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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk
By: SA Deputy Clerk

DUPLICATE

-----X
NATIONAL SHOOTING SPORTS :
FOUNDATION, INC., GLOCK INC., :
BERETTA U.S.A. CORP., BROWNING :
ARMS, INC.; COLT'S MANUFACTURING :
COMPANY, INC., SIG ARMS, INC., :
STURM, RUGER & COMPANY, INC. AND :
TAURUS INTERNATIONAL :
MANUFACTURING, INC., :

Plaintiffs, :

-against- :

ANDREW M. CUOMO, in his official :
capacity as Secretary of the :
United States Department of :
Housing and Urban Development; :
ELIOT SPITZER, in his official :
capacity as Attorney General of :
the State of New York; OFFICE OF :
THE ATTORNEY GENERAL OF THE STATE :
OF NEW YORK; LOUISE RENNE, in her :
official capacity as City :
Attorney of the City of San :
Francisco, California; CITY OF :
SAN FRANCISCO, CALIFORNIA; :
SHIRLEY DEAN, in her official :
capacity as Mayor of the City of :
Berkeley, California; MANUELA :
ALBUQUERQUE, in her official :
capacity as City Attorney of the :
City of Berkeley, California; :
CITY OF BERKELEY, CALIFORNIA; :
SHARIFA WILSON, in her official :
capacity as Mayor of the City of :
East Palo Alto, California; CITY :
OF EAST PALO ALTO, CALIFORNIA; :
ROOSEVELT DORN, in his official :
capacity as Mayor of the City of :
Inglewood, California; CHARLES :
DICKERSON, in his official :
capacity as City Attorney of the :
City of Inglewood, California; :
CITY OF INGLEWOOD, CALIFORNIA; :

CIVIL FILE 00-CV-1063
ACTION NO.

COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

Demand For Jury Trial

JAYNE W. WILLIAMS, in her x
 official capacity as City :
 Attorney of the City of Oakland, :
 California; CITY OF OAKLAND, :
 CALIFORNIA; DON HORSLEY, in his :
 official capacity as Sheriff of :
 the County of San Mateo, :
 California; COUNTY OF SAN MATEO, :
 CALIFORNIA; RICHARD BLUMENTHAL, :
 in his official capacity as :
 Attorney General of the State of :
 Connecticut; OFFICE OF THE :
 ATTORNEY GENERAL OF THE STATE OF :
 CONNECTICUT; JOSEPH GANIM, in his :
 official capacity as Mayor of the :
 City of Bridgeport, Connecticut; :
 CITY OF BRIDGEPORT, CONNECTICUT; :
 ALEX PENELAS, in his official :
 capacity as Executive Mayor of :
 the County of Miami-Dade, :
 Florida; CARLOS ALVAREZ, in his :
 official capacity as Police :
 Director of the County of Miami- :
 Dade, Florida; COUNTY OF MIAMI- :
 DADE, FLORIDA; BILL CAMPBELL, in :
 his official capacity as Mayor of :
 the City of Atlanta, Georgia; :
 CITY OF ATLANTA, GEORGIA; SCOTT :
 KING, in his official capacity as :
 Mayor of the City of Gary, :
 Indiana; CITY OF GARY, INDIANA; :
 THOMAS MENINO, in his official :
 capacity as Mayor of the City of :
 Boston, Massachusetts; CITY OF :
 BOSTON, MASSACHUSETTS; DENNIS W. :
 ARCHER, in his official capacity :
 as Mayor of the City of Detroit, :
 Michigan; CITY OF DETROIT, :
 MICHIGAN; CLARENCE HARMON, in his :
 official capacity as Mayor of the :
 City of St. Louis, Missouri; CARL :
 YATES, in his official capacity :
 as Assistant City Attorney of the :
 City of St. Louis, Missouri; CITY :
 OF ST. LOUIS, MISSOURI; SHARPE :
 JAMES, in his official capacity :
 as Mayor of the City of Newark, :
 New Jersey; CITY OF NEWARK, NEW :
 JERSEY; JOHN STREET, in his :
 official capacity as Mayor of the :
 City of Philadelphia, :

Pennsylvania; CITY OF :
PHILADELPHIA, PENNSYLVANIA; :
WASHINGTON, DISTRICT OF COLUMBIA; :
 :
Defendants. :
----- x

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs National Shooting Sports Foundation, Inc. ("NSSF"); Glock Inc.; Beretta U.S.A. Corp.; Browning Arms, Inc.; Colt's Manufacturing Company, Inc.; SIG Arms, Inc.; Sturm, Ruger & Company, Inc. and Taurus International Manufacturing, Inc. (together, excluding NSSF, the "Plaintiff Manufacturers"), allege upon information and belief, except as to matters pertaining to themselves, as and for their complaint, as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action against public officials who have conspired to impose regulations and restrictions on firearm manufacturers in violation of the Commerce Clause of the United States Constitution, the constitutional doctrine of separation of powers and legislation duly enacted by the Congress of the United States. This action seeks to defend one of the fundamental tenets of our nation: the democratic process in which elected representatives of the people consider and pass laws in accordance with established legislative procedures. Plaintiffs have commenced this action to

prevent the Defendants from unconstitutionally bypassing the democratic process and misusing their governmental authority and collective purchasing power to impose their particular political views on the rest of the nation.

2. This action concerns the design and distribution of firearms. The officials participating in this conspiracy believe that the elected representatives in Congress and the state legislatures have not enacted appropriate legislation on this topic. They have determined that they need not and will not accept the results of democratic processes of this nation and will instead seek regulation through coercion.

3. The United States Constitution vests exclusive authority in the United States Congress to regulate "Commerce with foreign Nations, and among the several States." Although the Commerce Clause contains an explicit grant of authority to Congress, the United States Supreme Court has long recognized that the Commerce Clause at the same time prohibits state and local governments from regulating interstate or international commerce, a doctrine known as the "Dormant Commerce Clause."

4. In a transparent effort to evade these restrictions on the executive branch's authority and in clear violation of the Constitution's separation of powers doctrine, the Commerce Clause and basic principles of federalism, members of the executive branch of

the federal government, in concert with others, have initiated patently illegal efforts to induce state and municipal officials to impose national and international regulations on firearms. Aware that the federal government's executive branch lacks legal authority to impose firearm regulations beyond those authorized by the Gun Control Act of 1968 and Firearms Owners' Protection Act of 1986, Secretary of the United States Department of Housing and Urban Development Andrew Cuomo has enlisted various state and local officials to impose additional regulations as a means to circumvent the legislative limitations established by Congress. Specifically, Secretary Cuomo has formed a coalition ("the Regulatory Coalition") that seeks the state and local imposition of a so-called "Code of Conduct" that contains fundamental changes in firearm design and distribution as well as changes in corporate governance of firearm manufacturers. Secretary Cuomo's actions violate not only the expressed will of Congress, but also the bedrock constitutional principles of separation of powers and federalism. Moreover, because the Code of Conduct contains national and international restrictions on commerce, the promulgation of the Code by the state and local officials violates the Constitution's Commerce Clause and exceeds the constitutional authority of individual states.

5. Secretary Cuomo has conspired with, among others, New York Attorney General Eliot Spitzer to impose the restrictions

described above. On March 16, 2000, Attorney General Spitzer issued Executive Order No. 12. That order imposed a New York statewide purchasing regulation prohibiting the New York State Department of Law from purchasing its police firearm of choice unless the manufacturer consented to a Code of Conduct. Realizing that these actions alone would not achieve the desired regulatory goal, however, Attorney General Spitzer simultaneously sent a letter to the President of the United States, the mayors of 100 of the United States' largest cities, and the 50 states' governors and attorneys general inviting them to join him in a coalition that would refuse to purchase police firearms from any manufacturer that did not accept the Code of Conduct.

6. The political and regulatory motives of this conspiracy are made explicit in Attorney General Spitzer's March 16, 2000 letter:

As you know, federal, state and city legislatures have wrestled with issues of gun control for decades. Frustrated with the results of legislative initiatives, many cities and states have sued or are threatening to sue gun manufacturers over their design and distribution practices . . . Working together, we can help bring fast and meaningful reform to an arena that to date has been characterized by gridlock . . . Our economic power as the primary market for many manufacturers is perhaps the greatest, most easily accessed leverage we have to change the design and marketing of guns.

7. In response to Attorney General Spitzer's invitation, state and local government executives announced their agreement to promulgate the nationwide Code of Conduct as a local regulation governing the purchases of law enforcement firearms. By doing so, these state and local officials would effectively prescribe the design for all non-law enforcement firearms (that is, for personal or corporate use) and restrict their interstate sale and distribution in ways that Congress has not authorized. If successful, these state and local officials will deprive their non-conspiring sister states of the ability to make independent choices with respect to intrastate gun regulation and will pre-empt the exclusive power of Congress to address gun regulation on an interstate and international level.

8. On March 17, 2000, Secretary Cuomo announced that he had obtained an agreement among the United States, certain state and local governments and a major firearms manufacturer ("the March 17 Agreement"), which contains substantially the same Code of Conduct referenced in Executive Order No. 12. For the manufacturer that signed the March 17 Agreement, the agreement fundamentally alters handgun designs and creates a national, entirely new and comprehensive regulatory scheme overseen by certain parties to the agreement. Secretary Cuomo signed the document on behalf of HUD and Attorney General Spitzer signed the document on behalf of the State

of New York. Among other city representatives, Atlanta Mayor Bill Campbell executed the agreement on behalf of the City of Atlanta.

9. Secretary Cuomo then facilitated the expansion of the conspiracy to impose unconstitutional regulation of firearms. On or about March 22, 2000, Secretary Cuomo and Attorney General Spitzer announced the formation of the Regulatory Coalition of 29 cities and counties from around the nation that would buy firearms from companies that adopt interstate and international design distribution and sale restrictions like those contained in the Code of Conduct. HUD announced on March 31, 2000 that 38 more local governments had joined the effort. The illegal purpose of the Regulatory Coalition is its announced goal to use its purchasing power in the market for police firearms to regulate commerce in civilian firearms. The restrictions that Defendants are attempting to force onto the Plaintiff Manufacturers defy congressional will, violate the constitutional principles of separation of powers and federalism, and contravene the Commerce Clause.

10. Plaintiffs seek i) a declaratory judgment that Secretary Cuomo's efforts to impose the Code of Conduct exceed the limits of his authority and violate the separation of powers doctrine, ii) an injunction to prevent Secretary Cuomo from taking any further steps to circumvent the federal firearms laws, iii) a declaratory judgment that the Code of Conduct purchase restrictions

being imposed by the Defendants violate the Commerce Clause of Article I of the United States Constitution and iv) an injunction prohibiting the state and local officials from taking any action to restrict interstate and foreign commerce. Plaintiffs seek this limited relief to ensure that interstate and foreign commerce issues are resolved in the manner that the United States Constitution requires: through legislation voted upon by democratically-elected representatives.

JURISDICTION AND VENUE

11. Jurisdiction over the federal claims contained herein exists pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Personal jurisdiction exists over all defendants because at least one resident defendant has taken overt acts within the Northern District of Georgia on behalf of all other defendants in furtherance of the conspiracy. At least one non-resident defendant has taken overt acts within the Northern District of Georgia on behalf of all other defendants, including the resident defendant, in furtherance of the conspiracy.

12. Venue lies with this Court because a substantial part of the events that give rise to this claim occurred in the counties comprising the Northern District of Georgia.

13. This action is properly assigned to the Northern District of Georgia, Atlanta Division, in that a substantial part of

the events giving rise to Plaintiffs' claims occurred and are occurring in the City of Atlanta and the City of Smyrna.

THE PARTIES

Plaintiffs

14. Plaintiff National Shooting Sports Foundation, Inc. ("NSSF") is a Connecticut corporation having its principal place of business in Connecticut. NSSF is a trade organization, the members of which include the other Plaintiffs herein.

15. Plaintiff Glock, Inc. ("Glock") is a Georgia corporation having its principal place of business in Smyrna, Georgia. Glock manufactures firearms for both 1) law enforcement or military use and 2) consumer use. Firearms manufactured or distributed by Glock are sold in all 50 states and United States territories and internationally.

16. Plaintiff Beretta U.S.A. Corp. ("Beretta") is a Maryland corporation having its principal place of business in Maryland. Beretta manufactures firearms for both 1) law enforcement or military use and 2) consumer use. Firearms manufactured or distributed by Beretta are sold in all 50 states and United States territories and internationally.

17. Plaintiff Browning Arms, Inc ("Browning") is a Utah corporation having its principal place of business in Utah. Browning manufactures firearms for both 1) law enforcement or military use and

2) consumer use. Firearms manufactured or distributed by Browning are sold in all 50 states and United States territories and internationally.

18. Plaintiff Colt's Manufacturing Company, Inc. ("Colt") is a Delaware corporation having its principal place of business in Connecticut. Colt manufactures firearms for both 1) law enforcement or military use and 2) consumer use. Firearms manufactured or distributed by Colt are sold in all 50 states and United States territories and internationally.

19. Plaintiff SIG Arms, Inc. ("SIG") is a Delaware corporation having its principal place of business in New Hampshire. SIG distributes firearms for both 1) law enforcement or military use and 2) consumer use. Firearms distributed by SIG are sold in all 50 states and United States territories and internationally.

20. Plaintiff Sturm, Ruger & Company, Inc. ("Sturm Ruger") is a Delaware corporation having its principal place of business in Connecticut. Sturm Ruger manufactures firearms for both 1) law enforcement or military use and 2) consumer use. Firearms manufactured or distributed by Sturm Ruger are sold in all 50 states and United States territories and internationally.

21. Plaintiff Taurus International Manufacturing, Inc. ("Taurus") is a Florida corporation having its principal place of business in Florida. Taurus manufactures firearms for both 1) law

enforcement or military use and 2) consumer use. Firearms manufactured or distributed by Taurus are sold in all 50 states and United States territories and internationally.

Defendants

22. Defendant Andrew M. Cuomo is the Secretary of the United States Department of Housing and Urban Development.

23. Defendant Eliot Spitzer is the Attorney General of the State of New York and a resident of the State of New York.

24. Defendant the Office of the Attorney General of the State of New York is an office of the State of New York, which authorizes purchases for the New York Department of Law.

25. Defendant Louise Renne is the City Attorney of the City of San Francisco, California and a resident of the State of California.

26. Defendant the City of San Francisco, California is a municipal corporation organized and existing under the laws of the State of California.

27. Defendant Shirley Dean is the Mayor of the City of Berkeley, California and a resident of the State of California.

28. Defendant Manuela Albuquerque is the City Attorney of the City of Berkeley, California and a resident of the State of California.

29. Defendant the City of Berkeley, California is a municipal corporation organized and existing under the laws of the State of California.

30. Defendant Sharifa Wilson is the Mayor of the City of East Palo Alto, California and a resident of the State of California.

31. Defendant the City of East Palo Alto, California is a municipal corporation organized and existing under the laws of the State of California.

32. Defendant Roosevelt Dorn is the Mayor of the City of Inglewood, California and a resident of the State of California.

33. Defendant Charles Dickerson is the City Attorney of the City of Inglewood, California and a resident of the State of California.

34. Defendant the City of Inglewood, California is a municipal corporation organized and existing under the laws of the State of California.

35. Defendant Jayne W. Williams is the City Attorney of the City of Oakland, California and a resident of the State of California.

36. Defendant the City of Oakland, California is a municipal corporation organized and existing under the laws of the State of California.

37. Defendant Don Horsely is the Sheriff of the County of San Mateo, California and a resident of the State of California.

38. Defendant the County of San Mateo, California is a municipal corporation organized and existing under the laws of the State of California.

39. Defendant Richard Blumenthal is the Attorney General of the State of Connecticut and a resident of the State of Connecticut.

40. Defendant the Office of the Attorney General of the State of Connecticut is an office of the State of Connecticut, which authorizes purchases for the Connecticut Department of Law.

41. Defendant Joseph Ganim is the Mayor of the City of Bridgeport, Connecticut and a resident of the State of Connecticut.

42. Defendant the City of Bridgeport, Connecticut is a municipal corporation organized and existing under the laws of the State of Connecticut.

43. Defendant Alex Penelas is the Executive Mayor of the County of Miami-Dade, Florida and a resident of the State of Florida.

44. Defendant Carlos Alvarez is the Police Director of the County of Miami-Dade, Florida and a resident of the State of Florida.

45. Defendant the County of Miami-Dade, Florida is a municipal corporation organized and existing under the laws of the State of Florida.

46. Defendant Bill Campbell is the Mayor of the City of Atlanta, Georgia and a resident of the State of Georgia.

47. Defendant the City of Atlanta, Georgia is a municipal corporation organized and existing under the laws of the State of Georgia.

48. Defendant Scott King is the Mayor of the City of Gary, Indiana and a resident of the State of Indiana.

49. Defendant the City of Gary, Indiana is a municipal corporation organized and existing under the laws of the State of Indiana.

50. Defendant Thomas Menino is the Mayor of the City of Boston, Massachusetts and a resident of the State of Massachusetts.

51. Defendant the City of Boston, Massachusetts is a municipal corporation organized and existing under the laws of the State of Massachusetts.

52. Defendant Dennis W. Archer is the Mayor of the City of Detroit, Michigan and a resident of the State of Michigan.

53. Defendant the City of Detroit, Michigan is a municipal corporation organized and existing under the laws of the State of Michigan.

54. Defendant Clarence Harmon is the Mayor of the City of St. Louis, Missouri and a resident of the State of Missouri.

55. Defendant Carl Yates is the Assistant City Attorney of the City of St. Louis, Missouri and a resident of the State of Missouri.

56. Defendant the City of St. Louis, Missouri is a municipal corporation organized and existing under the laws of the State of Missouri.

57. Defendant Sharpe James is the Mayor of the City of Newark, New Jersey and a resident of the State of New Jersey.

58. Defendant the City of Newark, New Jersey is a municipal corporation organized and existing under the laws of the State of New Jersey.

59. Defendant John Street is the Mayor of the City of Philadelphia, Pennsylvania and a resident of the State of Pennsylvania.

60. Defendant the City of Philadelphia, Pennsylvania is a municipal corporation organized and existing under the laws of the State of Pennsylvania.

61. Defendant Washington, District of Columbia is a self-governing municipality under the indirect control of the federal government.

62. The Defendants identified in paragraphs 23, 25, 27, 28, 30, 32, 33, 35, 37, 39, 41, 43, 44, 46, 48, 50, 52, 54, 55, 57 and 59 are elected or appointed public officials with authority to

regulate directly or indirectly the purchase of law enforcement firearms (hereinafter "Municipal Public Officials").

63. The Defendants identified in paragraphs 24, 26, 29, 31, 34, 36, 38, 40, 42, 45, 47, 49, 51, 53, 56, 58, 60 and 61 are towns, cities, counties or states that have implemented or have committed to implement a Code of Conduct (hereinafter "Municipalities," and collectively referred to herein with Municipal Public Officials as "Municipal Defendants").

BACKGROUND

64. This conspiracy publicly manifested itself on March 16, 2000, when New York Attorney General Spitzer issued Executive Order No. 12, which prohibits the New York State Department of Law from buying firearms from any manufacturer that has not "committed to adhere" to a "Code of Conduct" drafted by Attorney General Spitzer. (A true and correct copy of Administrative Memorandum No. 80.12, which contains Executive Order Number 12 and the Attorney General's Code of Conduct, is attached to the Complaint as Exhibit A.)

65. The following day, Secretary Cuomo, along with Attorneys General Spitzer of New York and Richard Blumenthal of Connecticut, publicly announced an agreement with a major firearm manufacturer to make significant changes in the interstate and international design, distribution and marketing of handguns (the

"March 17 Agreement"). The terms of the March 17 Agreement are, in all material respects, essentially the same as those contained in the Proposed Code of Conduct attached to Executive Order No. 12, and constitute the same Code of Conduct.

66. Approximately one week after revealing the March 17 Agreement, Secretary Cuomo announced that the U.S. Department of Housing and Urban Development would support those manufacturers that agreed to the terms of the March 17 Agreement imposing the Code of Conduct and that he would encourage other public officials to act similarly.

A. Restrictions on Commerce in Firearms

67. Attorney General Spitzer distributed with Executive Order No. 12 a Proposed Code of Conduct that contains an extensive eight-page list of regulations and restrictions that are plainly inconsistent with, and in excess of, existing federal and state regulations. Although the New York Department of Law purchases only guns for law enforcement use, the firearm design restrictions set forth in the Code apply only to all non-law enforcement, non-military handguns. Indeed, the Code explicitly exempts from its handgun design requirements those handguns "sold to law enforcement or the military." The Code, however, contains no geographic limitation on any of its terms and, thus, applies to handgun sales regardless of

where they occur, including throughout the United States or the rest of the world.

68. Defendants seek to impose changes in every aspect of the Plaintiff Manufacturers' operations, which currently comply with pervasive federal and state laws and regulations. The Code of Conduct establishes new criteria to apply throughout the United States and the world for design, marketing, distribution, sale, transfer, storage, handling, advertisement, security and shipment of firearms. It also requires that the Plaintiff Manufacturers that want to do business with the Municipal Defendants modify their corporate management, new product research budgets, and internal and external reporting requirements. While some of the Code of Conduct's particular design changes are already in use within the industry, others are ill-considered designs that might decrease, rather than increase, firearm safety.

69. The Code of Conduct would create an unelected and unaccountable external monitor and/or an oversight panel or commission with vast authority to implement the Code of Conduct and to direct the business of any manufacturer party to the Code. By vesting authority in a monitor and/or oversight committee to enforce the Code of Conduct, Defendants seek to supplant the statutory authority of the Department of the Treasury and the Bureau of Alcohol, Tobacco and Firearms.

70. The intent and effect of this scheme is to have a self-appointed combination of state agencies and self-appointed federal executives regulate interstate and foreign commerce in violation of the Commerce Clause (both foreign and between the states) in Article I of the United States Constitution and in violation of 42 U.S.C. Section 1983.

B. Initiation of The Regulatory Coalition

71. At the time he signed Executive Order No. 12, Attorney General Spitzer knew that the New York Law Department's imposition of a national and international firearms regulatory scheme would not achieve his political goal of comprehensive gun control regulation. He wanted to impose nationally the regulations he devised. Accordingly, he solicited certain elected and appointed officials in New York State and elsewhere to join with him.

72. In his effort to impose this national and international regulatory scheme from the state level, Attorney General Spitzer sent his March 16, 2000 letter to the President of the United States, the mayors of the nation's 100 largest cities, the 50 state governors and 50 state attorneys general (the "Spitzer Letter"). (A copy of the version of this letter that was sent to the Office of the Alabama State Attorney General is attached to the Complaint as Exhibit B.) He requested that the states and cities "join a coalition of governments that will award firearm contracts

only to those entities willing to abide by the principles enunciated in this Code [of Conduct]."

73. Attorney General Spitzer acknowledges the extra-legislative, extra-judicial purpose of the coalition:

[u]ntil now, there have been only two ways to try to ensure that the gun industry will produce safer guns and take more responsibility for its products once they leave the factory - either through legislation or litigation. Today, we are offering a third way, and that is for governments across the country to use financial leverage to encourage gun companies to do what is right. In this regard, the best way to get the gun companies' attention is by focusing on their bottom lines.

(Spitzer Forms Coalition To Influence Gun Industry, Press Release, Office of the Attorney General of the State of New York, March 16, 2000, <http://www.oag.state.ny.us/press/2000/mar/mar16a_00.html>.)

74. The Spitzer Letter proposed a naked restraint on trade. His premise was that "[l]aw enforcement purchases constitute a substantial portion of the gun industry's business" and that he wanted his addressees to participate "in a nationwide coalition of state and local governments using the power of their purse strings to encourage gun manufacturers to operate responsibly." (Exhibit B.) His definition of "operat[ing] responsibly" clearly entails designing, manufacturing and marketing firearms according to his

dictates. In his press release concerning the Spitzer Letter, the Attorney General stated bluntly that his objective was "to form a coalition that will, in effect, boycott gun manufacturers who fail to adhere to a new safety code." (*Spitzer Forms Coalition To Influence Gun Industry*, Press Release, Office of the Attorney General of the State of New York, March 16, 2000, <http://www.oag.state.ny.us/press/2000/mar/mar16a_00.html>.) Five days later, on March 21, 2000, Attorney General Spitzer reiterated the coercive intent of the coalition.

'Our goal is simple,' Spitzer said. 'We want every appropriate government entity to agree to purchase firearms only from companies that have signed a comprehensive code of conduct.'

(*Gun Procurement Coalition Expands in New York*, Press Release, Office of New York State Attorney General, March 21, 2000, <http://www.oag.state.ny.us/press/2000/mar/mar21b_00.html>.)

75. The anti-competitive nature of Attorney General Spitzer's proposal is manifest: "Together, we [the members of the Regulatory Coalition] are in a unique position to dictate the terms of that business" (Exhibit B.) "We have the capacity to squeeze manufacturers like a pincers and hurt them in the marketplace." (*Coalition Aims at Gun Profits*, Associated Press, March 23, 2000.)

76. The goals of the Regulatory Coalition are plainly regulatory and political. Attorney General Spitzer has publicly acknowledged the anti-democratic, national goals of the coalition as follows:

- “[w]hen Connecticut Attorney General Richard Blumenthal and I initiated settlement discussions with the industry last March, our goal was to serve as a catalyst for national reform. The prospects for achieving far-reaching change grew as other cities and states, and the federal government, joined the effort.” (*Statement by Attorney General Eliot Spitzer Regarding the Smith & Wesson Agreement*, Press Release, Office of New York State Attorney General, March 17, 2000, <http://www.oag.state.ny.us/press/2000/mar/mar17a_00.html>);
- “[t]oday we are seeing in many respects federalism at its best. We are seeing the federal government working in conjunction with states and cities, localities, joining forces on an endeavor that perhaps would have been impossible if only any single layer of government had been pursuing it.” (*Press Conference on Gun Safety Proposals by Smith & Wesson*, Federal News Service, March 17, 2000);
- “[w]e have the power - those of us in this room today - have the power to (sic) that. The way to do it is through government procurement.” (Id.);
- “[w]e have tried to legislate...” (Id.);
- “let us say to every other manufacturer, ‘You will not get a penny in government contracts unless and until you play by the same rules that Smith & Wesson has agreed to play by.’” (Id.).

77. Secretary Cuomo joined in this effort to use economic coercion to effectuate regulatory goals. On March 21 or March 22,

2000, Secretary Cuomo placed a telephone call to Paul Jannuzzo, Esq., Plaintiff Glock's Vice President and General Counsel, at Glock's Smyrna, Georgia offices. During that conversation, Secretary Cuomo asked about the percentage of Glock's business that was derived from law enforcement sales. Following Mr. Jannuzzo's reply, Secretary Cuomo attempted to coerce Glock to agree to the terms of the March 17 Agreement. Specifically, Secretary Cuomo told Mr. Jannuzzo that Secretary Cuomo had "a lot of push" with the "big city mayors." Secretary Cuomo threatened that Glock's "business is going to suffer" unless it agrees to the terms of the March 17 Agreement.

78. In a separate telephone conference with Mr. Jannuzzo that same week, Max Stier, counsel to Secretary Cuomo, elaborated on Secretary Cuomo's comments regarding his "push" with the "big city mayors" and his ability to make Glock's business suffer. Specifically, Mr. Stier predicted that a buying coalition of state and local governments being assembled by Secretary Cuomo would be a successful means of exerting financial pressure on the Plaintiff Manufacturers.

79. Secretary Cuomo's office also initiated several telephone calls with Robert Morrison, the Executive Vice President of Plaintiff Taurus, on or about March 30, 2000. During those calls, Secretary Cuomo claimed that "I have a great deal of influence over the mayors." He also attempted to coerce Taurus to sign the March 17

Agreement by stating that, if Taurus did so, it would then share profitable government contracts with the company that signed the March 17 Agreement. Secretary Cuomo stated that acquiescing to the terms of the March 17 Agreement would be very "lucrative" to Taurus.

C. The Regulatory Coalition Adopting the Code of Conduct

80. Having failed to coerce Plaintiff Manufacturers to sign the March 17 Agreement, Secretary Cuomo executed his threat. Specifically, on March 22, 2000, Secretary Cuomo announced his success in forming the Regulatory Coalition of 29 state and local officials who agreed to support purchase preferences by their respective law enforcement agencies for guns made by companies that have acquiesced to the Code of Conduct. Defendants joining the Regulatory Coalition conspiracy on or about that day were: i) from California: Berkeley, East Palo Alto, Inglewood, and San Francisco; ii) from Connecticut: Bridgeport; iii) from Florida: Miami-Dade County; iv) from Georgia: Atlanta; v) from Indiana: Gary; vii) from Massachusetts: Boston; viii) from Michigan: Detroit; ix) from Missouri: St. Louis; and, x) from New Jersey: Newark.

81. On March 31, 2000, Secretary Cuomo announced his success in persuading 38 additional state and local government entities to join the Regulatory Coalition conspiracy, including the following Defendants: i) from California: Oakland and San Mateo

County; ii) District of Columbia; and, iii) from Pennsylvania: Philadelphia.

82. Attorney General Spitzer maintains a website on which his office tracks the progress of the Regulatory Coalition. Based upon the Attorney General's website and press releases, there are "more than 60" municipalities from across New York that have joined a "National Coalition." (*Spitzer Addresses Crime Victims Vigil*, Press Release, Office of New York State Attorney General, April 9, 2000, <http://www.oag.state.ny.us/press/2000/apr/apr09a_00.html>.)

83. One of the participants at the March 22 meeting of the Regulatory Coalition was Bill Campbell, the Mayor of Atlanta, Georgia, who confirmed the economic coercion of the Regulatory Coalition when he explained that his city buys "about a million dollars (worth) of guns each year." He predicted that, when the purchasing power of other Regulatory Coalition cities are added together, the gun manufacturers "will comply or they will cease operations." (*Coalition Aims at Gun Profits*, Associated Press, March 23, 2000.)

84. On March 20, 2000, the Atlanta City Counsel passed Resolution 00-R-0459 "expressing the policy of the City of Atlanta to purchase firearms for use by sworn law enforcement personnel from manufacturers that have agreed to use safety standards as agreed to in the settlement document between certain gun manufacturers and the

Federal Government, as entered into in March 2000; directing the purchasing Director to make such standards a specification in any request for bids, solicitation for proposals, or any other method of procurement of firearms; and for any other purposes." (A copy of Resolution 00-R-0459 can be found at <<http://www.ci.atlanta.ga.us/dept/council/2000/minutes/fcm0320a.htm>>.) That resolution was proposed, passed and entered in furtherance of and in concert with the Regulatory Coalition.

85. According to a press release from Miami-Dade County Mayor Penelas' office, Mayor Penelas, on April 5, 2000, unveiled a policy providing a preference to county contractors if they purchase their firearms from companies that agree to the Code of Conduct. Mayor Penelas also announced that the Miami-Dade Police Department will provide a \$100.00 rebate to police officers who purchase their service weapons from such companies. On April 11, 2000, the Miami-Dade County Commission adopted Resolution R-361-00, directing the County Manager of Miami-Dade County to prepare an administrative order providing for the above-described preference. (A copy of R-361-00 can be found at <<http://www.co.miami-dade.fl.us/govaction/matter.asp?matter=000908>>.) Both such policies were promulgated in furtherance of and in concert with the Regulatory Coalition.

86. St. Louis Mayor Clarence Harmon stated that, if comparable firearms could be purchased from Smith & Wesson, even at a

slightly higher cost, he would recommend that. "It's a gesture we [the City of St. Louis] need to make." (Greg Freeman, *Harmon Is Right To Get Police To Buy From Smith & Wesson*, St. Louis Post-Dispatch, March 30, 2000 at B1.)

87. San Mateo County Sheriff Don Horsley has vowed to "purchase nothing but Smith & Wesson." (Richard Simon and Eric Lichtblau, *Police Feel Pressure to Choose the 'Code'*, April 9, 2000.)

88. Berkeley Mayor Shirley Dean has commented that, "[o]ne little city isn't going to make that much difference. One hundred little cities begin to make the difference; one thousand little cities, now you're going to get heard." (Id.)

89. Publicly available information states, or further investigation and discovery is likely to show, that each of the Defendants received a copy of the Spitzer letter and agreed to join the Regulatory Coalition on the terms set forth in that letter and the attached Code of Conduct.

90. Secretary Cuomo has continued his efforts to facilitate the expansion of the Regulatory Coalition. On April 6, 2000, he sent a letter to 1,200 local officials seeking their pledge to support the Code of Conduct. That letter states that nearly 70 public officials have "pledged" to support the Regulatory Coalition.

91. The Regulatory Coalition constitutes a conspiracy to impose the Code of Conduct by state agencies to regulate interstate

and foreign commerce in violation of the Commerce Clause and 42 U.S.C. §1983.

D. The Impermissible Burden on Interstate and Foreign Commerce

92. The Commerce Clause of the United States Constitution, Art. I, § 8, cl. 3, empowers the United States Congress to "regulate Commerce with foreign Nations, and among the several States." The Supreme Court has interpreted the Commerce Clause not only to grant legislative power to Congress, but also impliedly to limit the power of State and local governments to enact laws affecting foreign and interstate commerce. The implied limitation on State and local powers is referred to as the "dormant Commerce Clause."

93. The Commerce Clause precludes the application of a state regulation to commerce that takes place wholly outside the state's borders, whether or not the commerce has effects within the state. With respect to interstate commerce, the Commerce Clause's restrictions are based upon both (i) the need to maintain a national economic union unfettered by state-imposed limitations on interstate commerce and (ii) the autonomy of the individual States within their respective spheres. With respect to foreign commerce, the Commerce Clause both restricts protectionist policies and restrains states from excessive interference in foreign affairs. The Code of Conduct - whether promulgated by one or more members of the Regulatory

Coalition - violates both the domestic interstate and foreign aspects of the dormant Commerce Clause.

94. The Code of Conduct's design and distribution standards are geographically limitless; they apply to all handguns sold by a manufacturer across the nation and the world. As a result, the Code of Conduct necessarily regulates commerce that occurs entirely outside each Defendant's respective state border and beyond the United States' borders.

95. Although the Regulatory Coalition has made adherence to the Code of Conduct a condition or criterion for obtaining police firearm contracts, the Code of Conduct does not even apply to police firearms. The Regulatory Coalition thus seeks to impose a regulatory scheme in a product market that is entirely unrelated to the market for police firearms.

96. Defendants' scheme impermissibly burdens interstate commerce because it imposes a regulatory system not sanctioned by Congress that applies to commerce among the states, and also restricts firearm commerce in states whose officials have chosen not to participate in the coalition. Defendants' conduct improperly restricts the autonomy of those states that have declined to join the Regulatory Coalition.

97. If the imposition of the Code of Conduct were deemed permissible, there would be nothing to prevent other state and local

governments with competing political views from imposing contradictory or inconsistent design and distribution standards. The resulting patchwork regulatory scheme would restrict interstate commerce even further than the Regulatory Coalition's impermissible scheme.

98. The Code of Conduct impermissibly burdens foreign commerce because Plaintiff Manufacturers that do not comply with the Code of Conduct in designs or distribution methods employed outside the United States are either barred from obtaining police firearm contracts from Coalition members or are expressly and purposefully disadvantaged in obtaining such contracts.

99. By agreeing to impose the Code of Conduct through concerted action, the Regulatory Coalition members have further exacerbated its burden on interstate and foreign commerce. The Coalition members have agreed to act together to create monopsony power in the market for the purchase of police firearms. They have agreed either to close their police firearm markets to, or to disadvantage with respect to those markets, anyone who will not accept their regulation of an entirely distinct market: the market for non-police firearms.

100. The explicit goal of the Regulatory Coalition is to coerce the manufacturers into accepting the Code of Conduct by inflicting financial hardship upon those manufacturers that refuse or

fail to abide by its regulations. According to Attorney General Spitzer, "[i]f you [gun manufacturers] do not sign, your bankruptcy lawyers will be knocking at your door." (Mark Sherman, *Governments' pledge pressures gun makers; Safety device: Coalition urges dealings only with companies that agree to implement trigger locks and other measures*, The Atlanta Journal and Constitution, March 23, 2000.)

101. Through joint state and local regulatory action, the Regulatory Coalition members are attempting to "end run" the federal legislative process and to create their own nationwide and worldwide regulations for commerce in firearms. The terms of the Regulatory Coalition's Code of Conduct are different from all other regulations that have been imposed upon the Plaintiff Manufacturers by the democratically-elected United States Congress or any state legislature. These laws and regulations are found, *inter alia*, in Bureau of Alcohol, Tobacco & Firearms ("ATF") regulations (27 C.F.R. Part 178) enacted pursuant to the Gun Control Act of 1968, as amended by the Firearms Owners' Protection Act of 1986 (18 U.S.C. Chapter 44), which set out the conditions for interstate commerce in firearms (collectively "Federal Firearms Laws").

102. The Code of Conduct thus destroys an important balance contained in the Federal Firearms Laws between government power and personal and public safety. The Federal Firearms Laws require a

Federal Firearms License ("FFL") to import, manufacture or sell firearms. FFL holders are subject to ATF authority to investigate and revoke the license if the firearm manufacturer violates any part of the Gun Control Act. The Federal Firearms Laws require comprehensive record keeping and reporting. These laws also prohibit or limit certain firearms and accessories. The Code of Conduct imposes a parallel and inconsistent set of record keeping, reporting and investigatory requirements upon the Plaintiff Manufacturers.

103. Many states have passed local gun regulations that do not unconstitutionally burden interstate commerce. The states' approaches to hand gun regulation are varied and range from prohibition to little regulation beyond the Federal Firearms Laws. Those varied approaches are summarized in the ATF's publication *State Laws and Published Ordinances - Firearms, 1998 - 21st Edition* (AFTP 5300.5).

104. The Defendants' plain purpose is to change the manner in which Plaintiff Manufacturers operate in the United States and across the world. They have usurped improperly the constitutional authority of the democratically-elected United States Congress to regulate both interstate and foreign commerce.

FIRST CLAIM FOR RELIEF

**(All Defendants)
(Conspiracy to Deprive Plaintiffs of Constitutional Right -
Commerce Clause)
(42 U.S.C. § 1983)**

105. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 104 as though set forth in full.

106. The Commerce Clause of the United States Constitution (U.S. Const. Art. I, sec. 8, cl. 3) grants to the United States Congress the exclusive power to regulate "Commerce with foreign Nations, and among the several States" and thus prohibits states and localities from imposing undue burdens on, or creating impediments to, foreign and interstate commerce.

107. Publicly available information states, or further investigation and discovery is likely to show, that, in early March 2000, Attorney General Spitzer sought and received commitments from public officials to attempt to impose the Code of Conduct on the Plaintiff Manufacturers.

108. On March 16, 2000, Attorney General Spitzer sent a letter to the President of the United States, the Mayors of the 100 largest American cities and the Attorneys General and governors of the other states "request[ing] [their] participation" in "a nationwide coalition of state and local governments using the power of their purse strings" to impose the Code of Conduct. The purpose

of this letter was to solicit, encourage and facilitate other state and local officials to join in a conspiracy to impose the Code of Conduct and violate the Commerce Clause.

109. Publicly available information states, or further investigation and discovery is likely to show, that, in early March 2000, Secretary Cuomo began encouraging and facilitating local and state public officials to adopt the Code of Conduct.

110. On or about March 21, 2000, Secretary Cuomo announced that the Department of Housing and Urban Development would give preferences in purchasing police weapons from those firearm manufacturers who agree to the Code of Conduct. On April 6, 2000, Secretary Cuomo, together with United States Senator Charles Schumer, sent a letter to 1,200 state and local officials requesting that they join the Regulatory Coalition to provide a preference to firearm manufacturers who agree to the Code of Conduct.

111. Publicly available information states, or further investigation and discovery is likely to show, that each Municipal Defendant has agreed to impose the Code of Conduct on the Plaintiff Manufacturers. Moreover, by joining the Regulatory Coalition, each Municipal Defendant agreed to act in concert with the other defendants with the express intent of imposing the Code of Conduct on the Plaintiff Manufacturers.

112. Each Municipal Public Official has the actual or apparent authority to impose the Code of Conduct as a condition or criterion for police firearm purchases by his or her respective Municipality. By joining the Regulatory Coalition, each Municipal Defendant has agreed to use its authority as a government entity or agent, under the color of applicable state and local law, to impose the Code of Conduct as a condition or criterion for making firearm sales to that Municipal Defendant.

113. Secretary Cuomo's goal is to regulate the design, manufacture, distribution and sale of firearms. As a promoter, facilitator and member of the Regulatory Coalition conspiracy, he is acting under color of state law to impose regulation unlawfully. Secretary Cuomo has jointly participated with the Municipal Defendants, and acted in concert with them, to take intentional overt action designed to impose the Code of Conduct on the Plaintiff Manufacturers, resulting in the deprivation of their constitutional rights under the Commerce Clause.

114. Each Defendant has agreed to act in concert with every other Defendant with the express purpose of imposing the Code of Conduct on the Plaintiff Manufacturers, thereby depriving each Plaintiff Manufacturer of its rights protected by the Commerce Clause of the United States Constitution, in violation of 42 U.S.C. § 1983.

115. In furtherance of the goals of the conspiracy to impose the Code of Conduct, Secretary Cuomo has taken overt acts in concert with state officials to deny the Plaintiff Manufacturers of their constitutional rights. Secretary Cuomo's telephone calls to the Glock Vice President and the Taurus Chief Executive Officer are examples of such overt acts in furtherance of the conspiracy.

116. Publicly available information states, or further investigation and discovery is likely to show, that various conspirators have taken additional overt actions in furtherance of the goal of the conspiracy. Secretary Cuomo has taken an overt act in furtherance of that conspiracy by corresponding with state and local officials to facilitate the expansion of the Regulatory Coalition. The City of Atlanta has taken overt acts in furtherance of the conspiracy by adopting Resolution 00-R-0459 implementing the Code of Conduct for procurement of all law enforcement firearms. Attorney General Spitzer also committed overt acts in furtherance of the conspiracy when he implemented Executive Order No. 12, which imposes the Code of Conduct as a condition of selling firearms to the New York Law Department. The Miami Defendants committed overt acts in furtherance of the conspiracy when Executive Mayor Alex Panelas proposed, and Miami-Dade County approved, a resolution designed to offer each police officer a \$100 incentive payment toward the purchase of that officer's service firearm only if he or she

purchases the weapon from a manufacturer who accepts the Code of Conduct. Further investigation and discovery is likely to identify additional overt actions performed by Defendants and others in furtherance of the conspiracy. These actions each have the effect of encouraging and furthering the conspiracy to violate the Commerce Clause.

117. The conditions and restrictions contained in the Code of Conduct are regulatory in nature and the Defendants are not acting as market participants.

118. The Code of Conduct regulates firearm commerce that takes place entirely outside the borders of the state in which the Municipal Defendants are located and outside the United States. Thus, the Municipal Defendants have committed a *per se* violation of the Commerce Clause of the United States Constitution, which vests in the United States Congress the power to regulate commerce between the United States and other countries and among the states.

119. In addition, the Municipal Defendants' conduct violates the Commerce Clause of the United States Constitution by imposing a burden on interstate and international firearm commerce that is clearly excessive in relation to any legitimate benefits flowing to the states in which the Municipal Defendants are located.

120. As a direct and proximate result of the Defendants' conduct, and their conspiracy, Plaintiffs have suffered and will

suffer irreparable harm because of this unconstitutional action taken under color of state law. Injunctive relief is appropriate because Plaintiffs have no adequate remedy at law to redress the harm that they have suffered, and will suffer, as a result of Defendants' conduct. An injunction will serve the public interest by prohibiting unconstitutional and improper conduct by Defendants. Finally, the injury to Plaintiffs that will be prevented by an injunction restraining Defendants' unconstitutional and improper conduct outweighs the burden to Defendants, if any, caused by such an injunction.

SECOND CLAIM FOR RELIEF

(All Municipal Defendants)

**(Declaratory and Injunctive Relief -- Commerce Clause)
(28 U.S.C. § 2201 *et seq.*; The United States Constitution)**

121. Plaintiffs allege and incorporate by this reference paragraphs 1 through 104 and 106 through 120 as though set forth in full.

122. The Commerce Clause of the United States Constitution (U.S. Const. art. I, sec. 8, cl. 3) grants to the United States Congress the exclusive power to regulate "Commerce with foreign Nations, and among the several States" and thus prohibits states and localities from imposing undue burdens on, or creating impediments to, foreign and interstate commerce.

123. Publicly available information states, or further investigation and discovery is likely to show, that, in collaboration with Secretary Cuomo, in response to Secretary Cuomo's April 6, 2000 letter, in collaboration with Attorney General Spitzer, in response to the Spitzer Letter, or in response to the promulgation of Executive Order No. 12, each of the Municipal Defendants has agreed with Secretary Cuomo, Attorney General Spitzer and each other that they have restricted or will restrict handgun purchases to Plaintiff Manufacturers that comply with the Code of Conduct.

124. Each Municipal Public Official has the actual or apparent authority to implement the Code of Conduct for his or her respective Municipality as a condition or criterion of making firearm sales to that Municipality.

125. The conditions and terms contained in the Code of Conduct demonstrate that each Municipal Defendant is acting in its regulatory capacity with respect to these terms. First, firearm sales to law enforcement agencies - - including sales to the each Municipality- - are not subject to the Code of Conduct. Second, each Firearm Manufacturer is required to apply the terms of the Code of Conduct on all other sales, including handgun sales to which the Municipality is not a party and sales that take place outside the United States. Third, the most far-reaching aspects of the Code of Conduct do not affect traditional market participant concerns such as

product quality, price or availability. Instead, each Plaintiff Manufacturer must "accept" oversight by an unaccountable, self-appointed monitor concerning every aspect of its operations and radically expand its obligations and liabilities for its products, long after the firearm leaves its control. For example, as a necessary condition of selling firearms to a Municipality, the Plaintiff Manufacturers must: appoint an "executive-level," internal "Compliance Officer," adopt measures to prevent the "diversion from the legal stream of commerce, intentionally or otherwise," of its non-law enforcement products; and certify and ensure that wholesalers, distributors and sellers of firearms conform to tenets of the Code of Conduct, even if those firearms are sold in New Mexico (including those entirely in New Mexico) or Mexico.

126. The Code of Conduct impermissibly burdens firearm commerce that takes place entirely outside the borders of the State in which each Municipal Defendant is located and outside the United States. Thus, each Municipal Defendant has committed a *per se* violation of the Commerce Clause of the United States Constitution, which vests in the United States Congress the power to regulate commerce between the United States and other countries and among the states.

127. In addition, the conduct of each Municipal Defendant violates the Commerce Clause of the United States Constitution

because it imposes a burden on interstate and international firearm commerce that is clearly excessive in relation to any legitimate benefits flowing to the Municipality.

128. Each Municipal Defendant has either taken action or announced its clear intention to take action in violation of the Commerce Clause of the United States Constitution by agreeing to impose the terms of the Code of Conduct upon the Plaintiff Manufacturers as a condition or criterion of making firearm sales to that Municipal Defendant.

129. As a direct and proximate result of the intentions and actions taken by each Municipal Defendant, the Plaintiffs have suffered and will suffer irreparable harm because of this unconstitutional action. Injunctive relief is appropriate because Plaintiffs have no adequate remedy at law to redress the harm that they have suffered, and will suffer, as a result of Defendants' conduct. An injunction will serve the public interest by prohibiting unconstitutional and improper conduct by Defendants. Finally, the injury to Plaintiffs that will be prevented by an injunction restraining Defendants' unconstitutional and improper conduct outweighs the burden to Defendants, if any, caused by such an injunction.

THIRD CLAIM FOR RELIEF

**(City of Atlanta, New York Attorney General Spitzer,
City of Miami and County of San Mateo)
(42 U.S.C. § 1983)**

130. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 104, 106 through 120 and 122 through 129 as though set forth in full.

131. Defendant City of Atlanta, acting under color of law vested in it by the authority of the State of Georgia, has deprived Plaintiff Manufacturers of their rights protected by the Commerce Clause of the United States Constitution, in violation of 42 U.S.C. § 1983.

132. Defendant Eliot Spitzer, acting in his capacity as the Attorney General of the State of New York and under color of law vested in him by the authority of the State of New York, has deprived Plaintiff Manufacturers of their rights protected by the Commerce Clause of the United States Constitution, in violation of 42 U.S.C. § 1983.

133. Defendant City of Miami, acting under color of law vested in it by the authority of the State of Florida, has deprived Plaintiff Manufacturers of their rights protected by the Commerce Clause of the United States Constitution, in violation of 42 U.S.C. § 1983.

134. Defendant County of San Mateo, acting under color of law vested in it by the authority of the State of California, has deprived Plaintiff Manufacturers of their rights protected by the Commerce Clause of the United States Constitution, in violation of 42 U.S.C. § 1983.

135. The Commerce Clause of the United States Constitution grants to the United States Congress the exclusive power to regulate "Commerce with foreign Nations, and among the several States" and thus prohibits states and localities from imposing undue burdens on, or creating impediments to, foreign and interstate commerce.

136. The conditions and restrictions contained in the Code of Conduct are regulatory in nature and the City of Atlanta, Attorney General Spitzer, the City of Miami and the County of San Mateo are not acting as market participants.

137. Each defendant in this claim has imposed or adopted a Code of Conduct that regulates firearm commerce that takes place entirely outside the state in which that defendant is located. Thus, each has committed a *per se* violation of the Commerce Clause of the United States Constitution (U.S. Const. art. I, sec. 8, cl. 3), which vests in the United States Congress the power to regulate commerce between the United States and other countries and among the states.

138. In addition, the conduct of the defendants mentioned in this claim violates the Commerce Clause of the United States

Constitution by imposing a burden on interstate and international firearm commerce that is clearly excessive in relation to any legitimate benefits flowing to the each of their respective entities.

139. As a direct and proximate result of the actions described herein, Plaintiffs have suffered and will suffer irreparable harm. Injunctive relief is appropriate because Plaintiffs have no adequate remedy at law to redress the harm that they have suffered, and will suffer, as a result of Defendants' conduct. An injunction will serve the public interest by prohibiting unconstitutional and improper conduct by Defendants. Finally, the injury to Plaintiffs that will be prevented by an injunction restraining Defendants' unconstitutional and improper conduct outweighs the burden to Defendants, if any, caused by such an injunction.

FOURTH CLAIM FOR RELIEF

**(Secretary Cuomo)
(Declaratory and Injunctive Relief)
(*Ultra Vires* Action - *Larson* Doctrine)**

140. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 104, 106 through 120, 122 through 129 and 131 through 139 as though set forth in full.

141. As described in paragraphs 4 through 9 and 77 through 81, Secretary Cuomo has attempted to regulate firearms and firearm commerce in two ways. First, he directly attempted to impose the

terms of the March 17 Agreement on the Plaintiff Manufacturers by means of economic coercion, and on information and belief his attempts to do so continue. Second, he has aided, facilitated, coordinated and joined the Municipal Defendants in their conspiracy to impose the Code of Conduct on the Plaintiff Manufacturers as a condition or criterion of making firearms sales to those defendants.

142. By this conduct, Secretary Cuomo has impermissibly exceeded his authority as the Secretary of the United States Department of Housing and Urban Development ("HUD"). HUD and its agents, including Secretary Cuomo, have no grant of power, either from Congress or the Constitution, to regulate firearm commerce in this manner. The United States Supreme Court has long held that a federal agent, such as Secretary Cuomo, may be enjoined from taking such *ultra vires* action.

143. Secretary Cuomo has impermissibly exceeded his authority because Congress has not authorized HUD to regulate firearms or firearm commerce as described above, and the Constitution does not authorize Secretary Cuomo to regulate firearm commerce in this manner. To the extent that federal law permits the regulation of firearms or firearm commerce, Congress has specifically delegated such authority to the Secretary of the Treasury Department of the United States, and not to HUD. See 18 U.S.C. §§ 921, 926. Secretary Cuomo cannot exercise authority granted by statute to the Treasury

Department, and he cannot arrogate to himself the power to create new regulatory restrictions for firearm commerce, which is a legislative function that the Constitution entrusts to Congress.

144. Secretary Cuomo has further exceeded his authority because he is attempting to regulate firearms and firearm commerce in a manner expressly prohibited by the Federal Firearms Laws. See 18 U.S.C. §§ 921 *et seq.* (Gun Control Act of 1968, as amended by the Firearms Owners' Protection Act of 1986). In its enactment of the Firearms Owners' Protection Act, Congress recognized the necessity of additional legislation (1) to reaffirm its intent to avoid any undue or unnecessary federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms for any lawful activity and to avoid discouraging or eliminating the private ownership or use of firearms by law-abiding citizens for lawful purposes and (2) to avoid the imposition by federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of 18 U.S.C. §§ 921 *et seq.* The Firearms Owners' Protection Act specifically precludes the Secretary of the Treasury from prescribing any rules or regulations other than those necessary to carry out the provisions of 18 U.S.C. §§ 921 *et seq.* 18 U.S.C. § 926.

145. The March 17 Agreement contains provisions that drastically alter handgun design and fundamentally alter the internal

and external duties and responsibilities of firearm manufacturers, distributors and dealers. These provisions restrict the design, sale, distribution or marketing of firearms in a manner that is not required by the federal firearm laws. As such, Secretary Cuomo's attempt to impose the March 17 Agreement on the Plaintiff Manufacturers is an *ultra vires* act because it would contravene the limitations placed by Congress on the power to regulate firearms and firearm commerce. Secretary Cuomo has no authority to regulate firearm commerce in violation of these limitations established by Congress.

146. As a direct and proximate result of Secretary Cuomo's *ultra vires* attempts to regulate firearms and firearm commerce, which exceed the scope of his power as Secretary of HUD, Plaintiffs have suffered and will suffer irreparable harm. Injunctive relief is appropriate because Plaintiffs have no adequate remedy at law to redress the harm that they have suffered, and will suffer, as a result of Defendants' conduct. An injunction will serve the public interest by prohibiting unconstitutional and improper conduct by Defendants. Finally, the injury to Plaintiffs that will be prevented by an injunction restraining Defendants' unconstitutional and improper conduct outweighs the burden to Defendants, if any, caused by such an injunction.

FIFTH CLAIM FOR RELIEF

**(Secretary Cuomo)
(Declaratory and Injunctive Relief)
(Violation of the Separation of Powers Doctrine - United States
Constitution)**

147. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 104, 106 through 120, 122 through 129, 131 through 139, and 141 through 146 as though set forth in full.

148. As described in paragraphs 4 through 9 and 77 through 81, Secretary Cuomo has attempted to regulate firearms and firearm commerce in two ways. First, he directly attempted to impose the terms of the March 17 Agreement on the Plaintiff Manufacturers by means of economic coercion, and on information and belief his attempts to do so are ongoing. Second, he has aided, facilitated, and coordinated and joined the Municipal Defendants in their conspiracy to impose the Code of Conduct on the Plaintiff Manufacturers.

149. By this conduct, Secretary Cuomo has impermissibly invaded the province of Congress and thereby violated the constitutional doctrine of separation of powers. HUD and its agents, including Secretary Cuomo, have no grant of power, either from Congress or the Constitution, to regulate firearm commerce in this manner. The Constitution entrusts Congress, not HUD, with the power to regulate firearm commerce, and Congress has not authorized HUD to

regulate firearms or firearm commerce as described above. To the extent that federal law permits the regulation of firearms or firearm commerce, Congress has specifically delegated such authority to the Secretary of the Treasury Department of the United States, and not to HUD. 18 U.S.C. §§ 921, 926. Secretary Cuomo cannot exercise authority granted by statute to the Treasury Department, and he cannot arrogate to himself the power to impose new regulatory restrictions on firearm commerce, which is a legislative function that the Constitution entrusts to Congress.

150. Secretary Cuomo has further invaded the province of Congress, and thereby violated the constitutional doctrine of separation of powers, because he is attempting to regulate firearms and firearm commerce in a manner specifically prohibited by the Federal Firearms Laws. See 18 U.S.C. §§ 921 *et seq.* (Gun Control Act of 1968, as amended by the Firearms Owners' Protection Act of 1986). In its enactment of the Firearms Owners' Protection Act, Congress recognized the necessity of additional legislation (1) to reaffirm its intent to avoid any undue or unnecessary federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms for any lawful activity and to avoid discouraging or eliminating the private ownership or use of firearms by law-abiding citizens for lawful purposes and (2) to avoid the imposition by federal regulations of any procedures or requirements

other than those reasonably necessary to implement and effectuate the provisions of 18 U.S.C. §§ 921 *et seq.* The Firearms Owners' Protection Act specifically precludes the Secretary of the Treasury from prescribing any rules or regulations other than that necessary to carry out the provisions of 18 U.S.C. §§ 921 *et seq.* 18 U.S.C. §§ 926.

151. The March 17 Agreement contains provisions that drastically alter handgun designs and fundamentally alter the internal and external duties and responsibilities of firearm manufacturers, distributors and dealers. These provisions restrict the design, sale, distribution or marketing of firearms in a manner that is not required by the Federal Firearms Laws. As such, Secretary Cuomo's attempt to impose the March 17 Agreement on the Plaintiff Manufacturers violates the separation of powers doctrine because it invades Congress' power to determine the limitations to be placed on the regulation of firearms and firearm commerce.

152. As a direct and proximate result of Secretary Cuomo's attempts to regulate firearms and firearm commerce in violation of the separation of powers doctrine, Plaintiffs have suffered and will suffer irreparable harm. Injunctive relief is appropriate because Plaintiffs have no adequate remedy at law to redress the harm that they have suffered, and will suffer, as a result of Defendants' conduct. An injunction will serve the public interest by prohibiting

unconstitutional and improper conduct by Defendants. Finally, the injury to Plaintiffs that will be prevented by an injunction restraining Defendants' unconstitutional and improper conduct outweighs the burden to Defendants, if any, caused by such an injunction.

Prayer for Relief

Without the relief requested herein, the Plaintiff Manufacturers have or will suffer probable economic injury by virtue of the activities described in this complaint.

WHEREFORE, Plaintiffs pray for relief as follows:

1. On the First Claim, Plaintiffs are entitled to declaratory and injunctive relief as well as attorneys' fees. See 42 U.S.C. § 1983; 42 U.S.C. § 1988. There is now existing between the parties an actual justiciable controversy in respect to which Plaintiffs are entitled to a declaratory judgment that the defendants' concerted action and any Municipal Defendant's imposition of the Code of Conduct deprives Plaintiffs of their rights protected by the Commerce Clause, and therefore violates 42 U.S.C. § 1983. Plaintiffs are additionally entitled to a permanent injunction prohibiting the Municipal Defendants from imposing the Code of Conduct as a condition or criterion of making firearm sales to that Municipal Defendant. Plaintiffs

- are additionally entitled to a permanent injunction prohibiting the Defendants from taking any action in furtherance of their conspiracy to impose the Code of Conduct on Plaintiff Manufacturers. Finally, under 42 U.S.C. § 1988, Plaintiffs are entitled to attorneys' fees incurred in this action seeking to restrain Defendants from depriving Plaintiffs of their constitutional rights;

2. On the Second Claim, Plaintiffs are entitled to declaratory and injunctive relief. There is now existing between the Plaintiffs, on the one hand, and each Municipal Defendant, on the other, an actual justiciable controversy in respect to which Plaintiffs are entitled to a declaratory judgment that any Municipal Defendant's imposition of the Code of Conduct violates the Commerce Clause, and is therefore preempted by the Supremacy Clause of the United States Constitution. Plaintiffs are also entitled to a permanent injunction restraining each Municipal Defendant from complying with its agreement and intention to impose the terms of Code of Conduct as a condition or criterion of making firearm sales to that Defendant;

3. On the Third Claim Plaintiffs are entitled to declaratory and injunctive relief as well as attorneys' fees. See 42 U.S.C. § 1983; 42 U.S.C. § 1988. There is now existing

between the Plaintiffs and Defendants the City of Atlanta, Attorney General Spitzer, the City of Miami and The County of San Mateo an actual justiciable controversy in respect to which Plaintiffs are entitled to a declaratory judgment that their actions imposing the Code of Conduct violate the Commerce Clause, and are therefore preempted by the Supremacy Clause of the United States Constitution. Plaintiffs are additionally entitled to a permanent injunction prohibiting any imposition of the Code of Conduct as a necessary condition or criterion of making firearm sales to any of these Defendants;

4. On the Fourth Claim, Plaintiffs are entitled to declaratory and injunctive relief. There is now existing between the Plaintiffs and Secretary Cuomo an actual justiciable controversy in respect to which Plaintiffs are entitled to a declaratory judgment that Secretary Cuomo's attempts to impose the terms of the Code of Conduct on the Plaintiff Manufacturers exceed the scope of his authority as Secretary of the United States Department of Housing and Urban Development. Plaintiffs are additionally entitled to a permanent injunction prohibiting Secretary Cuomo from i) taking any further steps to circumvent the Federal Firearms Laws and ii) taking any action to restrict interstate and foreign commerce, including but not limited to, any and all attempts to impose the Code of Conduct on Plaintiff

Manufacturers as a necessary condition or criterion of making firearm sales to any Defendant;

5. On the Fifth Claim, Plaintiffs are entitled to declaratory and injunctive relief. There is now existing between the Plaintiffs and Secretary Cuomo an actual justiciable controversy in respect to which Plaintiffs are entitled to a declaratory judgment that Secretary Cuomo's attempts to impose the terms of the Code of Conduct on the Plaintiff Manufacturers violate the separation of powers doctrine by invading the province of Congress. Plaintiffs are additionally entitled to a permanent injunction prohibiting Secretary Cuomo from i) taking any further steps to circumvent the Federal Firearms Laws and ii) taking any action to restrict interstate and foreign commerce, including but not limited to, any and all attempts to impose the Code of Conduct on Plaintiff Manufacturers as a necessary condition or criterion of making firearm sales to any Defendant; and,

6. For such other and further relief that the Court deems just and proper.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

This 20th day of April, 2000.

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Sturm, Ruger & Company, Inc. and
Taurus International
Manufacturing, Inc.