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7 [No Fee, per Cal. Gov't. Code § 6103]
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11
12 THE PEOPLE OF THE STATE OF
CALIFORNIA,

13 Plaintiff,

14 vs.

15 POLYMER80, INC., a Nevada corporation;
16 DAVID BORGES, an individual; LORAN
KELLEY, an individual,

17 Defendants.
18

CASE NO.

**COMPLAINT FOR INJUNCTIVE
RELIEF, STATUTORY PENALTIES AND
ABATEMENT FOR:**

1. **VIOLATION OF BUS. & PROF. CODE
SECTION 17200**
2. **PUBLIC NUISANCE**

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1 **INTRODUCTION**

2 1. In September 2020, in Compton, a man with a felony conviction, armed with a
3 weapon bearing no serial number, ambushed and repeatedly shot in the face and head two Los
4 Angeles County Sheriff Deputies sitting in their patrol car. In November 2019, a 16-year old student
5 at Saugus High School in Santa Clarita brought to school a weapon bearing no serial number. He
6 shot five of his classmates, killing two before turning his gun on himself. The disturbing thread that
7 connects these horrific acts is the proliferation of “ghost guns”—home-assembled and untraceable
8 firearms—to commit an ever-increasing percentage of crime in Los Angeles, and throughout
9 California. The perpetrator of the Compton ambush held in his hand a ghost gun built from
10 components sold by Defendant Polymer80, Inc. (“Polymer 80”). Another ghost gun built from
11 Polymer80 components was used during a 2019 home invasion robbery and murder of three persons
12 in Glendale, and two ghost guns recovered near the scene of a November 2020 murder in Glendale,
13 carried out by members of the Gardena 13 street gang, were built with Polymer80 model PF940C
14 components.¹

15 2. In 2020, LAPD recovered over 700 firearms with Polymer80 components during the
16 course of criminal investigations. Nearly 300 such firearms were recovered from LAPD’s South
17 Bureau, which covers south Los Angeles, where the city has experienced a huge uptick in homicides
18 and gun crimes over the past few months.² LAPD reports that the proportion of recovered firearms
19 that are ghost guns is increasing. In other words, more and more, criminals are choosing ghost guns
20 to commit crimes.

21 3. Defendants sell through their website and a dealer network kits and parts used to
22 assemble ghost guns in violation of federal and state law. By their actions, Defendants are
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25 _____
26 ¹ Affidavit of ATF Special Agent Tolliver Hart, *In the Matter of the Search of the business and*
27 *Federal Firearms Licensee known as POLYMER80, which is located at 134 Lakes Blvd., Dayton,*
NV 89403, 3:20-mj-123-WGC, ¶¶ 28b, 28d (D. Nev. Dec. 9, 2020) (hereinafter “ATF Affidavit”).

28 ² *LAPD Sees Dramatic Spike in Number of Shooting Cases, Mostly in South Los Angeles*, ABC7
LOS ANGELES (Jan. 22, 2021), <https://abc7.com/shootings-los-angeles-lapd-south/9909185/>.

1 undermining law enforcement’s ability to prevent and prosecute the possession and criminal use of
2 illegal weapons.

3 4. This must end. By this lawsuit, Plaintiff, the People of the State of California (the
4 “People”), by and through Los Angeles City Attorney Michael N. Feuer, bring this action to obtain
5 an injunction and other remedies to stem the flow of these untraceable “ghost guns” manufactured
6 from kits and components sold by Defendants Polymer80, Loran L. Kelley, Jr. (“Kelley”), and
7 David L. Borges (“Borges”) (collectively, “Defendants”). ***These particular Defendants are at the***
8 ***heart of the crisis.*** They sell into California the vast majority of the kits and parts used to assemble
9 these illegal and untraceable firearms. Defendants have violated and are continuing to violate the
10 California Unfair Competition Law, Business and Professions Code sections 17200 *et seq.*, and
11 California Public Nuisance Law.

12 5. Defendants manufacture, advertise, and sell firearm kits and components that enable
13 customers to quickly and easily build complete and fully functional weapons, including AR-15
14 semi-automatic rifles and Glock-style semi-automatic handguns. These do-it-yourself firearms are
15 commonly known as “ghost guns” because they lack serial numbers and are therefore extremely
16 difficult if not impossible for law enforcement to trace when recovered in connection with criminal
17 investigations.

18 6. Defendants’ sales practices make a mockery of federal and state background check
19 laws. Before completing each sale, Defendants not only fail to conduct formal background checks,
20 on information and belief, Defendants ask customers to merely “self-certify” that they do not have
21 a felony record. By doing so, Defendants knowingly flout federal and state law by projecting
22 compliance through an utterly ineffective system.

23 7. In recent years, nearly 33% of all firearms recovered from criminal investigations
24 across California lacked serial numbers. In the Los Angeles area, the ratio of recovered ghost guns
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1 to traditional firearms has been higher, at over 40%.³ In 2020, the number of ghost guns recovered
2 by the Los Angeles County Sheriff increased a staggering 50% over the prior year.⁴

3 8. More and more, ghost guns are being used to commit serious crimes. The Bureau of
4 Alcohol, Tobacco, Firearms and Explosives (“ATF”) recently disclosed that approximately 10,000
5 ghost guns were recovered by law enforcement agencies across the country in 2019, including 2,700
6 in California.⁵ ATF further reported that Defendants’ “POLYMER80 complete pistols were used
7 in hundreds of crimes throughout the United States,” including approximately 15 recovered in
8 homicide investigations and eight in robbery investigations in California alone in 2019.

9 9. The LAPD believes that those engaging in criminal activity hang on to ghost guns
10 longer than they might a serialized firearm, because the guns are not traceable, and therefore cannot
11 be linked to the initial buyer or subsequent purchaser. Thus, there is less of a need to discard the
12 gun once used. As a result, there are likely more ghost guns in circulation in the community than is
13 reflected by the number recovered.

14 10. The People bring this lawsuit against Polymer80 because Polymer80 is *by far* the
15 *largest* seller and manufacturer of ghost gun kits and components. Of approximately 1,475 ghost
16 guns seized in 2019 and entered into the ATF’s database of ballistic images, *over 86%* (1,278) of
17 these weapons were assembled from Polymer80 components. This holds true in Los Angeles, where
18 an increasing percentage of firearms recovered by the LAPD in criminal investigations are ghost
19 guns, and where of those ghost guns, Polymer80 is the most common component manufacturer.

20 11. These numbers have attracted the attention of federal law enforcement officials,
21 prompting ATF agents at the end of 2020 to execute a search warrant at Polymer80’s headquarters.

22
23 ³ Alain Stephens, *Ghost Guns Are Everywhere in California*, THE TRACE (May 17, 2019),
24 <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>; Brandi Hitt, *Ghost Guns’*
25 *Investigation: Law Enforcement Seeing Unserialized Firearms on Daily Basis in SoCal*, ABC7
LOS ANGELES (January 30, 2020), <https://abc7.com/5893043/>.

26 ⁴ Bill Whitaker, *Ghost Guns: The Build-It-Yourself Firearms that Skirt Most Federal Gun Laws*
27 *and Are Virtually Untraceable*, 60 MINUTES (May 10, 2020),
[https://www.cbsnews.com/news/ghost-guns-untraceable-weapons-criminal-cases-60-minutes-](https://www.cbsnews.com/news/ghost-guns-untraceable-weapons-criminal-cases-60-minutes-2020-05-10/)
2020-05-10/.

28 ⁵ ATF Affidavit, ¶ 28b .

1 Polymer80 is now under federal criminal investigation for its sales of all-in-one “Buy Build Shoot
2 Kits,” from which purchasers can quickly and easily assemble their own Glock-style semi-automatic
3 handguns.

4 12. Polymer80’s shipping records show that Defendants shipped approximately 51,800
5 items across the United States between January 2019 and October 13, 2020.⁶ And between July
6 2019 and October 10, 2020, Polymer80 shipped at least 1,490 Buy Build Shoot Kits to consumers
7 in 46 states, plus the District of Columbia and Puerto Rico.⁷ California was the most frequent
8 destination. During this period, Defendants shipped at least 202 Buy Build Shoot Kits to California.⁸
9 In addition, the ATF has confirmed that Polymer80 or a reseller sold Buy Build Shoot kits to
10 addresses in California where individuals with felony convictions resided.⁹

11 13. Polymer80 further exacerbates the problem with misleading advertising on its
12 website, which suggests to customers that the purchase and possession of Polymer80’s kits are
13 lawful because they purportedly do not reach the necessary state of manufacture or completion to
14 constitute a “firearm” under federal law.¹⁰ But Polymer80’s core products—gun building kits that
15 are quickly and easily assembled into operable weapons—nonetheless fall under the definition of
16 “firearm” under federal law. And because these products are in fact “firearms” under federal law,
17 Polymer80’s business practice of selling them without serial numbers, without conducting
18 background checks, and to purchasers residing in a different state, is illegal.

19 14. Defendants have also been violating California law by aiding and abetting the
20 manufacture of handguns that fail to comply with the safety requirements of California’s Unsafe
21 Handgun Act, as well as failing to comply with California’s certification and serial number

22 ⁶ ATF Affidavit, ¶ 79.

23 ⁷ *Id.* at ¶ 80.

24 ⁸ *Id.*

25 ⁹ *Id.* at ¶ 87.

26 ¹⁰ Polymer80 claims that a specific type of product colloquially called an “80 percent receiver”
27 for long guns or an “80 percent frame” for handguns is not a “firearm” under the federal Gun
28 Control Act. The 80 percent receiver or frame is a nearly finished firearm receiver or frame,
although the “80 percent” moniker is an arbitrary term used by sellers that does not in fact connote
how much work remains to convert the frame or receiver into an operable firearm.

1 requirements. The ATF has concluded that “manufacturing or assembling a firearm made with
2 [Polymer80] pistol frames is unlawful in California.”¹¹

3 15. By selling kits and components that purchasers can quickly and easily assemble into
4 ghost guns in violation of federal and California law, Defendants are engaging in unlawful business
5 practices actionable under Business and Professions Code sections 17200 *et seq.* Defendants are
6 also engaging in deceptive business practices through misleading advertising, and Polymer80’s sale
7 of unserialized firearm kits in violation of federal and California law constitutes unfair competition
8 against licensed gun dealers in California who abide by the law.

9 16. As a separate issue, by marketing, selling and distributing ghost gun kits to California
10 residents without serial numbers, without conducting background checks, and without appropriate
11 safety features, Polymer80 has created a public nuisance, resulting in a significant threat to the
12 public right of health and safety in public spaces.

13 17. The People seek injunctive relief to stop Defendants’ unlawful and deceptive
14 business practices. The People also seek civil penalties to punish Defendants for their past violations
15 and to deter similar conduct by them and others. Finally, the People seek to abate the public nuisance
16 caused by Defendants’ business practices.

17 **PARTIES**

18 18. Defendant Polymer80, Inc. is a Nevada corporation with its principal place of
19 business in Dayton, Nevada. According to the Nevada Secretary of State’s business entity search,
20 Defendant Loran L. Kelley, Jr. is named as President of Polymer80 and Defendant David L. Borges
21 is named as Secretary and Treasurer. Defendants Kelly and Borges are both also co-founders of
22 Polymer80.

23 19. The People allege that, in addition to acting on its own behalf, all of the acts and
24 omissions described in this Complaint by Polymer80 were duly performed by, and attributable to,
25 all Defendants, each acting as agent, employee, alter ego, joint enterprise and/or under the direction
26 and control of the others, and such acts and omissions were within the scope of such agency,
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28 ¹¹ ATF Affidavit, ¶ 87.

1 employment, alter ego, joint enterprise, direction, and/or control. Any reference in this Complaint
2 to any acts of Defendants shall be deemed to be the acts of each Defendant acting individually,
3 jointly, or severally. At all relevant times, each Defendant had knowledge of and agreed to both the
4 objectives and course of action, and took the acts described in this Complaint pursuant to such
5 agreements, resulting in the unfair and fraudulent acts described herein.

6 **JURISDICTION AND VENUE**

7 20. The Court has subject matter jurisdiction over this action pursuant to Article VI,
8 section 10 of the California Constitution.

9 21. The Court has personal jurisdiction over Defendants as well. Polymer80
10 purposefully avails itself of California markets by intentionally advertising and selling its products
11 to California residents, both online and through its network of distributors, including through state-
12 based distributors, thereby taking advantage of the benefits and privileges of the laws of the state of
13 California. Shipping records obtained by the ATF show that Polymer80 shipped approximately
14 9,400 items to customers in California between January 2019 and October 2020, including at least
15 202 Buy Build Shoot kits containing all the components necessary for the purchaser to quickly
16 assemble a complete and operable firearm.

17 22. Defendants Kelley and Borges each own 45% of Polymer80. They are primarily
18 responsible for directing the activity of Polymer80 in the California market, and structured their
19 business to knowingly circumvent governing federal and state law applicable to firearms and
20 handguns, by opting to design readily-manufactured unserialized guns.

21 23. Venue is proper in this Court pursuant to Code of Civil Procedure section 393
22 because violations of law that occurred in the City and County of Los Angeles are part of the cause
23 upon which the People seek penalties imposed by statute.

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1 GENERAL ALLEGATIONS

2 **II. POLYMER80'S BUSINESS PRACTICES CONTRIBUTE SUBSTANTIALLY TO**
3 **VIOLENT CRIME IN LOS ANGELES**

4 **A. Ghost Guns Have Created a Public Safety Emergency**

5 24. Pursuant to federal law, a firearm made by a federally licensed manufacturer must
6 be engraved with identifying information, including the applicable make and model as well as a
7 unique serial number.¹² A “ghost gun,” as the term is used throughout this complaint, is a term
8 commonly used by law enforcement and others to refer to a firearm that (a) started off as an
9 unfinished lower receiver or frame purchased in a kit or separately along with other necessary parts,
10 and (b) was assembled by the purchaser into a completed and functional firearm that has no serial
11 number. Because these ghost guns are manufactured and assembled into operable form only upon
12 receipt, their components are acquired without a background check, and, once assembled, these
13 weapons lack the identifying information critical to law enforcement.¹³

14 25. Typically, when a law enforcement agent recovers a firearm, the agent uses the serial
15 number and other required markings to initiate a trace request through the ATF. The ability to trace
16 a firearm to its point of original sale is essential to an investigation; by doing so, law enforcement
17 agents can generate leads and identify straw purchasers and firearms traffickers, as well as establish
18 whether the weapon traveled in interstate commerce—an element of most federal gun laws.¹⁴

19 26. The emergence of untraceable firearms, sold for manufacture by consumers as
20 component parts and kits in an effort to circumvent federal and state regulation, undermines nearly
21 60 years of lawmakers’ efforts to prevent dangerous persons from possessing firearms and to assist
22 law enforcement in combating the use of firearms in criminal activity.

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24 _____
25 ¹² 18 U.S.C. § 923(i); 27 CFR 478.92.

26 ¹³ The term “ghost gun” is also sometimes used to describe commercially-available firearms that
27 have had their serial numbers removed. The allegations in this complaint target only those
28 unserialized and thus untraceable firearms constructed by the purchaser from component parts, or
sold by a Federal Firearms License dealer without a serial number in the first place.

¹⁴ See, e.g., 18 U.S.C. § 922.

1 27. Amid spiking rates of violent crime and following several high-profile
2 assassinations—including that of President Kennedy by mail-ordered rifle—Congress passed
3 landmark legislation in 1968 to assert federal control over the manufacture, distribution, purchase,
4 and sale of firearms. One of the principal aims of the Gun Control Act of 1968 was to stop minors,
5 those with prior criminal convictions, and others with dangerous histories from obtaining mail-order
6 firearms without federal oversight or regulation. To achieve this aim, the Act mandates that firearms
7 dealers be federally licensed and that every firearm sold by a federally licensed dealer be stamped
8 with a serial number to enable law enforcement to trace the origin of the weapon. The Act was later
9 amended to require background checks on all firearm purchases from licensed sellers.

10 28. Ghost guns directly undermine the Gun Control Act’s purpose. They are exceedingly
11 difficult to trace. A finished product comes with no records. Precisely for this reason, unserialized
12 firearm kits and component parts are highly attractive to those involved in criminal activity. As one
13 court has observed, “there would appear to be no compelling reason why a law-abiding citizen
14 would prefer an unmarked firearm. These weapons would then have value primarily for persons
15 seeking to use them for illicit purposes.”¹⁵ Given that sellers like Polymer80 do not conduct
16 background checks, the unserialized firearm kits and component parts are often purchased by or
17 otherwise end up in the hands of persons prohibited by the Gun Control Act.

18 29. Predictably, ghost guns are appearing at crime scenes with growing frequency. As
19 noted above, the ATF estimates that law enforcement across the United States recovered
20 approximately 10,000 ghost guns in 2019, and 2,700 in California alone.¹⁶

21 **B. Polymer80 Is Largely Responsible for the Proliferation of Ghost Guns**

22 30. As alleged above, law enforcement statistics show that a large percentage of the ghost
23 guns recovered at crime scenes were assembled from Polymer80’s products.

24 31. Polymer80 sells untraceable firearm kits and components without first conducting
25 background checks—foreseeably resulting in sales to persons who cannot legally purchase a
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27 ¹⁵ *United States v. Marzzarella*, 614 F.3d 85, 95 (3d Cir. 2010).

28 ¹⁶ ATF Affidavit, ¶ 28b .

1 serialized, traceable weapon from a licensed dealer. Moreover, Polymer80 misleadingly suggests
2 on its website that ATF has concluded that its kits are not firearms, and then illegally ships those
3 kits, which can be readily assembled into fully operational firearms, to consumers in California.

4 32. On Polymer80’s website, consumers can purchase unfinished lower receivers for
5 rifles or unfinished handgun frames, along with other materials necessary to complete the assembly
6 of a fully functional firearm, including an AR-15 semi-automatic rifle, a .308 semi-automatic rifle,
7 and seven or more types of handguns.¹⁷

8 33. Polymer80 also offered “Buy, Build, Shoot” kits—which until very recently,¹⁸ were
9 sold directly by Polymer80 before Polymer80 temporarily ceased sales, and which are still being
10 offered for sale by resellers.¹⁹ There is nothing that would stop Polymer80 from re-introducing
11 these kits into the market. Polymer80’s website described the kits as “contain[ing] all the necessary
12 components to build a complete PF940C™ or PF940v2™ pistol.”²⁰

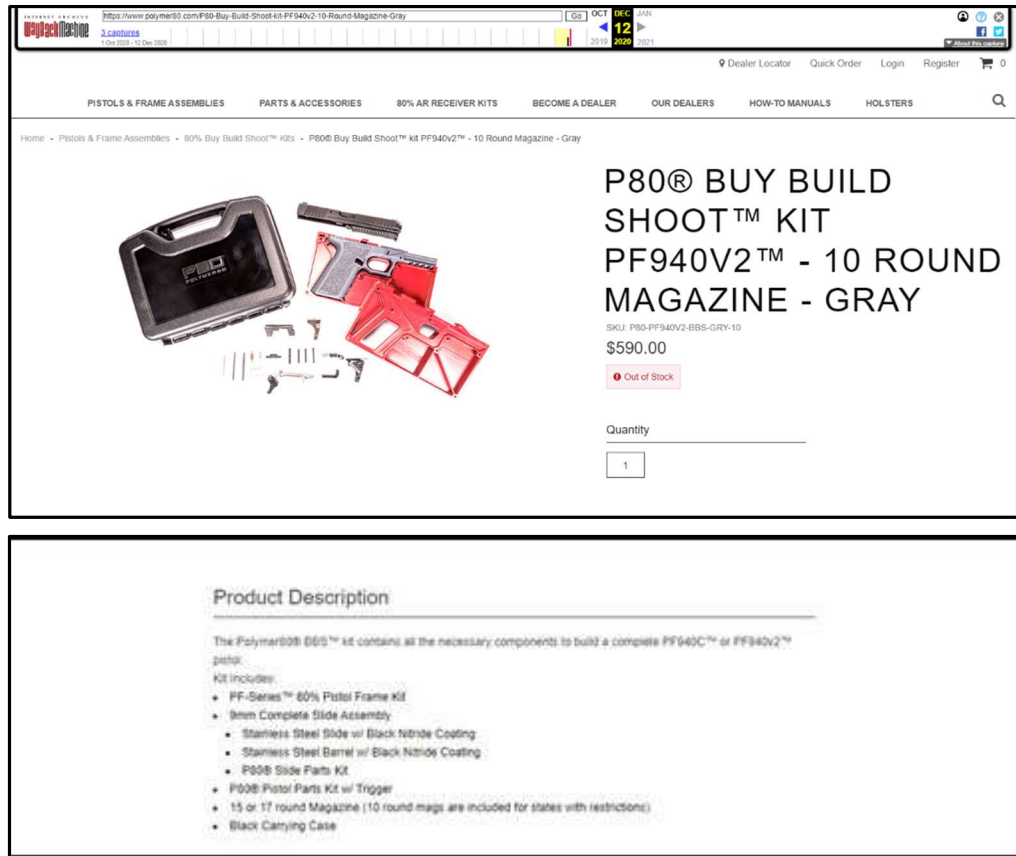
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19 ¹⁷ “Unfinished” frames and receivers, as that term is used in this Complaint, are the core
20 components of firearms that are solid in certain specified areas—i.e., without drilling or machining
21 in those areas—even though they are designed to be and are readily converted into operable
22 weapons. “Unfinished” frames and receivers are colloquially referred to as “80%,” meaning 80%
complete—although that description is not formally recognized by the ATF and misdescribes their
completeness.

23 ¹⁸ Polymer80 advertised these kits as recently as December 12, 2020. *See* “Polymer80 BBS™
24 Kits,” Polymer80, archived webpage from Dec. 12, 2020, *available at*
<https://web.archive.org/web/20201212165741/https://www.polymer80.com/pistols/bbskits> (last
visited Feb. 15, 2021).

25 ¹⁹ Although Polymer80’s Buy Build Shoot kits are not currently advertised for sale on
26 Polymer80’s own website, they are still being advertised for sale on some resellers’ websites. *See,*
e.g., <https://www.armorally.com/shop/polymer80-pf940c-g19-buy-build-shoot-kit/>.

27 ²⁰ Polymer80, archived webpage from Dec. 12, 2020, *available at*
28 [https://web.archive.org/web/20201212165927/https://www.polymer80.com/P80-Buy-Build-
Shoot-kit-PF940v2-10-Round-Magazine-Gray](https://web.archive.org/web/20201212165927/https://www.polymer80.com/P80-Buy-Build-Shoot-kit-PF940v2-10-Round-Magazine-Gray) (last visited Feb. 15, 2021).

1 34. Figures 1 and 2 below are screenshots of a cached Polymer80 webpage from
2 December 11, 2020.

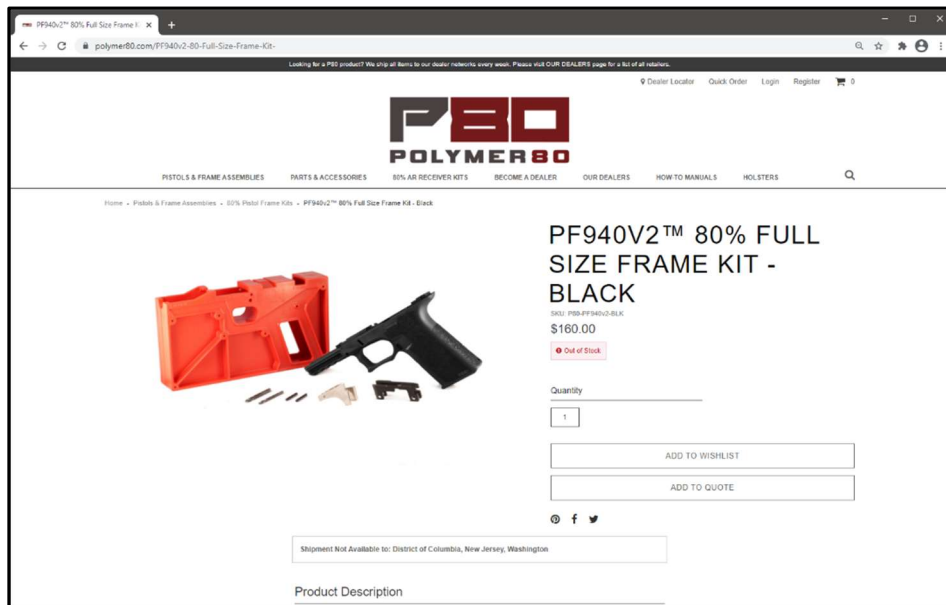


18 35. In addition to the full Buy Build Shoot kits, Polymer80 advertises and sells frame
19 kits for handguns and lower receiver kits for AR-15 and AR-10 style rifles.²¹ As of February 14,
20 2021, Polymer80 was still advertising the sale of these frame kits and lower receiver kits through
21 its website.²² Polymer80’s pistol frame kits are sold with a “complete finishing jig and drill bits,”
22 and some of Polymer80’s lower receiver kits are advertised as a “COMPLETE, all-inclusive
23 package in one price,” with “drill bits and the end mill bit that’s required to finish your AR project
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26 ²¹ “P80 80% Pistol Frame Kits,” Polymer80, *available at*
27 <https://www.polymer80.com/pistols/80percentpistolkits> (last visited Feb. 14, 2021); “80% AR
28 Receiver Kits,” Polymer80, *available at* <https://www.polymer80.com/arreceivers> (last visited Feb.
14, 2021).

²² *Id.*

1 the right way.”²³ The webpage listing a AR-15 lower receiver for sale also claims that “[t]he 80%
2 ‘reciever [sic] blank’ is defined by the ATF and therefore has not yet reached a stage of manufacture
3 that meets the definition of firearm frame or receiver found in the Gun Control Act of 1968
4 (GCA).”²⁴ Figure 3, below, is a screenshot of a Polymer80 webpage, taken on February 14, 2021,
5 showing a Polymer80 80% frame kit for sale.



16 36. Finally, Polymer80 sells other components to enable a customer to assemble a
17 complete handgun, including pistol barrels, slides, and trigger assemblies.

18 37. Beyond selling these products, Polymer80 takes it a step further by offering written
19 step-by-step assembly instructions online, accompanied by supplemental videos, to facilitate the
20 manufacture of both pistols and semi-automatic rifles in a matter of a few hours or less. Polymer
21 80 even touts its superior customer service that is on standby to assist its customers in manufacturing
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25 ²³ “PF940v2™ 80% Full Size Frame Kit - Black,” Polymer80, *available at*
26 <https://www.polymer80.com/PF940v2-80-Full-Size-Frame-Kit-> (last visited Feb. 14, 2021); “P80
27 G150 AR-15 80% Receiver Kit – Gray,” Polymer80, *available at*
<https://www.polymer80.com/P80-G150-AR-15-80-Receiver-Kit-Gray> (last visited Feb. 14, 2021).

28 ²⁴ “P80 G150 AR-15 80% Receiver Kit – Gray,” Polymer80, *available at*
<https://www.polymer80.com/P80-G150-AR-15-80-Receiver-Kit-Gray> (last visited Feb. 14, 2021).

1 firearms from its kits and components. “We want to give the customers all the tools they need, as
2 much as we can anyway, to complete this product.”²⁵

3 38. Polymer80, by selling all the component parts together with the means to readily
4 convert the parts into firearms, effectively puts firearms into the hands of customers and subverts
5 regulations that apply to the sale of firearms.

6 III. DEFENDANTS’ UNLAWFUL ACTS

7 A. The Federal Gun Control Act

8 39. The Federal Gun Control Act (the “Gun Control Act”) provides:

9 The term “firearm” means (A) any weapon (including a starter gun) which will or
10 is designed to or **may readily be converted** to expel a projectile by the action of
11 an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler
12 or firearm silencer; or (D) any destructive device. Such term does not include an
13 antique firearm.

14 18 U.S.C. § 921(a)(3) (emphasis added).

15 40. Polymer80 sold Buy Build Shoot kits consisting of all component parts of a firearm,
16 including handgun frames, which are “designed to” be and “may readily be converted” into an
17 operable weapon. Polymer80 also currently sells frame and receiver kits containing an unfinished
18 frame or receiver along with jigs and drill bits that enable a customer to complete the frame or
19 receiver. Accordingly, Polymer80 knowingly sells or has sold “firearms” under § 921(a)(3).²⁶ In
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22 ²⁵ Shooters Nation, *020 Dan McCalmon of Polymer 80*, YOUTUBE (Aug. 10, 2018), available at
<https://www.youtube.com/watch?v=nybZ3iNfUhU>.

23 ²⁶ Polymer80 sells standalone unfinished frames and receivers as well, which, when purchased
24 with other component parts, can readily be converted into a complete firearm; they are also designed
25 to be completed firearms; and for both of these reasons, these standalone frames and receivers meet
26 the definition of a “firearm” under the Gun Control Act. The ATF has concluded otherwise as to
27 certain of Polymer80’s standalone unfinished frames and receivers, but this conclusion is currently
28 being challenged in two separate lawsuits. *State of California, et al. v. Bureau of Alcohol, Tobacco,
Firearms and Explosives*, 3:20-cv-06761 (N.D. Cal. Sept. 29, 2020); *City of Syracuse, et al. v.
Bureau of Alcohol, Tobacco, Firearms and Explosives*, 1:20-cv-06885 (S.D.N.Y. Aug. 26, 2020).
Because of the ongoing litigation, the People’s claims under the Gun Control Act in this Complaint
are limited to Polymer80’s sale of Buy Build Shoot, frame, and receiver kits.

1 fact, “ATF Chief Counsel has ... determined that the Buy Build Shoot kits are, as a matter of law,
2 firearms pursuant to 18 U.S.C. section 921(a)(3).”²⁷

3 41. Federal law requires that firearm sellers obtain federal firearm licenses (“FFL”) prior
4 to engaging in the business of dealing in firearms, *see* 18 U.S.C. § 922(a)(1), and prohibits the
5 shipment of a firearm directly to a purchaser, § 922(a)(2), or sale or delivery of a firearm by a seller
6 with a Federal Firearms License to person residing in another state, § 922(b)(3). Federal law also
7 requires that firearms dealers and manufacturers conduct a background check before transferring
8 firearms, and that manufacturers inscribe serial numbers on all firearms.²⁸ Finally, federal law
9 prohibits selling a firearm to any purchaser who does not appear in person unless the purchaser
10 submits an affidavit as to the legality of the purchase from the seller along with a copy of a
11 notification to local law enforcement and acknowledgement of receipt of the notification, § 922(c).

12 42. At all relevant times, Defendants knowingly sold firearms in the form of ghost gun
13 kits and components without serial numbers and without conducting background checks.
14 Defendants also shipped kits directly to purchasers, and sold to purchasers who did not either appear
15 in person or submit an affidavit as to the legality of the purchase along with a copy of notification
16 to local law enforcement. Finally, Defendants knowingly sold and delivered firearms to purchasers
17 residing in another state.

18 43. Defendants’ failures to comply with federal firearm statutes and regulations are a
19 proximate cause of the increase in ghost gun-related violence and illegal activity in Los Angeles.

20 **B. The 2005 Child Safety Lock Act**

21 44. The 2005 Child Safety Lock Act makes it “unlawful for any licensed importer,
22 licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person ...
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26 ²⁷ ATF Affidavit, ¶ 65 and note 6.

27 ²⁸ 18 U.S.C. §§ 922(t)(1) and 923(i). Polymer80 is federally licensed to manufacture firearms, and
28 is therefore subject to the requirements for “licensed manufacturers” set forth in 18 U.S.C. § 922 *et*
seq.

1 unless the transferee is provided with a secure gun storage or safety device (as defined in section
2 921(a)(34)) for that handgun.”²⁹

3 45. Section 921(a)(34) defines “secure gun storage or safety device” as:

4 (A) *a device that, when installed on a firearm, is designed to*
5 *prevent the firearm from being operated without first*
6 *deactivating the device;*

7 (B) a device incorporated into the design of the firearm that is
8 designed to prevent the operation of the firearm by anyone
9 not having access to the device; or

10 (A) a safe, gun safe, gun case, lock box, or other device that is
11 designed to be or can be used to store a firearm and that is
12 designed to be unlocked only by means of a key, a
13 combination, or other similar means.

14 46. 18 U.S.C. § 921(a)(34) (emphasis added).

15 47. The Gun Control Act defines “handguns” as follows:

16 (B) A firearm which has a short stock and is designed to be
17 held and fired by the use of a single hand; and

18 (C) *Any combination of parts from which a firearm*
19 *described in subparagraph (A) can be assembled.*³⁰

20 48. The Buy Build Shoot kits Defendants have sold constitute a combination of parts
21 from which a firearm can be assembled, and thus satisfy the definition of a “handgun.”

22 49. On information and belief, Polymer80 knowingly violated these requirements by
23 failing to provide any supplemental or external locking device or gun storage container with the
24 ghost gun kits sold to California purchasers.

25 **C. The California Unsafe Handgun Act**

26 50. In 1999, California passed the Unsafe Handgun Act (“CUHA”), Cal. Penal Code
27 sections 31900, *et seq.*, to establish safety standards for all handguns manufactured, imported, and
28 sold in the state.

29 ²⁹ 18 U.S.C. § 922(z).

30 ³⁰ 18 U.S.C. § 921(a)(29) (emphasis added).

1 51. The primary enforcement clause of CUHA requires that “[a] person in this state who
2 manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or
3 exposes for sale, gives, or lends an unsafe handgun shall be punished by imprisonment in a county
4 jail not exceeding one year.”³¹

5 52. Moreover, CUHA’s certification requirement mandates that “[e]very person who
6 imports into the state for sale, keeps for sale, or offers or exposes for sale any firearm shall certify
7 under penalty of perjury and any other remedy provided by law that every model, kind, class, style,
8 or type of pistol, revolver, or other firearm capable of being concealed upon the person that the
9 person imports, keeps, or exposes for sale is not an unsafe handgun[.]”³²

10 53. An “unsafe handgun” is defined as “any pistol, revolver, or other firearm capable of
11 being concealed upon the person” that does not have certain safety devices, meet firing
12 requirements, or satisfy drop safety requirements.³³ An “unsafe handgun” also includes, for firearms
13 manufactured after a certain date and not already listed on the roster of handguns tested and
14 determined by the Department of Justice not to be unsafe, handguns that lack a chamber load
15 indicator and magazine disconnect mechanism.

16 54. Upon information and belief, Polymer80 assembled handguns, originally sold by
17 Defendants as kits and unfinished frames, do not comply with CUHA because, among other reasons,
18 they do not meet CUHA’s chamber load indicator and magazine disconnect mechanism
19 requirements.

20 55. As mentioned, CUHA charges the California Department of Justice with compiling
21 and maintaining a roster of handguns that have been tested and determined not to be unsafe, and
22 therefore, “may be sold in this state.”³⁴

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25 ³¹ Cal. Penal Code § 32000(a).

26 ³² Cal. Penal Code § 32005(b).

27 ³³ Cal. Penal Code § 31910.

28 ³⁴ Cal. Penal Code § 32015; *Nat’l Shooting Sports Foundation, Inc. v. State of California*, 6 Cal.
App. 5th 298 (2016).

1 56. The kits sold by Defendants intended to be assembled into handguns are not listed
2 on the Roster of Certified Handguns maintained by the State of California.³⁵

3 57. At all relevant times, Defendants knowingly aided and abetted the manufacture of
4 handguns that do not meet the safety requirements of CUHA by marketing, selling, and transferring
5 all of the components, parts, materials, tools and instructional videos needed to build an unsafe
6 handgun in the state.

7 58. Defendants' actions in aiding and abetting the manufacture of unsafe handguns in
8 California are a proximate cause of the increase in ghost gun-related violence and illegal activity in
9 Los Angeles.

10 **D. California's Assembly of Firearms Law**

11 59. Under California's Assembly of Firearms Law, any firearm "manufactured or
12 assembled from polymer plastic" must contain "3.7 ounces of material type 17-4 PH stainless steel
13 ... embedded within the plastic upon fabrication or construction with the unique serial number
14 engraved or otherwise permanently affixed in a manner that meets or exceeds the requirements
15 imposed on licensed importers and licensed manufacturers of firearms pursuant to subsection (i) of
16 Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto."³⁶

17 60. Defendants' knowingly sell unfinished pistol frames that do not contain either 3.7
18 ounces of the type of stainless steel embedded in it or a unique serial number engraved or
19 permanently affixed pursuant to Section 923 of the Gun Control Act, as required under California
20 law.³⁷

21 61. Defendants' actions selling and aiding and abetting the manufacture and assembly
22 of firearms that fail to comply with California's serialization requirement are a proximate cause of
23 the increase in ghost gun-related violence and illegal activity in Los Angeles.

24 _____
25 ³⁵ State of California Dep't. of Justice, "Handguns Certified for Sale,"
<https://oag.ca.gov/firearms/certified-handguns/search>.

26 ³⁶ Cal. Penal Code § 29180(b)(2)(B).

27 ³⁷ The ATF has reached this specific conclusion in finding that "manufacturing or assembling a
28 firearm made with POLYMER80 pistol frames is unlawful in California." ATF Affidavit ¶ 87
n.11.

1 **E. California’s Unfair Competition Law**

2 62. California’s Unfair Competition Law (“UCL”), Business and Professions Code
3 section 17200, provides that “[a]s used in this chapter, unfair competition shall mean and include
4 any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
5 misleading advertising.”

6 63. The UCL authorizes the City Attorney to bring a civil enforcement action against
7 “[a]ny person who engages, has engaged, or proposes to engage in unfair competition[.]”³⁸ The
8 UCL defines “person” to include “natural persons, corporations, firms, partnerships, joint stock
9 companies, associations and other organizations of persons.”³⁹

10 64. “Because Business and Professions Code Section 17200 is written in the disjunctive,
11 it establishes three varieties of unfair competition – acts or practices which are unlawful, or unfair,
12 or fraudulent.”⁴⁰ Defendants have been violating the UCL by engaging in: (1) unlawful business
13 activities; (2) fraudulent, deceptive, and misleading advertising; and (3) unfair competition.

14 65. First, “[b]y defining unfair competition to include any ‘unlawful ... business act or
15 practice,’ the UCL permits violations of other laws to be treated as unfair competition that is
16 independently actionable.”⁴¹

17 66. The unlawful prong of section 17200 “embrac[es] anything that can properly be
18 called a business practice and that at the same time is forbidden by law.”⁴² It “borrows violations
19 of other laws and treats them as independently actionable.”⁴³ “Virtually any state, federal or local
20 law can serve as the predicate for an action under Business and Professions Code section 17200.”⁴⁴

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23 ³⁸ Business and Professions Code section 17203.

24 ³⁹ *Id.*, section 17201.

25 ⁴⁰ *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632, 647 (1996).

26 ⁴¹ *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 949 (2002).

27 ⁴² *Rubin v. Green*, 4 Cal. 4th 1187, 1200 (1993) (internal quotation marks omitted).

28 ⁴³ *Daugherty v. American Honda Motor Co., Inc.*, 144 Cal. App. 4th 824, 837 (2006).

⁴⁴ *Podolsky*, 50 Cal. App. 4th at 647.

1 The UCL thus prohibits “any practices forbidden by law, be it civil or criminal, federal, state, or
2 municipal, statutory, regulatory, or court-made.”⁴⁵

3 67. Polymer80 knowingly sells firearms in the form of ghost gun kits without serial
4 numbers and without conducting background checks, and knowingly ships these kits directly to
5 purchasers who did not either appear in person or submit the required affidavit and notification to
6 law enforcement, in violation of the Gun Control Act. On information and belief, Polymer80 also
7 knowingly sells firearms in the form of ghost gun kits without any supplemental or external locking
8 device or gun storage container with the ghost gun kits sold to California purchasers in violation of
9 the 2005 Child Safety Lock Act. Furthermore, through the sale of its kits and components,
10 Polymer80 also knowingly violates California law by, among other things, aiding and abetting the
11 manufacture of unsafe handguns that do not meet the safety requirements under CUHA, that do not
12 meet certification requirements, and that do not meet serial number requirements. Through these
13 actions, Polymer80 also knowingly violates California’s Assembly of Firearms Law.

14 68. Second, the fraudulent prong of section 17200 “affords protection against the
15 probability or likelihood as well as the actuality of deception or confusion.”⁴⁶ A UCL action alleging
16 violations of the fraudulent prong is “distinct from common law fraud.”⁴⁷ “A fraudulent deception
17 must be actually false, known to be false by the perpetrator and reasonably relied upon by a victim
18 who incurs damages. None of these elements are required to state a claim for injunctive relief under
19 section 17200”⁴⁸ “This distinction reflects the UCL’s focus on the defendant’s conduct, rather
20 than the plaintiff’s damages, in service of the statute’s larger purpose of protecting the general public
21 against unscrupulous business practices.”⁴⁹

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24 ⁴⁵ *Saunders v. Superior Court (California Reporting Alliance)*, 27 Cal. App. 4th 832, 838-839
25 (1994).

26 ⁴⁶ *Payne v. United California Bank*, 23 Cal. App. 3d 850, 856 (1972).

27 ⁴⁷ *In re Tobacco II Cases*, 46 Cal. 4th 298, 312 (2009).

28 ⁴⁸ *Day v. AT&T Corp.*, 63 Cal. App. 4th 325, 332 (1998).

⁴⁹ *In re Tobacco II Cases*, 46 Cal. 4th at p. 312.

1 69. “A UCL cause of action may be based on representations to the public which are
2 untrue, and also those which may be accurate on some level, but will nonetheless tend to mislead or
3 deceive A perfectly true statement couched in such a manner that it is likely to mislead or
4 deceive the consumer, such as by failure to disclose other relevant information, is actionable under
5 the UCL.”⁵⁰

6 70. In advertising and selling its Buy Build Shoot and frame and receiver kits to
7 California residents while representing that ATF determination letters classified those kits as not
8 being firearms, Defendants expressly and by implication represent that these products are legal,
9 which they are not, and that ATF has said so with respect to Polymer80’s kits, which it has not.

10 71. Additionally, Polymer80 contends on its website that the ATF has determined that
11 the unfinished frames and receivers it sells as part of firearm building kits have “not yet reached a
12 stage of manufacture that meets the definition of firearm frame or receiver found in the Gun Control
13 Act of 1968.” This is misleading and deceptive.

14 72. Although the ATF provided determination letters to Polymer80 between 2015 and
15 2017 concluding that certain Polymer80 unfinished pistol frames and lower receivers *standing alone*
16 were not “sufficiently complete to be classified as the frame or receiver of a firearm,” the ATF has
17 made no such determination that the frame kits and Buy Build Shoot Kits sold by Polymer80 are
18 not considered firearms under federal law.

19 73. To the contrary, when Polymer80 submitted its PF940v2 frame in December 2017,
20 ATF wrote back a few months later to note: “[i]t is clear from the above information provided in
21 your correspondence that the submitted sample is only a component used in the assembly of an end-
22 item,” and that “[c]learly the submitted sample is simply a component of a larger product.”⁵¹

23 74. The ATF noted in the same letter that it would “not render a classification on a partial
24 product submission.”⁵² Instead, the ATF instructed Polymer80 to “submit the complete Polymer 80

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26 ⁵⁰ *Paduano v. American Honda Motor Company, Inc.*, 169 Cal. App. 4th 1453, 1469 (2009)
(internal quotations omitted).

27 ⁵¹ ATF Affidavit, ¶ 43.

28 ⁵² *Id.* at 44.

1 Model PF940v2 80% Standard Pistol Frame Kit,” if Polymer80 wanted to receive an evaluation and
2 classification of the product.⁵³ Not surprisingly, Polymer80 never subsequently submitted the
3 complete PF940v2 pistol frame kit or any of its frame kits or Buy Build Shoot kits to the ATF for
4 a final determination as to whether such kits constituted firearms.

5 75. Polymer80 has not only continued to advertise and sell the PF940v2 pistol frame kit
6 for nearly three years since receiving the ATF’s letter, but to advertise and sell the more inclusive
7 Buy Build Shoot Kits through at least December 2020. Polymer80 also continued in misleading
8 fashion to tout the ATF determination letters as support for the legality of its frame and receiver
9 kits, when in fact the determination letters evaluated only the unfinished frames and receivers as
10 standalone products.⁵⁴

11 76. Finally, the unfair prong of Section 17200 “provides an independent basis for
12 relief.”⁵⁵ “It is not necessary,” therefore, “for a business practice to be ‘unlawful’ in order to be
13 subject to an action under the unfair competition law.”⁵⁶ “In general the ‘unfairness’ prong has been
14 used to enjoin deceptive or sharp practices.”⁵⁷

15 77. The courts of this state have adopted several tests for determining whether a business
16 act or practice is unfair, two of which are applicable to Defendants’ conduct:

17 A. A business practice is unfair when the defendant’s conduct “threatens an
18 incipient violation of [a law], or violates the policy or spirit of [a law] because

19 _____
20 ⁵³ *Id.*

21 ⁵⁴ As alleged above, the ATF’s decisions not to regulate certain Polymer80 “unfinished” frames
22 and receivers is currently the subject of federal court litigation, including in the Northern District of
23 California in a case brought by the Attorney General of California, and in the Southern District of
24 New York, in a case brought by several U.S. cities. Polymer80’s sales of frame and receiver kits
25 and Buy Build Shoot kits go beyond the ATF’s evaluation of a single component in the
determination letters. More recently, and as referenced above, in a federal search warrant executed
at Polymer80’s headquarters in December 2020, the ATF made clear that it has determined that a
“Buy Build Shoot Kit” as designed, manufactured, and distributed by POLYMER80, is a ‘firearm’
as defined under federal law.” ATF Affidavit, ¶ 8.

26 ⁵⁵ *Smith v. State Farm Mutual Automobile Ins. Co.*, 93 Cal. App. 4th 700, 718 (2001).

27 ⁵⁶ *Id.*

28 ⁵⁷ *South Bay Chevrolet v. General Motors Acceptance Corp.*, 72 Cal. App. 4th 861, 887 (1999)
(internal quotations omitted).

1 its effects are comparable to or the same as a violation of the law, or otherwise
2 significantly threatens or harms competition.”⁵⁸

3 B. As to consumers, a business practice is unfair when it is “immoral,
4 unethical, oppressive, unscrupulous or substantially injurious to consumers
5 and requires the court to weigh the utility of the defendant’s conduct against
6 the gravity of the harm to the alleged victim.”⁵⁹

7 78. Polymer80’s sales of unserialized firearm kits in violation of state and federal law
8 constitutes unfair competition to licensed gun dealers in California who abide by the applicable state
9 and federal laws and regulations. The California Legislature intends to regulate the sale of firearms
10 within the state, including by requiring all firearms to be marked with a unique serial number.
11 Polymer80 violates this policy by selling kits and components that enable purchasers to assemble
12 an unserialized firearm instead of purchasing a legal, serialized firearm from a licensed dealer. The
13 California Legislature also charges the Department of Justice with compiling and maintaining a
14 roster of handguns that “may be sold in this state” under CUHA. Polymer80’s products do not
15 appear on that roster but are nonetheless sold. CUHA additionally requires that every person who
16 offers or exposes for sale any firearm shall certify under penalty of perjury that the firearm is not an
17 unsafe handgun, which Polymer80 has never done for any of its products sold.

18 79. Defendants also engage in and have engaged in business activity that is unfair to the
19 residents of California, because the combination of Polymer80’s sale of Buy Build Shoot kits, frame
20 and receiver kits, and unfinished frames and receivers with component parts in contravention of
21 state and federal law is “immoral, unethical, oppressive, unscrupulous or substantially injurious to
22 consumers,” and the harm caused to the People of the State of California from the proliferation of
23 untraceable ghost guns outweighs the utility of these unserialized, untraceable weapons.⁶⁰

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26 ⁵⁸ *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 187
(1999).

27 ⁵⁹ *Drum v. San Fernando Valley Bar Ass’n*, 182 Cal. App. 4th 247, 257 (2010).

28 ⁶⁰ *Id.*

1 80. These violations of the UCL are a proximate cause of increased ghost gun-related
2 violence and illegal activity in Los Angeles.

3 **F. Creation of a Public Nuisance**

4 81. Defendant Polymer80 created a public nuisance by marketing, selling and
5 distributing ghost gun kits to California residents without serial numbers, without background
6 checks, and without appropriate safety features. The ultimate result is a threat to the safety and
7 well-being of the people of Los Angeles.

8 82. The nuisance is ongoing, as Defendants continue to sell frame and receiver kits
9 directly and through third-party sellers, as well as other firearm and handgun components on their
10 websites, and as ghost guns manufactured from Defendants' kits and components remain on City
11 streets. By bringing this lawsuit, Plaintiff seeks an order enjoining Defendants from continuing to
12 propagate this public nuisance as well as all remedies necessary to abate the nuisance they have
13 caused.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF UNFAIR COMPETITION LAW**

16 **(Polymer80 and Individual Defendants)**

17 83. The People incorporate by reference the allegations in paragraphs 1 through 82 as
18 though fully set forth herein.

19 84. California's Unfair Competition Law, Bus. & Prof. Code §§ 17200-17210, prohibits
20 any person from engaging in "any unlawful, unfair, or fraudulent business act or practice," or any
21 "unfair, deceptive, untrue or misleading advertising." § 17200.

22 85. Defendant Polymer80 is a "person" subject to the UCL, pursuant to Business and
23 Professions Code § 17201.

24 86. Polymer80 knowingly engaged in, and continues to knowingly engage in, unlawful
25 business practices in violation of the UCL through its violations of federal gun laws, including the
26 Gun Control Act of 1968 and Child Safety Lock Act.

27 87. Polymer80 knowingly engaged in and continues to knowingly engage in unlawful
28 business practices in violation of the UCL through its violations of state gun law—namely, in

1 violation of the CUHA by aiding and abetting in the manufacture of unsafe handguns and the
2 manufacture and assembly of unserialized handguns through its sales of Buy Build Shoot kits and
3 frame and receiver kits.

4 88. Further, Polymer80 knowingly engaged in fraudulent and deceptive acts and
5 practices by falsely advertising to consumers, either expressly or by implication, that its kit products
6 were legal to purchase and possess.

7 89. As alleged above, Polymer80's knowing fraudulent and deceptive business acts and
8 practices include, but are not limited to, misleading statements on Polymer80's website "that the
9 G150 AR15 80% Receiver Kit, .308 80% Receiver Kit, & the PF940C™ 80% Pistol Frame Kits
10 were classified by the Bureau of Alcohol, Tobacco, Firearms and Explosives as not falling within
11 the federal definition of 'firearm' or 'frame or receiver.'"⁶¹

12 90. Finally, Polymer80 knowingly engaged in and continues to knowingly engage in
13 unfair business activity. Polymer80's sale of unserialized firearm kits in contravention of state and
14 federal gun law requirements constitutes unfair competition to licensed gun dealers in California
15 who abide by the applicable state and federal laws and regulations, including the requirement that
16 all firearms sold, manufactured, and/or assembled bear a unique serial number and that licensed
17 sellers conduct background checks on all sales. Polymer80's sales also violate the CUHA
18 requirements that their products appear on the Roster of Certified Handguns maintained by the State
19 of California, and that "every person who ... offers or exposes for sale any firearm ... certify under
20 penalty of perjury" that the firearm being "expose[d] for sale is not an unsafe handgun." The kits
21 sold by Defendants intended to be assembled into handguns—as well as the assembled handguns
22 sold by Defendants—are not listed on the Roster of Certified Handguns maintained by the State of
23 California.

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26 ⁶¹ Polymer80, *FAQs*, <https://www.polymer80.com/faqs> (archived at
27 <https://web.archive.org/web/20210122164500/https://www.polymer80.com/faqs>) (archive last
28 visited Feb. 15, 2021). According to ATF's Application for a Search Warrant, the PF940V2,
which ATF refused to "approve" without reviewing the whole kit, is simply a newer version of the
unfinished PF940C frame that was the subject of ATF's November 2, 2015 determination letter.

1 91. Further, Polymer80’s illegal sales in California are “immoral, unethical, oppressive,
2 unscrupulous or substantially injurious to consumers,” and the harm caused to Plaintiff by the
3 proliferation of untraceable ghost guns in the hands of prohibited purchasers outweighs the utility
4 of these unserialized, untraceable weapons.⁶²

5 92. Polymer80’s founders Kelly and Borges are also individually liable for the acts
6 alleged in this Complaint. Under the UCL, “[i]ndividual liability must be predicated on [the
7 individual’s] personal participation in the unlawful practices.”⁶³ Moreover, an individual must
8 demonstrate “his knowledge or participation in the illegal conduct.”⁶⁴ “[I]f the evidence establishes
9 defendant’s participation in the unlawful practices, either directly or by aiding and abetting the
10 principal, liability under sections 17200 and 17500 can be imposed.”⁶⁵

11 93. Defendant Kelley, CEO and Owner of Polymer80, met with an ATF Industry
12 Operations Investigator in 2016 when obtaining Polymer80’s federal firearms license, and discussed
13 federal firearm laws, regulations, and recordkeeping requirements.⁶⁶ The investigator provided
14 Kelley with a copy of the Federal Firearms Regulations Reference Guide and Federal Firearms
15 Licensee Quick Reference and Best Practices Guide.⁶⁷ In addition, as stated by Kelley in 2015,
16 “When we develop an 80% product, we do it with a specific system in mind. Much like with the
17 AR-15 and .308 Lower Receivers, we needed to design a complete kit which included not only the
18 frame, but a jig and all the drill bits necessary to make the milling process flawless.”⁶⁸

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22 ⁶² *Drum*, 182 Cal.App.4th at 257.

23 ⁶³ *People v. Toomey*, 157 Cal. App. 3d 1, 14 (1984).

24 ⁶⁴ *Id.*

25 ⁶⁵ *Id.* at 15.

26 ⁶⁶ ATF Affidavit, ¶ 35.

27 ⁶⁷ *Id.*

28 ⁶⁸ Polymer80, Inc., Press Release, Nov. 7, 2015, *available at*
<https://n2a.goexposoftware.com/events/ss2016/FORMfields/uploads/pressreleasescurprur1449270800172965425.pdf>.

1 94. Defendant Borges, CFO, Secretary, and Co-Owner of Polymer80, was the account
2 holder for P80's Stamps.com, the company through which Polymer80 mailed and shipped its
3 products. In addition, Borges' name and owner email address is "sales@polymer80.com"⁶⁹

4 95. Individual Defendants Kelley and Borges participated in the illegal conduct
5 prohibited by the UCL by directing and participating in all illegal conduct outlined, including
6 deciding and directing what products to sell to California residents and on what terms, and on
7 information and belief deciding and approving the advertising on Polymer80's website, and are thus
8 subject to liability under the statute as well.

9 **SECOND CAUSE OF ACTION**

10 **PUBLIC NUISANCE**

11 **(Defendant Polymer80)**

12 96. The People incorporate by reference the allegations in paragraphs 1 through 82 as
13 though fully set forth herein.

14 97. "A public nuisance is one which affects at the same time an entire community or
15 neighborhood, or any considerable number of persons, although the extent of the annoyance or
16 damage inflicted upon individuals may be unequal."⁷⁰

17 98. A public nuisance is substantial if it causes significant harm and unreasonable if its
18 social utility is outweighed by the gravity of the harm inflicted.⁷¹

19 99. Defendant Polymer80 created a public nuisance by marketing, selling and
20 distributing ghost gun kits to California residents without serial numbers, without background
21 checks, and without appropriate safety features. Defendants' actions have created a significant threat
22 to the public right of health and safety in public spaces. Defendants' ongoing business practices
23 have resulted in dangerous conditions that threaten Los Angeles residents.

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⁶⁹ ATF Affidavit, ¶¶ 74, 76.

27 ⁷⁰ Cal. Civ. Code § 3480.

28 ⁷¹ *People ex rel. Gallo v. Acuna*, 14 Cal. 4th 1090, 1105 (1997).

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- 3. Statutory penalties for violating California’s Unfair Competition Law according to proof at trial;
- 4. Establishment of a dedicated abatement fund to remediate a public nuisance;
- 5. For costs of suit and attorneys’ fees to the fullest extent permitted by law; and
- 6. Grant such other relief as the Court may deem just and proper.

DATED: February 17, 2021

Respectfully submitted,
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