun-arsenal/>. To the extent that these or other documents may constitute hearsay, “the Court can consider hearsay on a motion for a preliminary injunction.” *Wright v. N.Y. City Council*, Index No. 160701/17, 2017 N.Y. Slip Op. 32629(U), 2017 WL 6493323, at *6 n.6 (Sup. Ct. N.Y. Cty. Dec. 19, 2017).

⁸ Available at <https://nypost.com/2022/05/03/man-killed-2-bystanders-hurt-in-bronx-shooting-cops/>.

⁹ Available at https://buffalonews.com/news/local/da-suspect-in-police-shooting-accused-of-using-homemade-guns-in-attacks/article_0ccc4699-a340-53b9-a87e-26a278dd7fc8.html.

Queens. See Morales Aff. ¶ 15. When the NYPD searched Kiem’s home as part of an investigation, they found numerous ghost guns and components, including several unfinished or completed lower receivers. See Press Release, Queens County District Attorney, Cache of Ghost Guns Seized Following Investigation; Queens Couple Charged with Illegal Possession and Sale of Firearms.¹⁰ Kiem and his wife apparently turned unfinished frames and receivers into ghost guns and sold them for profit; both were charged with a host of crimes, including criminal sale of a weapon and endangering the welfare of a child. Id.

These shipping records from Defendants are powerful circumstantial evidence of their illegal sales of unfinished frames and receivers into New York State. The Defendants sold unfinished frames and receivers, shipped to specific New York State consumers, and several of those same consumers went on to commit crimes with ghost guns made from unfinished frames and receivers. It does not take much supposition to figure out what was likely in the packages the Preliminary Injunction Defendants shipped.

ARGUMENT

Under generally applicable law, “[a] party seeking a preliminary injunction must show a likelihood of success on the merits, the possibility of irreparable harm in the absence of a preliminary injunction, and that the balance of the equities favors the movant. Wilder v. Fresenius Med. Care Hldgs., Inc. 175 A.D.3d 406, 409 (1st Dep’t 2019) (citing Doe v. Axelrod, 73 N.Y.2d 748, 750 (1988)). Here, as discussed in Point II(A) below, New York need not show irreparable harm because the conduct sought to be enjoined is illegal. In any event, all three factors weigh strongly in favor of putting a halt to the Preliminary Injunction Defendants’ ongoing sales of ghost gun components into New York State.

¹⁰ <https://queensda.org/cache-of-ghost-guns-seized-following-investigation-queens-couple-charged-with-illegal-possession-and-sale-of-firearms/>.

I. EVIDENCE OF ONGOING ILLEGAL SHIPMENTS INTO NEW YORK STATE ESTABLISHES A LIKELIHOOD OF SUCCESS ON THE MERITS

A. New York Is Likely to Succeed on Its Executive Law § 63(12) Cause of Action Premised on Shipment of Prohibited Unfinished Frames And Receivers.

New York is likely to succeed on the merits of its first cause of action, based on the Preliminary Injunction Defendants' sale of illegal unfinished frames and receivers. Executive Law § 63(12) empowers the Attorney General to bring an action “[w]henver any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting, or transaction of business.” The terms “persistent fraud” and “illegality” are defined as “continuance or carrying on of any fraudulent or illegal act or conduct.” *Id.* “The provision also defines ‘repeated’ conduct as conduct affecting more than one person and ‘persistent’ conduct as continuing conduct.” People ex rel. James v. Northern Leasing Sys., Inc., 70 Misc. 3d 256, 263 (Sup. Ct. N.Y. Cty. 2020), *aff’d*, 193 A.D.3d 67 (1st Dep’t 2021), *lv. dismissed sub nom.*, People v. Northern Leasing Sys., Inc., 37 N.Y.3d 1088 (2021). The statute is a flexible vehicle for the Attorney General to seek justice against any ongoing illegal conduct, and New York courts have held that it must “be liberally construed in furtherance of its intended purpose.” State v. Maiorano, 189 A.D.2d 766, 767 (2d Dep’t 1993). Simply put, if New York can establish that the Preliminary Injunction Defendants engaged in repeated illegal activity, the result should be “an order enjoining the continuance of such business activity or of any fraudulent or illegal acts.” Executive Law § 63(12).

The Preliminary Injunction Defendants' sale of unfinished frames and receivers into New York State is unquestionably illegal. Under New York State law, possession or sale of unfinished frames or receivers is a felony, as is possession or sale of the ghost guns made from them. See Penal Law §§ 265.60, .61, .63, .64. Unfinished frames and receivers are also illegal to sell or possess under the law of New York City, rendering shipments made into the five

boroughs illegal on this ground as well. See N.Y. City Admin. Code § 10-314. Each of these statutes constitutes a separate and sufficient ground to sustain a claim of persistent illegality under Executive Law § 63(12).

New York is likely to succeed at showing that the Preliminary Injunction Defendants have engaged in such illegal conduct – and continue to do so. This preliminary injunction motion is brought only against the subset of defendants from whom New York State or City investigators have completed one or more undercover purchases in the past few weeks. See Shelmidine and LeBlond Affs. The undercover purchases alone are sufficient to demonstrate that these defendants are currently shipping illegal unfinished frames and receivers into New York State, and the likely success of New York’s cause of action under Executive Law § 63(12).

New York’s likelihood of success is also demonstrated by the Preliminary Injunction Defendants’ own shipping records. Although New York cannot yet say definitively what was in each package – that information exists only in the Preliminary Injunction Defendants’ own files, which will come out in discovery – a significant percentage are likely to have contained unfinished frames or receivers. This fact is evidenced by the fact that each of the Preliminary Injunction Defendants marketed frames and receivers online, see Shelmidine Aff. ¶ 3; LeBlond Aff. ¶ 4, and by the fact that records from common carriers show that each of the Preliminary Injunction Defendants for whom such records have been obtained¹¹ sent many thousands of packages into New York. See Morales Aff. ¶¶ 5-10. Some of the same customers who received the Preliminary Injunction Defendants’ products went on to commit crimes with fully-assembled ghost guns, including black-market ghost gun sales by a couple in Queens, a multiple shooting

¹¹ The Office of the Attorney General has not yet obtained shipping records for Defendants Indie Guns, Salvo Technologies, or Rock Slide USA. However, State and City investigators were able to complete undercover purchases of unfinished frames and receivers from each of these defendants, demonstrating both their ongoing illegal activity and the fact that New York’s claims under Executive Law § 63(12) are likely to succeed.

last month at a bodega in the Bronx, and a drive-by and a shooting of a police officer outside Buffalo. See Pages 7-8, above. It is reasonable to conclude that some of the Defendants' packages contain those illegal products, and "even a small fraction of the total number of [shipments] presented would sustain a claim under Executive Law § 63(12)." Northern Leasing, 70 Misc. 3d at 269. Accordingly, New York is highly likely to succeed on this cause of action.

B. New York Is Likely to Succeed on its Executive Law 63(12) Cause of Action Premised on Aiding and Abetting Possession of Firearms By Convicted Persons.

New York is also likely to succeed on the merits of its second cause of action, under Executive Law § 63(12) and based on the Preliminary Injunction Defendants' aiding and abetting the possession of firearms by felons. Federal law prohibits felons from possessing a firearm, see 18 U.S.C. § 922(g)(1), and a defendant can "aid and abet the violation of th[is] law by[] knowingly permitting a felon to possess firearms." City of N.Y. v. A-1 Jewelry & Pawn, Inc., No. 06 Civ. 2233, 2008 WL 4298501, at *3 (E.D.N.Y. Sept. 19, 2008), aff'd in part, vacated in part on other grounds sub nom., City of N.Y. v. Mickalis Pawn Shop, LLC, 645 F.3d 114 (2d Cir. 2011); accord U.S. v. Zaleski, 686 F.3d 90, 94 (2d Cir. 2012) (transferring a firearm to a felon "would constitute criminally aiding and abetting a convicted felon in the possession or attempted possession of firearms."). New York State law similarly forbids possession of a firearm by one who "has been previously convicted of any crime." Penal Law § 265.02(1).

Media reports and statements from public authorities demonstrate that the Defendants have sold their products to convicted persons. For instance, Edison Cruz, the Brownells customer who killed one person and wounded two when firing a ghost gun into a Bronx Bodega, was described by NBC as having "a lengthy rap sheet." See NBC 4 New York, 25-Year-Old

Arrested in NYC Store Shooting That Killed Man, Wounded 2 Bystanders, May 3, 2022.¹² And Matthew Gerwitz, the drive-by ghost gun shooter who later shot a police detective multiple times, was also barred from gun possession by his prior conviction. See People v. Hughes, 83 A.D.3d 960, 961 (2d Dep’t 2011) (ban on gun possession applies to anyone convicted of a “crime,” defined as “a misdemeanor or a felony”); Becker, supra (Gerwitz’ attorney conceded he had a prior misdemeanor conviction).

The Defendants also acted with the requisite intent. Cf. A-1 Jewelry, 2008 WL 4298501, at *3. The Defendants know that the unfinished frames and receivers they sell are attractive to convicted persons and intentionally promote them to that demographic, emphasizing how customers can easily convert their products into working firearms without ever being subject to federal serialization, background check, and recordkeeping requirements. For instance, Defendant Arm Or Ally’s webpages for unfinished receivers proudly proclaim, in large bold green letters, “**No FFL Required!**”¹³ A press release from Defendant Brownells touted its exclusive line of unfinished frames as a way “to make instant custom handguns at home,” while advertising that “they can be shipped straight to a customer’s home without an FFL”. See Press Release, Brownells, Brownells Announces Exclusive Polymer80 Frames (October 11, 2017).¹⁴ And a product listing from Defendant Rainier Arms emphasizes that “this item can ship straight to your door, with no Federal Firearms License required. Simply follow the instructions provided, and 48 hours later, you will be ready to assemble and shoot your home built [ghost

¹² Available at <https://www.nbcnewyork.com/news/local/crime-and-courts/25-year-old-man-in-custody-after-bronx-shooting-leaves-1-dead-2-hurt/3672700/>.

¹³ See https://www.armorally.com/shop/polymer80-ar15-80-lower-receiver-kit-rl556v3/. “FFL” is short for Federal Firearms Licensee, a person or business that has gone through a Department of Justice investigation, review, and licensing process to ensure their ability to responsibly manufacture or sell firearms. See generally 18 U.S.C. § 923.

¹⁴ Available at <https://www.theoutdoorwire.com/story/1507676814jseq2774930>. The same release emphasized how “an 80% frame can be finished into a firearm in just minutes.”

gun]!”¹⁵ This evidence demonstrates that the Defendants have sold their unfinished frames and receivers to convicted persons, and that they have intentionally marketed their products as a way of avoiding the legal protections that keep firearms out of convicted persons’ hands. New York is likely to succeed on the merits of its second claim.

C. New York Is Likely to Succeed on Its Executive Law § 63(12) Cause of Action Premised on Aiding and Abetting Possession of Firearms By Unlicensed Persons.

New York is similarly likely to succeed on the merits of its third cause of action, based on aiding and abetting the possession of firearms by unlicensed persons. New York State’s firearm licensing process exists to ensure that a person seeking to obtain a firearm is responsible enough to own one, including verifying that the applicant is over 21, has no serious convictions or arrest warrants, is not a fugitive from justice, is not unlawfully in the United States, and has not been involuntarily committed to a psychiatric facility. See Penal Law § 400.00. Because of the importance of verifying a gun owner’s fitness to carry a deadly weapon, New York law prohibits the possession of a firearm without a valid license. See id. §§ 265.01(1), 265.20(3).

The Defendants have undisputedly sold their products to unlicensed persons. For instance, when discussing Matthew Gerwitz, the Brownells customer who carried out a drive-by shooting and then shot a police detective multiple times, the Erie County District Attorney noted that his weapon was illegal because he “didn’t have a permit for it.”¹⁶ The Queens District Attorney similarly pointed out that Ricardi Kiem, the Queens-based customer of Brownells and Rainier Arms who had an arsenal of frames, receivers, and ghost guns and was indicted for selling them, “does not have a license to possess or own firearms in New York City and he is

¹⁵ See <https://www.rainierarms.com/rifle-parts/receiver-parts/lone-wolf-arms-freedom-wolf-80-glock-19-compatible-pistol-frame/>. Notably, Rainier Arms says it will not ship the unfinished receivers to New Jersey or allow in-store purchases in Washington State, but acknowledges no such restrictions in New York.

¹⁶ See https://buffalonews.com/news/local/da-suspect-in-police-shooting-accused-of-using-homemade-guns-in-attacks/article_0ccc4699-a340-53b9-a87e-26a278dd7fc8.html.

also not licensed to carry a firearm.”¹⁷ Likewise, Defendants Arm or Ally and Brownells both sent packages to Jonathan Santos, a Queens man who was indicted on 252 separate firearms counts relating to his possession and construction of ghost guns, despite the fact that he “does not have a license to possess or own firearms in New York City.” See Press Release, Queens County District Attorney, Queens Man Charged With Possessing Arsenal of Illegal “Ghost” Guns, Dec. 9, 2021.¹⁸

The Defendants acted with the requisite intent because their marketing targets persons who could not obtain a license just as much as it targets persons with prior convictions. The Defendants advertise to both groups that their unfinished frames and receivers are a simple way of making working firearms while evading any legal scrutiny. See, e.g., Brownells Press Release, supra (emphasizing that Brownells’ unfinished frames are a way “to make instant custom handguns at home,” and “can be shipped straight to a customer’s home without an FFL.”). And the Preliminary Injunction Defendants sell their products into New York without ever warning consumers that a licensing requirement applies, or ever attempting to confirm whether a customer is licensed. See Shelmidine Aff. ¶ 5; LeBlond Aff. ¶ 5. There is a clear reason why the Preliminary Injunction Defendants omit these licensing requirements from their marketing materials while also touting their unfinished frames and receivers as a way around legal scrutiny: they want to sell their products to people who cannot legally have a gun.

D. New York Is Likely to Succeed on Its Statutory Firearms Nuisance Cause of Action Based on Creation of a Dangerous Condition

New York is entitled to an injunction on its Executive Law § 63(12) claims alone, as that statute provides for “an order enjoining the continuance of such business activity or of any

¹⁷ See <https://queensda.org/cache-of-ghost-guns-seized-following-investigation-queens-couple-charged-with-illegal-possession-and-sale-of-firearms/>.

¹⁸ Available at <https://queensda.org/queens-man-charged-with-possessing-arsenal-of-illegal-ghost-guns-2/>.

fraudulent or illegal acts.” But New York is also likely to succeed on the merits of its claims under General Business Law § 898-b(1), which imposes public nuisance liability for dangerous conditions created by gun industry members. Section 898-b(1) is a flexible statute designed to ensure that “[g]iven the ease with which legal firearms flow into the illegal market – in spite of stringent state and local restrictions – and given the specific harm illegal firearm violence causes certain New Yorkers, those responsible for the sale, manufacture, importing, or marketing of firearms should be held liable for the public nuisance caused by such activities.” N.Y. Spons. Memo., 2021 S.B. 7196. Critically, even if the products sold by the Preliminary Injunction Defendants were legal – which they are not, as discussed above – Section 898-b(1) would still render them liable for dangerous conditions created by their unreasonable acts.

The application of Section 898-b(1) presents an issue of first impression: the statute has been upheld against a facial constitutional challenge from the gun lobby, see Nat’l Shooting Sports Found’n, Inc. v. James, __ F. Supp. 3d __, 2022 WL 1659192 (N.D.N.Y. May 25, 2022), but it has yet to be applied in the context of a specific enforcement action. Nonetheless, a plain reading shows the statutory claim to have six elements: “[n]o [1] gun industry member, by [2] conduct either unlawful in itself or unreasonable under all the circumstances shall [3] knowingly or recklessly [4] create, maintain or contribute to a condition in New York state that endangers the safety or health of the public [5] through the sale, manufacturing, importing, or marketing [6] of a qualified product.” General Business Law § 898-b(1).

Each of these elements is satisfied in the context of the Preliminary Injunction Defendants’ illegal sales of unfinished frames and receivers into New York State. **First**, each Defendant is a “gun industry member,” defined in General Business Law § 898-a(4) as any entity “engaged in the sale, manufacturing, distribution, importing, or marketing of firearms” and

related items. **Second**, each has engaged in illegal conduct, as selling unfinished frames and receivers is illegal under State and City Law, as is contributing to the possession of firearms by convicted or unlicensed persons or contributing to the manufacture or possession of an unserialized firearm. See Penal Law §§ 265.01(1), 265.02(1), 265.20(3); 18 U.S.C. §§ 922(g); 26 U.S.C. 5842(a), 5842(b). But even if the conduct were not illegal in all these ways, it is manifestly “unreasonable under all the circumstances” to sell a product that can so easily be converted to a working firearm, without following any of the federal background check, serialization, and recordkeeping requirements designed to keep the public safe, and without taking any steps at all to determine whether one’s customer is legally permitted to have a gun.

Third, each of the Preliminary Injunction Defendants acted either “knowingly,” defined by statute as “when he is aware that his conduct is of such nature or that such circumstance exists,” or “recklessly,” defined as “when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur.” Penal Law § 15.05(2), (3); see General Business Law § 898-a(5). The Preliminary Injunction Defendants knew that their unfinished frames and receivers would be converted into working weapons (some of them even helped the process along by providing detailed instructions and support), and their marketing demonstrates that they knew their customers viewed their products as attractive in part as a way around federal and state firearms laws.¹⁹ **Fourth and Fifth**, the sale of these unfinished frames and receivers contributes to a dangerous condition in New York State, namely the growing proliferation of ghost guns and the violence committed by them. See 87 Fed. Reg. 24655-60 (discussing “the substantial increase in the number of [ghost guns] recovered from crime scenes throughout the country in recent years;” the ways in which ghost guns frustrate efforts to trace weapons used in

¹⁹ See Footnote 4, *supra*.

crimes; the efforts made by federal, state, and local law enforcement to combat their proliferation; and concluding that “wide availability of ghost guns” is “a homeland security threat”); see also Jonah E. Bromwich, Deadly and Untraceable, ‘Ghost Guns’ Are Becoming More Common in N.Y., N.Y. Times, Nov. 14, 2021. And **Sixth**, the unfinished frames and receivers are a “qualified product” because they are either “a firearm” or “a component part of a firearm” and have been “shipped or transported in interstate . . . commerce.” 15 U.S.C. § 7903(4); see General Business Law § 898-a(6).

New York is likely to succeed on its claim under General Business Law § 898-b(1), providing a separate and sufficient ground for an injunction even in the absence of the manifest illegality supporting liability under Executive Law § 63(12).

E. New York Is Likely to Succeed on Its Statutory Firearms Nuisance Cause of Action Based on Insufficient Controls

New York is similarly likely to succeed on its claim based on General Business Law § 898-b(2), which provides for liability against gun industry members who fail to use reasonable controls to prevent unlawful use of their products. Like the claim under subsection (1) of the same statute, a claim under Section 898-b(2) has never been litigated before, but its elements are clear from a plain reading of the statutory text. “All [1] gun industry members who [2] manufacture, market, import or offer for wholesale or retail sale any qualified product in New York State shall [3] establish and utilize reasonable controls and procedures to prevent [4] its qualified products [5] from being possessed, used, marketed or sold unlawfully in New York state.” General Business Law § 898-b(2).

New York is highly likely to establish each of these elements. The only element even arguably in dispute is the third element; the remaining elements are easily satisfied. The **first and fourth** elements are met because the Preliminary Injunction Defendants are “gun industry

members” and their unfinished frames and receivers are “qualified products” under the applicable statutory definitions. See General Business Law § 898-a(4), (6); 15 U.S.C. § 7903(4). The **second** element is met because the Preliminary Injunction Defendants have “market[ed], import[ed], or offered for . . . retail sale” their products, as evidenced by the fact that the State and City purchased them. See generally Shelmidine, Matthews, Schottenfeld, and LeBlond Affidavits. The **fifth** element is similarly straightforward: the Preliminary Injunction Defendants’ products are necessarily “being possessed . . . unlawfully” because it is illegal for anyone to have an unfinished frame or receiver, or the deadly and untraceable ghost guns made from them. See Penal Law §§ 265.60, 61, 63, 64; N.Y. City Admin. Code § 10-314; 26 U.S.C. § 5842.

As to the **third** element, there is no evidence that the Preliminary Injunction Defendants “establish[ed] and utilize[d] reasonable controls and procedures,” or any controls at all. They sold to undercover investigators (and to countless other less reputable New Yorkers) without ever verifying their identities, without ever conducting a background check, without asking if they had a valid license or were legally permitted to own a firearm – without verifying anything at all other than whether the money was right. See generally Shelmidine, Matthews, Schottenfeld, and LaBlond Affidavits. These sorts of irresponsible sales, without making any effort to verify the customer’s identity or suitability, contravene the statutory definition of “reasonable controls and procedures, which “include, but are not limited to[] instituting screening, security, inventory, and other business practices to prevent . . . sales of qualified products to straw purchasers, traffickers, persons prohibited from possessing firearms under state or federal law, or persons at risk of injuring themselves or others.” General Business Law § 898-a(2). The lack of reasonable controls and procedures (or the manifest inadequacy of whatever

procedures the Preliminary Injunction Defendants have) is also demonstrated by the many incidents described in the Complaint and in pages 7-8, *supra*, in which their customers have turned out to be legally barred from possessing a firearm,²⁰ or when those customers use the ghost guns made from their products to commit acts of violence.²¹ The Preliminary Injunction Defendants are unlikely to be able to demonstrate the presence of any reasonable controls, and the Court is likely to find them liable on the merits.

II. THE DEFENDANTS' SHIPMENT OF ILLEGAL, UNTRACEABLE GHOST GUN COMPONENTS INTO NEW YORK CONSTITUTES IRREPARABLE HARM

A. New York Need Not Prove Irreparable Harm

As an initial matter, the Court need not engage in the irreparable harm analysis because “the traditional concept of irreparable harm, which applies to private parties seeking injunctive relief, does not apply in the public interest field.” *Spitzer v. Lev*, Index No. 400989/2002, 2003 WL 21649444, at *2 (Sup. Ct. N.Y. Cty. June 5, 2003). “Thus, when the Attorney General is authorized by statute to seek injunctive relief to enjoin fraudulent or illegal acts, no showing of irreparable harm is necessary.” *Id.*; accord *People v. Apple Health & Sports Club, Ltd.*, 174 A.D.2d 438, 438-39 (1st Dep’t 1991), *aff’d*, 80 N.Y.2d 803 (1992); *see also* *People v. Greenberg*, 27 N.Y.3d 490, 496 (2016) (“The standards of the public interest and not the requirements of private litigation measure the propriety and need for injunctive relief. Therefore, we reject defendants’ argument that the Attorney General must show irreparable harm in order to obtain a permanent injunction.” (quotation omitted)). Each of the statutes providing New York’s causes of action specifically authorizes such injunctive relief. *See* Executive Law § 63(12); General Business Law § 898-d. Accordingly, New York need not demonstrate irreparable harm

²⁰ *See, e.g.*, *Morales Aff.* ¶¶ 17-18.

²¹ *See, e.g.*, Pages 7-8, *supra*.

for the Court to enjoin the Preliminary Injunction Defendants' illegal shipments.

B. The Harm the Preliminary Injunction Defendants Are Causing Is Irreparable, Ongoing, and Imminent

Even if the Court were to perform the irreparable harm analysis, the harm from Defendants' products and the ghost guns made from them is compelling and well-documented. New York's Complaint is rife with individual incidents, each reported in the media or the statements of a public authority, where the Defendants' customers used the ghost guns made from their products in crime, from a triple shooting in the Bronx,²² to domestic violence in Queens,²³ and a drive-by and the shooting of a police detective north of Buffalo.²⁴ These incidents, and the certainty of more of them if unfinished frames and receivers continue to flow into New York, constitute irreparable injury because "[h]uman safety is in issue. The ultimate relief may be rendered inadequate, as the loss of one life would render permanent injunctive relief, granted at a later date, ineffective." Doe v. Dinkins, 192 A.D.2d 270, 275 (1st Dep't 1993). Moreover, irreparable harm exists even in those areas where the Preliminary Injunction Defendants' business practices lead to economic costs, because those costs, such as increased health, safety, and law enforcement expenditures, "are difficult to quantify," Gundermann & Gundermann Ins. v. Brassill, 46 A.D.3d 615, 617 (2d Dep't 2007), particularly in the context of a gun violence epidemic in which the ghost guns made from the Defendants' products are one of many sources.

²² See Marino, Marino, et al., Fast-food worker obsessed with 'ghost guns' killed one, injured two others in Bronx shooting: cops, *supra*.

²³ See Thomas Tracy, L.I. man caught with 'ghost guns' charged with threatening to shoot up Queens hospital, N.Y. Daily News, Feb 19, 2022, available at <https://www.nydailynews.com/new-york/nyc-crime/ny-man-arrested-for-threatening-to-shoot-up-queens-hospital-20220219-pcsnxvpclnb2hoxbicouvn12ei-story.html>.

²⁴ See Becker, DA: Suspect in police shooting accused of using 'homemade' guns in attacks, *supra*.

III. THE BALANCE OF THE EQUITIES REQUIRES THAT THESE ILLEGAL SHIPMENTS BE STOPPED

The equities also favor issuance of an injunction against the Preliminary Injunction Defendants' illegal shipments. Normally, "[t]he balancing of the equities requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief." Barbes Rest., Inc. v. ASRR Suzer 218, LLC, 140 A.D.3d 430, 432 (1st Dep't 2016). But in cases like this one where the outcome of the motion will cause significant benefit or harm to others, "[i]t is also important . . . for the court, in balancing the equities, to be cognizant of the public's interest." Trump v. Trump, 69 Misc.3d 285, 304 (Sup. Ct. Dutchess Cty. 2020); accord Eastview Mall, LLC v. Grace Holmes, Inc., 182 A.D.3d 1057 (4th Dep't 2020) ("the courts must weigh the interests of the general public as well as the interests of the parties to the litigation.").

Here, the harm to New York from a continuation of the Preliminary Injunction Defendants would be significant, as a further influx of unfinished frames and receivers – with many of the ghost guns made from them going into the hands of persons who cannot legally carry firearms – will lead to significant expenditures on health and law enforcement, as well as an undermining of the rule of law. Meanwhile, the harm to the Preliminary Injunction Defendants from the issuance of an injunction will be negligible, since they will only be enjoined from selling products the law already forbids them to sell. See Penal Law §§ 265.60, 265.61; N.Y. City Admin. Code § 10-314. But it is the public's interest that truly calls out for an injunction, as the unfinished frames and receivers sold by the Preliminary Injunction Defendants will inevitably be turned into deadly, untraceable ghost guns in the hands of persons who could not obtain a firearm legally, resulting in more senseless shootings and unnecessary tragedy.

CONCLUSION

For the reasons set forth above, together with the affirmations and exhibits submitted herewith, New York respectfully requests that the Court enter a preliminary injunction ordering the Preliminary Injunction Defendants to immediately cease selling, shipping, distributing, or otherwise supplying unfinished frames or receivers to any person or entity with a New York State address. New York also requests that the Court grant such other and further relief as it deems just and proper.

Dated: New York, New York
July 13, 2022

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UNIFORM RULE 202.8-b(c) CERTIFICATION

Pursuant to Rule 202.8-b(c) of the Uniform Civil Rules for the Supreme Court and the County Court, I certify that the above memorandum of law contains 6,877 words, according to the word count function in Microsoft Word.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James M. Thompson', written over a horizontal line.

James M. Thompson
Special Counsel