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Attorneys for Plaintiffs YISROEL GOLDSTEIN, ISRAEL DAHAN, L.D.1, a minor, by and through his Guardian Ad Litem, EDEN DAHAN, L.D.2, a minor, by and through her Guardian Ad Litem, EDEN DAHAN, N.D., a minor, by and through her Guardian Ad Litem, EDEN DAHAN, SHIMON ABITBUL, DANNY ALMOG, N.A., a minor, by and through his Guardian Ad Litem, HILA ALMOG, Y.A., a minor, by and through her Guardian Ad Litem, HILA ALMOG

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL

YISROEL GOLDSTEIN, ISRAEL
DAHAN, L.D.1, a minor, by and through his
Guardian Ad Litem, EDEN DAHAN, L.D.2,
a minor, by and through her Guardian Ad
Litem, EDEN DAHAN, N.D., a minor, by
and through her Guardian Ad Litem, EDEN
DAHAN, SHIMON ABITBUL, DANNY
ALMOG, N.A., a minor, by and through his
Guardian Ad Litem, HILA ALMOG, Y.A.,
a minor, by and through her Guardian Ad
Litem, HILA ALMOG,

Plaintiffs,

vs.

JOHN T. EARNEST, an individual; LISA

No. 37-2020-00016638-CU-PO-CTL

**SECOND AMENDED COMPLAINT
FOR:**

- 1. PRODUCT LIABILITY**
- 2. UNFAIR COMPETITION LAW
[BUS. & PROF. CODE, §17200]**
- 3. NEGLIGENCE; NEGLIGENCE
PER SE; NEGLIGENT
INFLECTION OF EMOTIONAL
DISTRESS; NEGLIGENT
ENTRUSTMENT**
- 4. PUBLIC NUISANCE**
- 5. INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS**

C. EARNEST, an individual; JOHN A. EARNEST, an individual; STATE OF CALIFORNIA, DEPARTMENT OF FISH AND WILDLIFE; STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE; SAN DIEGO GUNS, a California Limited Liability Company, AMERICAN OUTDOOR BRANDS CORPORATION, a Nevada Corporation, SMITH & WESSON BRANDS, INC., a Nevada Corporation, and DOES 1 through 100,

Defendants.

6. ASSAULT AND BATTERY
7. NEGLIGENCE

DEMAND FOR JURY TRIAL

Plaintiffs YISROEL GOLDSTEIN, ISRAEL DAHAN, L.D.1, a minor, by and through his Guardian Ad Litem, EDEN DAHAN, L.D.2, a minor, by and through her Guardian Ad Litem, EDEN DAHAN, N.D., a minor, by and through her Guardian Ad Litem, EDEN DAHAN, SHIMON ABITBUL, DANNY ALMOG, N.A., a minor, by and through his Guardian Ad Litem, HILA ALMOG, Y.A., a minor, by and through her Guardian Ad Litem, HILA ALMOG, (collectively, “Plaintiffs”), on behalf of themselves and all other persons similarly situated, file this Complaint against AMERICAN OUTDOOR BRANDS CORPORATION, SMITH & WESSON BRANDS, INC., SAN DIEGO GUNS, DOES 1 through 100, various business entities assigned fictitious names, STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE, LISA C. EARNEST, JOHN A. EARNEST, and JOHN T. EARNEST (collectively, “Defendants”) and allege as follows:

INTRODUCTION

1. On April 27, 2019, worshippers were gathered at the Chabad of Poway synagogue to attend services on the last day of the Jewish holiday, Passover, which commemorates the survival and liberation of the Jewish people.

2. Outside the synagogue was a teenager (the “Shooter,” “JOHN T. EARNEST” or “EARNEST”)¹ who was bent on waging war on the worshippers and exterminating the Jewish people. His hateful views could not, on their own, cause a fraction of the physical and emotional

¹ To not give attention to criminals (*see* <https://nonotoriety.com/>) this Complaint refers to this individual as “the Shooter” except to the extent necessary to identify him.

1 harm he would soon render on the Chabad community of worshippers.

2 3. As a result of Defendants' actions and/or inaction, the Shooter used a SMITH &
3 WESSON M&P 15, AR-15 style rifle (the "Rifle") to engage in a mass shooting on April 27,
4 2019— a military-style assault on the worshippers at the Chabad of Poway synagogue (the
5 "Incident"). Plaintiffs were among the worshippers in the Chabad of Poway synagogue and were
6 harmed in the attack.

7 4. The Incident was foreseeable.

8 5. The negligent and unlawful actions of Defendants AMERICAN OUTDOOR
9 BRANDS CORPORATION, SMITH & WESSON BRANDS, INC., DOE DEFENDANTS, and
10 SAN DIEGO GUNS ("Gun Company Defendants") enabled the Shooter to transform his dark
11 fantasies into a lethal reality by designing, marketing, distributing, and ultimately placing in the
12 Shooter's hands a highly lethal weapon— the Rifle.

13 6. Defendant AMERICAN OUTDOOR BRANDS CORPORATION, the parent
14 company of SMITH & WESSON BRANDS, INC. at the time of the incident at issue here²
15 ("SMITH & WESSON" will collectively refer to both SMITH & WESSON BRANDS, INC. and
16 AMERICAN OUTDOOR BRANDS CORPORATION):

- 17 a) negligently and intentionally designed and manufactured a military-style
18 assault rifle that could easily be effective in mass attacks on people, and could
19 easily be modified at a minimum, to include a pistol grip that protrudes
20 conspicuously beneath the action of the weapon and enable automatic firing, in
21 violation of federal and California state law;
- 22 b) deceptively marketed its military-style assault rifle in a way that attracted
23 impulsive young men with military complexes who were particularly likely to
24 be attracted to the unique ability of AR-15 style weapons; and
- 25 c) unreasonably distributed and sold the Rifle to the public without reasonable

26 ² It is Plaintiffs' understanding that AMERICAN OUTDOOR BRANDS CORPORATION and
27 SMITH & WESSON BRANDS, INC. merged into one corporation, SMITH & WESSON
28 BRANDS, INC. on May 29, 2020. Prior to that, SMITH & WESSON BRANDS, INC. was a
wholly-owned subsidiary of AMERICAN OUTDOOR BRANDS CORPORATION.

safeguards to keep it out of dangerous hands.

7. Plaintiffs bring claims for defective design, violation of California's Unfair Competition Law ("UCL"), negligence, and public nuisance against Defendant AMERICAN OUTDOOR BRANDS CORPORATION because of its actions through its then-subsiary SMITH & WESSON BRANDS, INC. and SMITH & WESSON BRANDS, INC. itself.

8. Defendant SAN DIEGO GUNS, in violation of law, sold the Rifle to the teenage Shooter in the absence of a valid hunting license which is legally required in California to complete the sale of an AR-15 style rifle to an individual under 21 years old.

9. Defendant SAN DIEGO GUNS, upon information and belief, also negligently failed to have protocols and systems in place to prevent it from selling firearms to individuals under the age of 21 with invalid documentation.

10. Plaintiffs bring claims for defective design, negligence, negligence per se, negligent entrustment, and public nuisance against Defendant SAN DIEGO GUNS.

11. Defendant DOES 1 through 100, upon information and belief, recklessly sold and distributed the Rifle without exercising reasonable care to ensure that its guns would be sold lawfully and responsibly.

12. Plaintiffs bring claims for defective design, negligence, and public nuisance against Defendant DOES 1 through 100.

13. Defendant STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE, negligently failed to comply with its mandatory duty to administer the California background check systems in a responsible manner that would have blocked the Shooter from acquiring the Rifle.

14. Plaintiffs bring claims for negligence and negligent infliction of emotional distress against Defendant STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE.

15. Defendants J.A. EARNEST and L.C. EARNEST negligently facilitated their son's (the Shooter's) ability to gain access to one or more pieces of weaponry/tactical equipment used in the Incident, despite, upon information and belief, having prior knowledge of his avowed, virulent anti-Semitism and propensity for violence.

17. Plaintiffs bring claims for assault and battery, and intentional infliction of emotional distress against the Shooter for his military-style assault designed to maim or kill a large number of worshippers at the Chabad of Poway synagogue.

18. But for the misconduct of all Defendants, Plaintiffs would not have been harmed.

19. This lawsuit does not seek to hold firearms manufacturers and/or sellers liable for responsibly making, marketing, or selling weapons for use by law-abiding citizens while complying with all relevant standards of care and applicable laws designed to prevent unlawful acts of violence.

20. Instead, this lawsuit seeks to impose liability for irresponsible and unlawful conduct by a firearms manufacturer and seller for making, marketing, or selling weapons in an unsafe and illegal manner.

21. Plaintiffs are and at all times relevant hereto were individuals residing in the state of California.

22. Plaintiff YISROEL GOLDSTEIN (“GOLDSTEIN”) was working as a Pulpit Rabbi at the Chabad of Poway synagogue on the day of the Incident. GOLDSTEIN suffered severe emotional injury, permanent physical injury to his bilateral upper extremities—including amputation, and economic injury in the form of over \$24,000 in medical expenses, and lost monetary earnings, future medical expenses and lost future earning capacity totaling at least hundreds of thousands of dollars as a result of the Incident.

23. Plaintiff ISRAEL DAHAN (“DAHAN”) was a congregant at the Chabad of Poway synagogue and was present at the synagogue on the day of the Incident. DAHAN suffered severe emotional injury and economic injury in the form of significant lost monetary earnings, lost future earning capacity, and loss of earnings totaling at least hundreds of thousands of dollars as a result of the Incident.

1 24. Plaintiff L.D.1, who brings claims by and through his Guardian Ad Litem, EDEN
2 DAHAN, was a congregant at the Chabad of Poway synagogue and was present at the synagogue
3 on the day of the Incident. L.D.1 suffered severe emotional injury and economic injury in the
4 form of significant future medical expenses and lost future earning capacity totaling at least
5 hundreds of thousands of dollars as a result of the Incident.

6 25. Plaintiff L.D.2, who brings claims by and through her Guardian Ad Litem, EDEN
7 DAHAN, was a congregant at the Chabad of Poway synagogue and was present at the synagogue
8 on the day of the Incident. L.D.2 suffered severe emotional injury and economic injury in the
9 form of future medical expenses and loss of future earning capacity totaling at least hundreds of
10 thousands of dollars as a result of the Incident.

11 26. Plaintiff N.D., who brings claims by and through her Guardian Ad Litem, EDEN
12 DAHAN, was a congregant at the Chabad of Poway synagogue and was present at the synagogue
13 on the day of the Incident. N.D. suffered severe emotional injury, permanent physical injuries to
14 her leg, head and face, and economic injury in the form of over \$25,000 in medical expenses, and
15 future medical expenses and lost future earning capacity totaling at least hundreds of thousands of
16 dollars as a result of the Incident.

17 27. Plaintiff SHIMON ABITBUL (“ABITBUL”) was a congregant at the Chabad of
18 Poway synagogue and was present at the synagogue on the day of the Incident. ABITBUL
19 suffered severe emotional injury, and economic injury in the form of medical expenses, lost
20 monetary earnings, future medical expenses and lost future earning capacity totaling at least
21 hundreds of thousands of dollars as a result of the Incident.

22 28. Plaintiff DANNY ALMOG (“ALMOG”) was a congregant at the Chabad of
23 Poway synagogue and was present at the synagogue on the day of the Incident. ALMOG suffered
24 severe emotional injury and economic injury in the form of over \$1,500 in medical expenses and
25 lost monetary earnings, loss of future earnings capacity and future medical expenses totaling at
26 least hundreds of thousands of dollars as a result of the Incident.

27 29. Plaintiff N.A., who brings claims by and through his Guardian Ad Litem, HILA
28

1 ALMOG, was a congregant at the Chabad of Poway synagogue and was present at the synagogue
2 on the day of the Incident. N.A. suffered severe emotional injury and economic injury in the form
3 of future medical expenses and lost future earning capacity totaling at least hundreds of thousands
4 of dollars as a result of the Incident.

5 30. Plaintiff Y.A., who brings claims by and through her Guardian Ad Litem, HILA
6 ALMOG, was a congregant at the Chabad of Poway synagogue and was present at the synagogue
7 on the day of the Incident. Y.A. suffered severe emotional injury and economic injury in the form
8 of future medical expenses and lots future earning capacity totaling at least hundreds of thousands
9 of dollars as a result of the Incident.

10 31. At all relevant times, Defendant AMERICAN OUTDOOR BRANDS
11 CORPORATION was a Nevada corporation doing business in the State of California and was the
12 parent company of SMITH & WESSON BRANDS, INC.—the manufacturer of the Rifle used by
13 the Shooter in the Incident. As of May 29, 2020, AMERICAN OUTDOOR BRANDS
14 CORPORATION and SMITH & WESSON BRANDS, INC. merged to create SMITH &
15 WESSON BRANDS, INC., a Nevada Corporation doing business in the State of California.

16 32. At all relevant times, Defendant SAN DIEGO GUNS was a California limited
17 liability company doing business in the State of California, licensed and incorporated under the
18 laws of California, and believed to be the owner, co-owner, or manager of the San Diego Guns
19 retail gun store located at 5995 Mission Gorge Road, Suite C, San Diego, California 92120.

20 33. At all relevant times, Defendant DOES 1 through 100 were wholesalers,
21 distributors, or other intermediaries responsible for one or more transfers of the Rifle before it
22 was sold by SAN DIEGO GUNS. The true names of Defendant DOES 1 through 100 are
23 unknown to Plaintiffs at this time. Plaintiffs therefore sue these defendants by fictitious names
24 and will amend this Complaint to allege their true names and capacities when ascertained.

25 34. At all relevant times, Defendant STATE OF CALIFORNIA, DEPARTMENT OF
26 JUSTICE, was an investigative law enforcement agency responsible for identifying individuals
27 who are ineligible to acquire or possess firearms.
28

35. At all relevant times, Defendants JOHN T. EARNEST (“EARNEST”), JOHN A. EARNEST (“J.A. EARNEST”), and LISA C. EARNEST (“L.C. EARNEST”) were individuals residing in San Diego County, California, residing at 10134 Freeport Court, San Diego, California 92129. EARNEST is the self-admitted perpetrator of the Incident and is currently facing trial for his role in assaulting the Chabad of Poway synagogue and the worshippers therein. He is the “Shooter” designated throughout this Complaint. J.A. EARNEST and L.C. EARNEST are the Shooter’s parents.

JURISDICTION AND VENUE

36. This Court has personal jurisdiction over Defendants on the grounds that all Defendants live and/or conduct business in the State of California, Defendants have purposefully availed themselves of the jurisdiction of this Court by residing in and/or transacting business in this state, and the events which give rise to this Complaint occurred in California.

37. Pursuant to Cal. Code of Civil Procedure, § 395(a), venue is proper in this Court because the actions underlying this complaint and the harms sued upon took place in San Diego County, California.

GENERAL ALLEGATIONS

I. SMITH & WESSON’S NEGLIGENT DESIGN AND MARKETING OF THE RIFLE WAS A PROXIMATE CAUSE OF THE SHOOTING.

38. SMITH & WESSON, as a manufacturer and seller of lethal weapons that are sought after by criminals, owed the highest duty of care to members of the general public like the Plaintiffs to minimize the foreseeable misuse of its products in unlawful acts of violence like the Incident.

39. SMITH & WESSON was aware for years before the Incident that mass shootings were frequent and deadly in the United States, and that it was foreseeable that some would-be mass shooters would seek to obtain firearms, including SMITH & WESSON firearms, to commit such heinous acts.

40. SMITH & WESSON knew that its firearms, in particular its M&P firearms, had

1 been chosen by mass shooters for use in mass shootings, including:

- 2 a) In December 2015 a shooter armed with a SMITH & WESSON M&P .223 semi-
3 automatic rifle attacked the Inland Regional Center in San Bernardino, California,
4 killing 14 people and injuring 22 others. This M&P rifle was modified by a mass
5 shooter to fire automatically and was modified via the “shaving down” method
6 described in paragraph 65 below.
- 7 b) In February 2017 a young white male opened fire with a Smith & Wesson M&P
8 .223 semi-automatic rifle at Marjory Stoneman Douglas High School in Parkland,
9 Florida, killing 17 people and injuring 17 others.
- 10 c) In July 2018 a man killed two people and injured 13 others on Danforth Avenue in
11 Toronto, Canada, armed with a SMITH & WESSON M&P 40 semi-automatic
12 pistol.

13 41. SMITH & WESSON included design features in its M&P 15 series of AR-15 style
14 guns—including the Rifle—that enabled them to be easily modified, including to fire
15 automatically and to constitute a prohibited assault weapon under California law.

16 42. SMITH & WESSON did so despite actual or constructive knowledge that their
17 firearms, with such features, would be attractive to would-be mass shooters, like the Shooter, and
18 would be used in crimes, including mass shootings.

19 **A. SMITH & WESSON’s Design Made the Rifle Easily Modifiable, Enabling**
20 **Criminals, Including Would-Be Mass Shooters, To Subvert California Law.**

21 43. California has recognized that a semi-automatic centerfire rifle that includes “[a]
22 pistol grip that protrudes conspicuously beneath the action of the weapon” is highly dangerous
23 and, for this reason, is a prohibited “assault weapon.” Cal. Pen. Code. §§ 30515(a)(1)(A); 30605.

24 44. A pistol grip is prohibited in semi-automatic centerfire rifles because it:

- 25 a) enables individuals like the Shooter to more easily handle and aim a semi-
26 automatic centerfire rifle like the Rifle;
- 27 b) is useful when engaging in a rapid-fire, mass shooting scenario, like a mass attack
28 on people;

1 c) serves little to no benefit regarding lawful uses of such firearms.

2 45. SMITH & WESSON designed the Rifle in a way that enabled purchasers,
3 including would-be mass shooters like the Shooter, who wanted an assault weapon prohibited by
4 California law, to easily have one by modifying the Rifle.

5 46. Tutorials for modification methods are readily available from online sources.

6 47. SMITH & WESSON designed the Rifle with a slightly angled pistol grip inside an
7 easily modified or removable grip-cover, resembling a shark fin, that was attached directly behind
8 the trigger of the Rifle.

9 48. SMITH & WESSON made the grip-cover with specific materials and in certain
10 locations so that the Rifle could be easily modified, including by cutting or otherwise removing it,
11 so that Rifle had a prohibited pistol grip and was a prohibited assault weapon.

12 49. There were a number of economically and technologically available alternative
13 designs that SMITH & WESSON could have used that would have prevented the Rifle from
14 being easily modified into an assault weapon in violation of California law.

15 50. For example, SMITH & WESSON could have designed the Rifle using stronger
16 materials, different configurations, and/or different locations of the grip that would have
17 prevented the Shooter and others from easily modifying the gun into a prohibited and highly
18 lethal “assault weapon” within the meaning of California law. Any of these proposed changes
19 were economically and technologically feasible and would have inhibited dangerous
20 modifications to products like the Rifle, while not diminishing its utility and safety for lawful
21 activities.

22 51. Other Gun Company Defendants could have and should have refused to distribute
23 or sell weapons like the Rifle because, upon information and belief, they were susceptible to
24 modifications like those described above.

25 **B. SMITH & WESSON’s Design Made the Rifle Easily Modifiable, Enabling**
26 **Criminals, Including Would-Be Mass Shooters, in Violation of Federal Law.**

27 52. The National Firearms Act (“NFA”) regulates the production, dealing in,
28 possession, transfer, import, and export of machineguns. See 26 U.S.C. §§ 5801–1861.

1 53. The NFA defines a “machinegun” as “any weapon which shoots, is designed to
2 shoot, or can be readily restored to shoot, automatically more than one shot, without manual
3 reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). The definition also includes
4 “the frame or receiver of any such weapon,” as well as “any part” or “combination of parts
5 designed and intended, for use in converting a weapon into a machinegun,” and “any combination
6 off parts from which a machinegun can be assembled” as long as those “parts are in the
7 possession of under the control of a person.” *Id.*

8 54. 18 U.S.C. § 922(b)(4) prohibits the sale of “machinegun[s]” to members of the
9 general public who have not undergone the required registration process.

10 55. In 1982, the Bureau of Alcohol, Tobacco Firearms and Explosives (ATF)
11 underscored that the NFA definition of “machinegun[s]” includes “those weapons which have not
12 previously functioned as machineguns but possess design features which facilitate full automatic
13 fire by simple modification or elimination of existing component parts.”

14 56. AR-15 style weapons like the Rifle are “machinegun[s]” because they can be
15 easily modified to facilitate automatic fire.

16 57. Congress restricted the sale and possession of “machinegun[s]” because automatic
17 fire weapons pose an undue risk to members of the public, provide no or negligible benefit to
18 law-abiding civilian users, and will be disproportionately likely to be misused by bad actors like
19 the Shooter in a mass shooting.

20 58. The original AR-15 rifle was developed in response to the needs of the United
21 States military during the Vietnam War and was unquestionably a “machinegun” that included a
22 selector switch enabling fully automatic fire.

23 59. Manufacturers like SMITH & WESSON later decided to adapt AR-15 style rifles
24 for sale to the civilian market.

25 60. As opposed to significantly altering the design of AR-15 style weapons to reduce
26 their utility in combat-like situations and to adapt the weapons to the legitimate needs of law-
27 abiding civilians, SMITH & WESSON made few changes to the basic AR-15 design when
28

1 producing weapons like the Rifle.

2 61. SMITH & WESSON chose to design the Rifle in a manner that made it able to be
3 easily modified or degraded to fire automatically.

4 62. Weapons like the Rifle can be easily modified to accomplish this goal by
5 individuals with minimal financial resources and little to no gunsmithing expertise through
6 methods including but not limited to:

- 7 a) replacing the manufacturer-installed sear system inside the Rifle (which enables
8 semi-automatic fire) with a third-party sear system which enables automatic fire;
9 b) shaving down part of the manufacturer-installed sear system to change the way it
10 functions and;
11 c) attaching an external device such as a “bump stock” or trigger crank to the
12 weapon.

13 63. It was foreseeable to SMITH & WESSON that its AR-15 style rifles would be
14 easily modified to create a fully automatic weapon and/or a weapon approximating a fully
15 automatic rate of fire, and that that these features would make firearms attractive to would-be
16 mass shooters like the Shooter, and would be used in crimes, including mass shootings.

17 64. In fact, one of the two shooters in the 2015 San Bernardino, California mass
18 shooting wielded a SMITH & WESSON M&P-15 Sport rifle that had been modified via the
19 “shaving down” method described above, which provided SMITH & WESSON with specific
20 notice that weapons like the Rifle were attractive to mass shooters in part because of their
21 susceptibility to such modifications.

22 65. SMITH & WESSON has been on notice and/or aware since at least 2000 that its
23 business practices played a role in contributing to gun crimes, when the company entered into a
24 settlement agreement with the federal government (“2000 Settlement Agreement”), where it
25 committed to trying to reduce criminal misuse of firearms, acknowledged company responsibility,
26 and agreed it should not “sell...a weapon designed in a manner so that with few additional parts
27 and/or minimal modifications an owner can convert the firearm into an illegal fully automatic
28

1 weapon.”

2 66. The Gun Company Defendants all knowingly sold firearms, including the Rifle,
3 which were designed to be and were, in fact, capable of ready modification to function as
4 automatic weapons or approximate the rate of fire of automatic weapons with minimal
5 expenditure of cost or effort.

6 67. The Gun Company Defendants are, thus, all responsible for violations of §
7 922(b)(4)’s prohibition on the sale of “machinegun[s]” to the general public and to the Shooter, in
8 particular.

9 **C. SMITH & WESSON Marketed the Rifle and Other Military-Style Weapons in a**
10 **Way That Attracted and Enabled Dangerous Individuals Like the Shooter.**

11 68. SMITH & WESSON failed to use reasonable care when marketing and selling the
12 Rifle.

13 **i. SMITH & WESSON’s marketing attracted a Dangerous Category of**
14 **Consumers.**

15 69. When SMITH & WESSON marketed the Rifle, it knew or should have known of
16 the existence of a category of consumers containing individuals like the Shooter, who would be
17 attracted to such a weapon and could pose a tremendous risk to the safety of others—namely
18 impulsive young men with hero complexes/militaristic delusions attracted to using the
19 particularly high lethality of AR-15 style weapons like the Rifle to effectively execute their
20 fantasies.

21 70. SMITH & WESSON knew or should have known, among other facts, that:

- 22 a) The United States has been plagued by a series of deadly mass shootings, many of
23 which were conducted by disturbed, violent young men wielding AR-15 style
24 assault weapons.
- 25 b) Many of the mass shootings committed in the United States over the last 10 years
26 with the highest numbers of gunshot injuries and deaths were perpetrated by male
27 shooters who were between the ages of nineteen and twenty-six.
- 28 c) Many young mass shooters have used AR-15 style weapons like the Rifle in

highly publicized mass shootings preceding the Incident, including:

- i. the twenty-four-year-old man who killed 12 and injured 70 in an attack at a movie theater in Aurora, Colorado in July 2012;
- ii. the twenty-year-old man who killed 27, including 20 children, and injured 2 in an attack at an elementary school in Sandy Hook, Connecticut in December 2012;
- iii. the twenty-six-year-old man who killed 26 and injured 20 in an attack at a church in Sutherland Springs, Texas in November 2017;
- iv. and the nineteen-year-old man who killed 17 and injured 17 in an attack at Marjorie Stoneman Douglas High School in Parkland, Florida in February 2018.

d) The Colorado and Florida attackers both used a SMITH & WESSON M&P 15 rifle substantially similar to the Rifle in this case to perpetrate their mass shootings.

71. SMITH & WESSON knew or should have known that:

- a) Young men like the Shooter are, generally, more susceptible to advertising than fully neurologically-developed adults.
- b) Young men like the Shooter are disproportionately prone to irresponsible, impulsive and thrill-seeking behavior.
- c) Young men like the Shooter are more likely to harbor delusional, militaristic fantasies involving acting as a supposed hero eradicating large groups of perceived enemies.
- d) Young men like the Shooter are particularly attracted to highly lethal AR-15 style weapons like the Rifle in mass shootings because they fulfill their fantasies.
- e) AR-15 style weapons are particularly attractive to mass shooters because, *inter alia*, they allow shooters to rapidly expend large numbers of bullets at multiple targets.

1 72. SMITH & WESSON was aware and had actual or constructive knowledge of the
2 fact that its marketing had the effect of attracting this category of consumers.

3 73. SMITH & WESSON was sued in a declaratory judgment action by some victims
4 of the Parkland, Florida mass shooting, that explained that it could be liable for the contribution
5 that its marketing practices had in the Parkland shooting. Upon information and belief, SMITH &
6 WESSON chose not to alter its deceptive marking practices prior to the sale of the similar, AR-15
7 style rifle used in this shooting.

8 74. As part of the 2000 Settlement Agreement, SMITH & WESSON agreed, inter alia,
9 to “[n]ot market any firearm in a way that would make the firearm particularly appealing to
10 juveniles or criminals” due to the foreseeable risk of such advertising fueling unlawful acts of
11 violence by such actors. SMITH & WESSON chose to defy the safety practices it knew about and
12 committed to in the 2000 Settlement Agreement and instead chose to target young consumers.

13 **ii. SMITH & WESSON’s Use of the First-Person Shooter Aesthetic Marketing.**

14 75. Upon information and belief, then SMITH & WESSON President CEO Michael F.
15 Golden acknowledged, in discussing the launch of the M&P rifle brand, that the company was
16 marketing and selling weapons as “tactical,” stating: “We also believe that our M&P rifle series
17 fills a tremendous gap in the marketplace by delivering high-quality, feature-rich tactical rifles
18 that will be readily available in commercial channels.”

19 76. SMITH & WESSON designed advertisements for its products to mimic the
20 aesthetic of being the shooter in a video game (“first-person shooter aesthetic”). These types of
21 video games are disproportionately popular among young men like those in the class of
22 individuals described above.

23 77. This first-person shooter aesthetic is used in many popular games, such as Call of
24 Duty and modified versions of Minecraft (shown in the below clip is a YouTube video of one of
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26
27
28

these modified versions of Minecraft):



78. SMITH & WESSON advertising mimics this first-person shooter aesthetic, including but not limited to:

a) SMITH & WESSON published the following advertisement for its M&P series of rifles on its corporate channel on the popular social media site YouTube:



b) SMITH & WESSON published the below advertisement:



79. SMITH & WESSON chose to establish a marketing presence on social media platforms disproportionately frequented by younger consumers, including but not limited to maintaining accounts on YouTube, and on the popular social media sites Instagram and Facebook (such as @smithwessoninc, @smithandwessongear, and www.facebook.com/SmithandWessonInc/.).

80. SMITH & WESSON chose to market its M&P series using images of children handling its firearms over social media.

81. SMITH & WESSON targeted youth despite the fact that many states, including California had age restrictions on who could lawfully possess its M&P rifles.

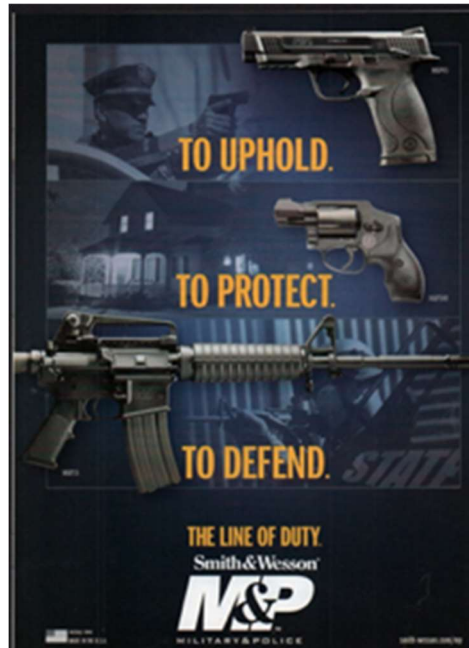
iii. SMITH & WESSON's Misleading Association with Military and Law Enforcement.

82. SMITH & WESSON's marketing campaign caters to the characteristics and preferences of the above dangerous category of individuals by repeatedly and falsely associating SMITH & WESSON products that are sold to civilians, like the Rifle, with United States military and law enforcement, including but not limited to:

- a) falsely representing or suggesting that SMITH & WESSON products are utilized or endorsed by military and law enforcement;
- b) using “M&P” in the “M&P 15” designation of the Rifle to stand for “Military & Police;”
- c) showing SMITH & WESSON products similar to the Rifle being used by or positioned near individuals wearing what appear to be military and/or law enforcement uniforms or gear, with text resembling oaths taken by military and/or law enforcement personnel, and implications that SMITH & WESSON products are “[s]elected” or “[c]hosen” by these groups, reinforcing this association with pictures of American flags.

83. Examples of advertisements reflecting this facet of SMITH & WESSON’s marketing campaign—and specifically involving M&P brand weapons like the Rifle—include but are not limited to the following:

- a) SMITH & WESSON ran the image below as an advertisement for its M&P brand weapons—including both the M&P rifle series and its related M&P line of handguns:



- b) SMITH & WESSON published the following image as an advertisement for the M&P rifle series:



- c) SMITH & WESSON produced the following advertisement regarding its M&P



brand weapons:

- d) Smith & Wesson ran the below ad, which describes an M&P rifle as enabling “reliability when your job is to serve and protect” and spells out the fact that M&P stands for “Military and Police:”



84. SMITH & WESSON has referred to the strategy of promoting an association between its products and United States military and law enforcement officials as an effort to take advantage of the halo effect.

85. SMITH & WESSON explained this halo effect by suggesting that connection of M&P brand products like the Rifle with United States military and law enforcement personnel benefits the M&P brand by conferring credibility on M&P brand products in the eyes of civilian buyers.

86. This supposed association of SMITH & WESSON M&P brand products with the United States military and law enforcement agencies is largely a fiction aimed at deceiving the public, and attracting the above-described dangerous class of would-be mass shooters.

87. Upon information and belief, SMITH & WESSON:

- a) sells approximately 90% of its products on the civilian consumer market;
- b) sales to law enforcement agencies represent only a small percentage of SMITH & WESSON's total firearms sales;

- c) sales to law enforcement are predominantly handguns, not AR-15 style rifles;
- d) has not obtained any significant contracts to provide any sizable domestic military agencies with firearms since at least 2009.

88. By cloaking products generally sold to the public in the heroic aura of United States military and law enforcement, SMITH & WESSON marketing suggests to individuals that buying a SMITH & WESSON product like the Rifle will enable them to model behavior of military and law enforcement.

89. SMITH & WESSON's marketing and advertising also caters to the propensity for thrill-seeking behavior disproportionately exhibited by impulsive young men like the Shooter by associating SMITH & WESSON products like the Rifle with the adrenaline-pumping experience of combat.

90. SMITH & WESSON's marketing and advertising repeatedly emphasizes the ability of SMITH & WESSON weapons to function in combat-like scenarios and quickly dispatch a large number of perceived enemies with a torrent of fire.

91. Examples of advertisements illustrating this message as it applies to the M&P rifle series include, but are not limited to:

- a) SMITH & WESSON promoted on its YouTube channel a video endorsement of its M&P 15 T model rifle from a professional shooter who described using the weapon to establish a "world record" in speed shooting involving ten shots fired into four different targets in 1.59 seconds. See Smith & Wesson, Inc., *Smith & Wesson M&P15 T Rifle with Jerry Miculek* (2017), <https://www.youtube.com/watch?v=guNHME8cB0M> (last visited June 10, 2020).

b) SMITH & WESSON advertised an M&P 15 rifle and emphasized that its weapon lets you “[k]ick [b]rass” by “[b]urn[ing] through all the ammunition you want . . .”:



92. The narratives conveyed by SMITH & WESSON advertising combine to promote its products in a way which increased the likelihood of their foreseeable misuse by individuals like the Shooter.

93. SMITH & WESSON’s actions were unlawful under, at minimum, the UCL, which prohibits, *inter alia*, “deceptive, untrue or misleading advertising” like the advertising described above. Cal. Bus. & Prof. Code, § 17200.

D. The Shooter Fell Within the Dangerous Category of Consumers and, Upon Information and Belief, Was Foreseeably Motivated by Defendants’ Advertising and Associated Design Decisions.

94. The Shooter fell within the category of dangerous consumers that SMITH & WESSON effectively targeted with marketing and associated design choices tailored to their characteristics and preferences.

95. Upon information and belief, the Shooter, including while living at his home in San Diego, was motivated to acquire and utilize the Rifle because he was exposed to SMITH & WESSON’s marketing and advertising, and it appealed to his characteristics and preferences.

96. As documented in an online manifesto purporting to be from the Shooter, the

1 Shooter was a player of one or more online video games incorporating the first-person shooter
2 aesthetics mimicked in SMITH & WESSON marketing.

3 97. The Shooter’s manifesto particularly references Minecraft and states, that, within
4 Minecraft’s virtual world “[y]ou can even shoot up a . . . synagogue . . . wealthy Jews in gated
5 communities, Jewish-owned company buildings.”

6 98. As documented in both the manifesto and the 911 call during which the Shooter
7 turned himself in after the attack, the Shooter revealed that he was exhibiting militaristic
8 delusions and a twisted hero complex and that the Incident was his effort to fulfill a self-
9 generated mythology in which, in his mind, he was a noble warrior defending a just cause, like
10 the military and law enforcement referenced in SMITH & WESSON marketing.

11 99. In the manifesto, the Shooter states: “I . . . wish to . . . be a *soldier* that has the
12 honor and privilege of defending his race.” (emphasis added).

13 100. In his 911 call, the Shooter cast himself as a soldier defending his nation in what
14 he deemed to be a just war, stating, “I just shot up a synagogue . . . I’m defending my country . . .
15 the Jewish people are destroying the white race . . .”

16 101. SMITH & WESSON’s presentation of its products—including weapons like the
17 Rifle—as having an association with noble warriors in the United States military and law
18 enforcement agencies fueled a false narrative that possessing a SMITH & WESSON product
19 would enable someone to adopt the heroic, military mantle the Shooter craved.

20 102. The Shooter, consistent with SMITH & WESSON marketing emphasizing the
21 ability of M&P weapons like the Rifle to rapidly burn through large amounts of ammunition and
22 destroy many targets, planned to use the Rifle to engage in a massacre at the Chabad of Poway
23 synagogue claiming many more lives than the one fatality he inflicted.

24 103. The Shooter brought at least five additional ammunition magazines with him to the
25 synagogue.

26 104. The Shooter emphasized the manufacturer (SMITH & WESSON), brand (M&P)
27 and style (AR-15) of the Rifle in his communications to law enforcement while surrendering
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1 following the Incident.

2 105. In the 911 call describing the weapons in his possession, the Shooter stated he had
3 an “AR-15 . . . a SMITH & WESSON M&P 15” and that he had an “AR-15 SMITH & WESSON
4 . . . M&P 15 Sport II.”

5 106. Upon information and belief, the Shooter emphasized these details about the Rifle
6 because they were important to his false self-conceptualization as a hero/soldier and were a
7 source of pride.

8 107. Upon information and belief, the Shooter would not have acquired the Rifle or
9 used it in the Incident but for his exposure to the reckless, deceptive and illegal marketing
10 campaign disseminated by SMITH & WESSON and SMITH & WESSON’s associated design
11 decisions.

12 108. The fact that a weapon like the Rifle would be used not only in a mass shooting
13 but in a hate-motivated mass shooting specifically was also predictable in light of the history of
14 guns being used in anti-Semitic or generally hate-fueled shootings in the United States and
15 abroad.

16 109. Well-known incidents of which SMITH & WESSON knew or should have known
17 illustrating the prevalence of this trend include but are not limited to the following:

- 18 a) In July 1999 a white supremacist went on a shooting spree that wounded 9 and
19 killed 2 people in multiple locations in Illinois and Indiana, including injuring
20 6 Orthodox Jews returning from temple services.
- 21 b) In August 1999 a white supremacist injured 5 and killed 1 in and around a
22 Jewish Community Center in California.
- 23 c) In June 2009 a white supremacist killed a security guard at the Holocaust
24 museum in Washington, D.C.
- 25 d) In April 2014 an anti-Semite killed 3 people at a Jewish Community Center
26 and retirement community in Overland Park, Kansas.
- 27 e) In June 2016 a man pledging allegiance to ISIS and exhibiting homophobic
28

tendencies armed himself with an AR-15 style rifle and at least one handgun and killed 49 and injured 58 people in an LGBTQ+ nightclub in Orlando, Florida.

f) In October 2018 a man shouting anti-Semitic slurs and wielding, among other weapons, an AR-15 style rifle killed 11 people and injured 6 at the Tree of Life Synagogue in Pennsylvania.

g) In March 2019 a white supremacist attacked two mosques in New Zealand and killed 51 and injured 49 people.

110. Many or all of these attacks received significant media coverage in the press and were, upon information and belief, known to SMITH & WESSON prior to April 2019.

111. The Poway Shooter's manifesto referenced both the Pennsylvania and New Zealand attackers by name and directly connects the Incident to the well-known lineage of anti-Semitic/hate-fueled gun violence.

112. A mass shooting motivated by anti-Semitic sentiments and committed by an individual like the Shooter utilizing a product like the Rifle as a result of being exposed to and motivated by SMITH & WESSON's marketing campaign and associated design choices was clearly foreseeable.

113. Upon information and belief, SMITH & WESSON chose not to take responsible steps to reform its business practices in order to minimize the foreseeable risk that its guns would be used in crime, including mass shootings.

114. SMITH & WESSON recognized that its revenues increased as a result of mass shootings.

115. Former SMITH & WESSON CEO James Debney observed after the Parkland school shooting that SMITH & WESSON was receiving reports of increased retail sales.

116. SMITH & WESSON's 2019 10-K filing recognized that speculation about the passage of gun violence prevention measures—speculation which often increases in the wake of a mass shooting—can “[o]ften . . . result in increased near-term consumer demand” for SMITH &

1 WESSON products.

2 117. SMITH & WESSON chose to put the pursuit of profit above its duty to take all
3 reasonable steps to not endanger public safety by enabling mass shootings like the Incident.

4 **II. SAN DIEGO GUNS UNLAWFULLY AND NEGLIGENTLY PLACED THE RIFLE**
5 **IN THE SHOOTER'S HANDS AND WAS A PROXIMATE CAUSE OF THE**
6 **SHOOTING.**

7 **A. SAN DIEGO GUNS Violated the Law By Selling the Shooter the Rifle.**

8 118. In applying for and receiving the privilege of obtaining a Federal Firearms
9 License, SAN DIEGO GUNS voluntarily assumed the duty to act as a “principal agent of federal
10 enforcement’ in ‘restricting [criminals’] access to firearms” and accepted “the responsibility to
11 ‘[e]nsure that, in the course of sales or other dispositions . . . , weapons [are not] obtained by
12 individuals whose possession of them would be contrary to the public interest.” *Abramski v.*
13 *United States*, 573 U.S. 169, 186, 190 (2014) (quoting *Huddleston v. United States*, 415 U.S. 814,
14 824-825 (1974)).

15 119. Part of the duty SAN DIEGO GUNS assumed when taking on the role of a
16 gatekeeper controlling public access to firearms was to learn and follow all relevant federal
17 and/or state laws so as not to transfer weapons to parties relevant legislatures had determined pose
18 an unreasonable threat to public safety.

19 120. SAN DIEGO GUNS violated this duty.

20 121. SAN DIEGO GUNS violated, at minimum, an applicable California law at the
21 time of the sale of the Rifle to the Shooter that prohibited the sale or transfer of a firearm by a
22 licensed dealer like SAN DIEGO GUNS to a person under the age of 21 absent various
23 exceptions. Cal. Pen. Code § 27510 (eff. Jan. 1, 2019).

24 122. The only exception which could have potentially applied to allow SAN DIEGO
25 GUNS to transfer the Rifle required the Shooter to be age 18 or over and to “possess[] a valid,
26 unexpired hunting license issued by the STATE OF CALIFORNIA, DEPARTMENT OF FISH
27 AND WILDLIFE .” Cal. Pen. Code § 27510(b)(1).

28 123. The Shooter entered SAN DIEGO GUNS and sought to purchase the Rifle on

1 April 13, 2019.

2 124. Upon information and belief, SAN DIEGO GUNS knew that the Shooter was 19
3 years old.

4 125. Upon information and belief, SAN DIEGO GUNS had actual or constructive
5 knowledge that the hunting license the Shooter presented was not valid for the purchase of any
6 firearms in April 2019.

7 126. To buy the Rifle, the Shooter showed SAN DIEGO GUNS a hunting license he
8 had obtained from the STATE OF CALIFORNIA, DEPARTMENT OF FISH AND WILDLIFE
9 on April 13, 2019.

10 127. The Shooter's hunting license, upon information and belief, did not go into effect
11 and was not valid until July 2019.

12 128. The hunting license the Shooter displayed to SAN DIEGO GUNS was invalid for
13 the April 2019 purchase of a firearm.

14 129. In the absence of seeing a valid hunting license, SAN DIEGO GUNS could not
15 lawfully sell the underage Shooter the Rifle.

16 130. However, despite knowing or having reason to know that the license was not valid
17 at the time of sale, SAN DIEGO GUNS unlawfully approved the purchase of the Rifle on April
18 13, 2019 and completed the transfer of the Rifle to the Shooter on April 26, 2019, the day before
19 the Incident.

20 131. SAN DIEGO GUNS sold the Shooter the assault-style semi-automatic Rifle, as
21 well as five additional ammunition magazines, on April 13, 2019.

22 132. SAN DIEGO GUNS also sold the Shooter at least three boxes of ammunition on
23 April 13, 2019.

24 133. By transferring a firearm to an individual under the age of 21 who had not
25 presented and did not possess a valid hunting license, SAN DIEGO GUNS knowingly and
26 directly violated Cal. Pen. Code § 27510 (eff. Jan. 1, 2019).

27 134. SAN DIEGO GUNS also violated additional state and/or federal firearms laws,
28

1 including but not necessarily limited to federal statutes regulating the sale of machineguns.

2 135. Had SAN DIEGO GUNS not violated the law, the Shooter would not have gained
3 access to the Rifle and been able to use it in the Incident the next day.

4 136. Laws like Cal. Pen. Code § 27510 seek to protect members of the general public
5 like Plaintiffs from the foreseeable likelihood that a dangerous party like the Shooter will misuse
6 a firearm to harm others and/or himself.

7 137. SAN DIEGO GUNS' violation of the law predictably resulted in precisely the type
8 of harm statutes like Cal. Pen. Code § 27510 seek to guard against—an unlawful act of gun
9 violence by a dangerous party.

10 138. SAN DIEGO GUNS' violation of the law proximately caused Plaintiffs' harm.

11 **B. SAN DIEGO GUNS Negligently Entrusted the Rifle to the Shooter.**

12 139. As an FFL, SAN DIEGO GUNS voluntarily assumed a duty to use reasonable care
13 and implement reasonable protocols to prevent the negligent or unlawful sale of firearms.

14 140. These protocols include but are not limited to:

- 15 a) in the event of being presented with an invalid, out-of-date or suspect
16 identification such as the Shooter's hunting license, calling the relevant
17 licensing authority—here, the STATE OF CALIFORNIA, DEPARTMENT
18 OF FISH AND WILDLIFE;
- 19 b) asking screening questions of an individual displaying an invalid, out-of-date
20 or suspect identification such as the Shooter's hunting license to verify that he
21 or she had a legitimate purpose for wanting the relevant firearm and had a
22 logical explanation for trying to use invalid, out-of-date or suspect
23 identification such as the Shooter's hunting license;
- 24 c) calling law enforcement to enable investigation into the circumstances of a
25 potential purchaser displaying invalid, out-of-date or suspect identification in
26 the event of any doubt as to the stability, intent or character of the potential
27 purchaser;
- 28

- d) screening young purchasers;
- e) screening purchasers of assault-style rifles;
- f) screening purchasers where circumstances are suspicious, such as a teenager wishing to buy an assault-style rifle, five ammunition magazines, and ammunition, with an invalid hunting license that was issued that day;
- g) declining or postponing the sale when there is reason to believe the purchaser is or may pose an unreasonable danger to himself or others.

141. A responsible gun dealer in SAN DIEGO GUNS' position would have inquired into the Shooter's intended use of the Rifle.

142. A responsible gun dealer in SAN DIEGO GUNS' position would have recognized that given all of the circumstances, the Shooter was not intending to use a semi-automatic assault-style rifle with five additional ammunition magazines for hunting or other legal purposes.

143. A responsible gun seller in SAN DIEGO GUNS' position would have used these and other protocols when the Shooter was attempting to purchase an AR-15 military-style rifle, with five additional ammunition magazines, and three boxes of ammunition, pursuant to an invalid hunting license, and denied the sale.

144. A responsible gun seller in SAN DIEGO GUNS' position would have alerted law enforcement immediately about the Shooter's attempted purchases.

145. A responsible business in SAN DIEGO GUNS' position would have also carefully trained all of its employees to follow these protocols and have reasonable systems in place to make sure they were followed.

146. Upon information and belief, SAN DIEGO GUNS violated these duties of reasonable care.

147. SAN DIEGO GUNS transferred the Rifle to the Shooter despite "red flags" showing his propensity to likely misuse the Rifle in a manner that would cause harm to third-parties and/or himself, including but not limited to the Shooter's youth, lack of a valid hunting license, desire to quickly purchase a highly lethal AR-15 style weapon and a large quantity of

1 magazines and ammunitions purportedly for hunting, and his purchasing the AR-15 on the same
2 day he had obtained a hunting license.

3 148. SAN DIEGO GUNS knew or had reason to know of the Shooter's potential to
4 misuse the Rifle in a dangerous manner causing harm to third-parties or himself.

5 149. As a proximate result of SAN DIEGO GUNS' negligent entrustment the Shooter
6 was able to arm himself for an assault on Plaintiffs.

7 **III. SMITH & WESSON AND ALL DOE DEFENDANTS NEGLIGENTLY SOLD**
8 **AND DISTRIBUTED THE RIFLE AND WERE A PROXIMATE CAUSE OF THE**
9 **SHOOTING.**

10 150. All Gun Company Defendants owed members of the general public, including
11 Plaintiffs, the highest possible duty of care when transferring firearms to downstream
12 distributors/sellers.

13 151. One facet of this duty included ensuring that downstream distributors and sellers—
14 including SAN DIEGO GUNS—acted lawfully or responsibly when selling products like the
15 Rifle.

16 152. This obligation included, but is not limited to requiring responsible business
17 practices by all downstream sellers, including appropriate screening of buyers and following all
18 applicable laws, and refusing to sell to any downstream distributors or sellers who have not been
19 verified as having and complying with adequate safeguards.

20 153. SMITH & WESSON and DOE Defendants violated their duty to reasonably
21 distribute and sell firearms by properly monitoring and requiring sale and legal business practices
22 by downstream sellers.

23 154. In the 2000 Settlement Agreement SMITH & WESSON agreed that monitoring
24 and ceasing sales to downstream distributors and sellers that did not appear to be acting
25 responsibly and safely when distributing or selling its products was part of its duties as a
26 responsible firearms manufacturer.

27 155. Upon information and belief, had SMITH & WESSON and/or various DOE
28 Defendants responsibly acted to vet and monitor downstream distributors/sellers including

various other DOE Defendants and/or SAN DIEGO GUNS leading up to April 13, 2019, the Rifle would not have been transferred to the Shooter.

IV. NON-GUN COMPANY DEFENDANTS, STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE, J.A. EARNEST AND L.C. EARNEST AND EARNEST’S NEGLIGENCE ALSO PROXIMATELY CAUSED THE SHOOTING.

156. The Shooter exhibited a deep hatred of the Jewish people and planned the attack on worshippers at the Chabad of Poway synagogue at least weeks in advance.

157. On April 9, 2019, the Shooter made several purchases on Amazon for tactical equipment, including an ammunition holder worn across the chest, a military-style duffel bag, a “GoPro” camera, a tactical helmet, and other items.

158. In April 2019, the Shooter, aged 19, arranged to purchase and acquire a Smith & Wesson M&P 15, an AR-15 style semiautomatic weapon (“Rifle”) bearing a serial number ending in 950, and a large amount of ammunition.

159. On Saturday, April 27, 2019, the Shooter drove to Chabad of Poway and parked his 2012 Honda Civic on an adjacent street.

160. Dressed in tactical gear and armed with the loaded assault-style Rifle and five magazines of ammunition, the Shooter entered the synagogue and opened fire.

161. Inside the foyer of the temple, the Shooter shot and killed a congregant, Lori Gilbert-Kaye. The Shooter then shot Plaintiff GOLDSTEIN, striking him in both hands. Plaintiff N.D. was struck by shrapnel in her face and leg.

162. As a result of the incident, Plaintiffs GOLDSTEIN and N.D. sustained gunshot-related injuries and all Plaintiffs have suffered severe pain and suffering and emotional distress.

163. After firing several rounds, the Shooter had trouble reloading his weapon and a congregant rushed towards him, causing him to retreat and preventing additional casualties.

164. An off-duty United States Border Patrol agent fired on the Shooter’s car as he sped away.

165. The Shooter called 911 from his car and stated, “I just shot up a synagogue. I’m defending my country...the Jewish people are destroying the white race,” before surrendering to

1 police.

2 166. The Shooter's hateful attack with an AR-15 style weapon like the Rifle was both
3 entirely foreseeable and entirely preventable.

4 167. All Defendants other than the Shooter thus had actual or constructive knowledge
5 of the risk that their actions/omissions might enable hateful individuals exactly like the Shooter to
6 arm themselves with weapons like the Rifle and transform their genocidal fantasies into lethal
7 realities.

8 168. Non-Gun Company Defendants – including but not limited to the governmental
9 actors and members of the Shooter's family named as Defendants in this complaint – acted
10 negligently, intentionally and/or unlawfully in ways that predictably enabled the Shooter to
11 acquire the Rifle and engage in the attack.

12 169. These actors all directly and proximately caused Plaintiffs' injuries.

13 **FIRST CAUSE OF ACTION³**

14 **PRODUCT LIABILITY—DEFECTIVE DESIGN**

15 **(Against Defendants AMERICAN OUTDOOR BRANDS CORPORATION, SMITH &**
16 **WESSON BRANDS, INC., SAN DIEGO GUNS, and DOE Defendants)**

17 170. Plaintiffs incorporate each allegation contained in this Complaint as though set
18 forth herein in full.

19 171. AMERICAN OUTDOOR BRANDS CORPORATION, acting through its
20 subsidiary SMITH & WESSON BRANDS INC. and SMITH & WESSON BRANDS, INC, itself,
21 manufactured, designed, distributed and sold the Rifle, and DOE Defendants distributed the Rifle,
22 and SAN DIEGO GUNS sold the Rifle.

23 172. The Rifle was designed to be easily modified into an assault rifle prohibited under
24 California law. Cal. Pen. Code §§ 30515(a)(1)(A); 30605.

25 _____
26 ³ On July 2, 2021, the Court issued an order sustaining Defendants SMITH & WESSON
27 BRANDS, INC.'S and SAN DIEGO GUNS demurrers as to the product liability cause of action,
28 without leave to amend. *See* Order, pp. 5, 6, 9 (July 2, 2021). Plaintiffs recognize that this claim
has been involuntarily dismissed and only leave this cause of action in place out of an abundance
of caution to ensure their appellate rights are preserved.

173. The Rifle was designed to be easily modified to fire automatically, prohibited under federal law unless sold in compliance with the federal National Firearms Act (“NFA”).

174. The Rifle was defective in that the risks of its design outweighed any benefits of the design; and a safer alternative design was feasible at the time of manufacture.

175. It was reasonably foreseeable to SMITH & WESSON that, as a result of its defective design, purchasers like the Shooter would modify the Rifle to be more effective for mass shootings and other crimes, at a minimum, by removing or modifying the grip cover to utilize the pistol grip, using the gun as a prohibited assault weapon under California law; that the gun would be modified to fire automatically; and that the gun would then be used in mass shootings.

176. As a direct and foreseeable result of Defendants’ defective design, Plaintiffs GOLDSTEIN and N.D. were seriously injured, and will continue to suffer pain and anguish, limited range of motion, reduced capacity to carry, hold or lift, and will continue to require future and further medical treatment.

177. As a direct and foreseeable result of Defendants’ defective design, all Plaintiffs have suffered, and continue to suffer, great pain of mind and body, shock, severe and persistent emotional distress, physical manifestations of emotional distress, loss of enjoyment of life, loss of earnings and earning capacity, and incurred substantial expenses for medical and psychological treatment, therapy and counseling and other economic and/or noneconomic damages in amounts in excess of the jurisdictional limits of this Court.

178. Plaintiffs are entitled to relief based on a theory of products liability.

SECOND CAUSE OF ACTION

UNFAIR AND UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF THE UCL **(Against Defendants AMERICAN OUTDOOR BRANDS CORPORATION and SMITH & WESSON BRANDS, INC.)**

179. Plaintiffs incorporate each allegation contained in this Complaint as though set forth herein in full.

1 180. AMERICAN OUTDOOR BRANDS CORPORATION, through its subsidiary
2 SMITH & WESSON BRANDS, INC. and SMITH & WESSON BRANDS, INC. itself, engaged
3 in a marketing campaign associating products like the Rifle with United States military and/or
4 law enforcement personnel to create the false impression that its products were utilized and/or
5 endorsed by these respected, formidable forces, and that targeted a class of consumers at
6 particular risk to use assault firearms for mass shootings.

7 181. SMITH & WESSON engaged in a marketing campaign targeting youth with
8 advertisements over social media and through videogame-like commercials despite the known
9 risks that young people in that demographic are highly susceptible to that type of advertising and
10 have disproportionately perpetrated mass shootings using similar firearms.

11 182. SMITH & WESSON's marketing violated California's prohibition on "deceptive,
12 untrue or misleading advertising" (see Cal. Bus. & Prof. Code § 17200).

13 183. This association between SMITH & WESSON products and military and/or law
14 enforcement personnel is misleading and false.

15 184. SMITH & WESSON targeting its marketing campaign at youth is unfair and
16 unlawful.

17 185. SMITH & WESSON marketed its firearms in a way that attracted and enabled
18 dangerous persons like the Shooter.

19 186. SMITH & WESSON's unlawful marketing foreseeably caused the Shooter to
20 select and utilize the Rifle to try to complete his twisted, delusional self-image as a heroic warrior
21 fighting what he wrongly believed was a noble war.

22 187. SMITH & WESSON's violation of the UCL and potentially other California
23 and/or federal laws applicable to the sale and/or marketing of firearms thus directly and
24 proximately caused Plaintiffs' harm, including Plaintiffs' economic injury in the form of medical
25 expenses and lost monetary earnings exceeding tens of thousands of dollars.

26 188. Plaintiffs, as a result of, *inter alia*, medical treatment necessitated by the Incident,
27 have been forced to enter into transactions costing a significant amount of money that would have
28

1 been unnecessary but for the Defendants' misconduct in violation of the UCL.

2 189. SMITH & WESSON, upon information and belief, continues to act in violation of,
3 at minimum, the UCL by continuing to perpetuate the irresponsible, misleading and/or unlawful
4 advertising described above.

5 190. These actions continue to pose a threat to all members of the public, including
6 Plaintiffs.

7 191. Plaintiffs are entitled, under the UCL, at a minimum, to injunctive relief, on behalf
8 of all members of the public, prohibiting SMITH & WESSON from falsely representing its
9 products as being commonly used by, endorsed by or associated with United States military/law
10 enforcement personnel and unfairly and unlawfully targeting youth in their marketing.

11 **THIRD CAUSE OF ACTION**

12 **NEGLIGENCE**

13 **(Against Defendants AMERICAN OUTDOOR BRANDS CORPORATION, SMITH &**
14 **WESSON BRANDS, INC., SAN DIEGO GUNS and DOE Defendants)**

15 192. Plaintiffs incorporate each allegation contained in this Complaint as though set
16 forth herein in full.

17 193. AMERICAN OUTDOOR BRANDS CORPORATION, acting through its
18 subsidiary SMITH & WESSON BRANDS, INC., SMITH & WESSON BRANDS, INC., SAN
19 DIEGO GUNS, and DOE Defendants, had, at all relevant times, a duty to design, market and sell
20 their firearms using the highest degree of care to minimize the risk of these weapons falling into
21 the hands of dangerous individuals like the Shooter and being used to cause harm to others.

22 194. SMITH & WESSON breached this duty, and failed to use even reasonable care,
23 by:

- 24 a) designing a firearm that could be easily modified, including to become an
25 assault weapon prohibited under California law, and to fire automatically,
26 effectively prohibited to sell to the general public under federal law (unless the
27 NFA's requirements were followed);
28

- b) engaging in a reckless, deceptive and unlawful advertising campaign that attracted a dangerous category of consumers including the Shooter;
- c) distributing and selling the Rifle to the general public in an unreasonably dangerous manner that failed to include safeguards, monitoring, or conditions to minimize the risk that it would be obtained and used by persons like the Shooter.

195. SMITH & WESSON negligently designed the Rifle, negligently marketed the Rifle, and negligently distributed the Rifle.

196. SAN DIEGO GUNS was also subject, at all times, to a common law duty to exercise the highest degree of care in supplying members of the general public with firearms.

197. Upon information and belief, SAN DIEGO GUNS violated these duties of care.

198. Upon information and belief, SAN DIEGO GUNS did not use reasonable care in its sales to the Shooter, did not have appropriate safety protocols, and had not effectively trained its employees to follow these protocols.

199. Upon information and belief, had SAN DIEGO GUNS used reasonable care, it would not have approved the Shooter's purchase of the Rifle on April 13, 2019 and would not have transferred the Rifle to the Shooter on April 26, 2019.

200. As a result, the Shooter would not have been in possession of the Rifle on April 27, 2019 and could not have used it to harm Plaintiffs.

201. Defendants' violations of their duties of reasonable care proximately caused Plaintiffs' harm by foreseeably placing the Rifle in the hands of a dangerous individual (the Shooter) either directly or indirectly.

202. The result of Defendants' violation of their duty of care – a mass shooting committed by a consumer like the Shooter with a weapon like the Rifle – was eminently foreseeable.

203. SAN DIEGO GUNS and DOE Defendants negligently sold and distributed the Rifle.

205. As a direct and foreseeable result of Defendants' breach of these duties of care, all Plaintiffs have suffered, and continue to suffer, great pain of mind and body, shock, severe and persistent emotional distress, physical manifestations of emotional distress, loss of enjoyment of life, loss of earnings and earning capacity, and incurred substantial expenses for medical and psychological treatment, therapy and counseling and other economic and/or noneconomic damages in amounts in excess of the jurisdictional limits of this Court.

11 || 206. As a result, Plaintiffs are entitled to recover under a theory of negligence.

FOURTH CAUSE OF ACTION

NEGLIGENCE PER SE

(Against Defendant SAN DIEGO GUNS)

15 207. Plaintiffs incorporate each allegation contained in this Complaint as though set
16 forth herein in full.

17 || 208. Violation of a statutory standard of care can constitute negligence.

18 209. SAN DIEGO GUNS violated laws applicable to the sale or marketing of
19 firearms— including but not limited to Cal. Pen. Code § 27510—either directly or as an
20 accomplice.

21 210. By selling the Rifle to the Shooter with actual and/or constructive knowledge that
22 the Shooter was under the age of 21 and lacked a valid hunting license, SAN DIEGO GUNS
23 violated, at minimum, Cal. Pen. Code § 27510.

24 211. Cal. Pen. Code § 27510 and other potentially applicable state and/or federal
25 firearms laws are designed to protect all members of the general public—including Plaintiffs—
26 from the foreseeable harm that results when dangerous possessors like the Shooter gain access to
27 lethal weapons.

212. Plaintiffs were within the class of people Cal. Pen. Code § 27510 and/or other potentially applicable state and/or federal firearms laws are designed to protect.

213. Cal. Pen. Code § 27510 and other potentially applicable state and/or federal firearms laws are also designed to prevent precisely the type of harm Plaintiffs predictably suffered as a result of SAN DIEGO GUNS arming a dangerous individual—shooting-related injuries/trauma resulting from a dangerous individual’s use of a firearm in an unlawful act of violence.

214. As a direct and foreseeable result of Defendant SAN DIEGO GUNS’ breach of duties imposed by one or more statutes regulating the sale and/or marketing of firearms, Plaintiffs GOLDSTEIN and N.D. were seriously injured, and will continue to suffer pain and anguish, limited range of motion, reduced capacity to carry, hold or lift, and will continue to require future and further medical treatment.

215. As a direct and foreseeable result of Defendant SAN DIEGO GUNS’ breach of these statutory duties, all Plaintiffs have suffered, and continue to suffer, great pain of mind and body, shock, severe and persistent emotional distress, physical manifestations of emotional distress, loss of enjoyment of life, loss of earnings and earning capacity, and incurred substantial expenses for medical and psychological treatment, therapy and counseling and other economic and/or noneconomic damages in amounts in excess of the jurisdictional limits of this Court.

216. As a result, Plaintiffs are entitled to recover under a theory of negligence per se.

FIFTH CAUSE OF ACTION

NEGLIGENT ENTRUSTMENT

(Against Defendant SAN DIEGO GUNS)

217. Plaintiffs incorporate each allegation contained in this Complaint as though set forth herein in full.

218. SAN DIEGO GUNS negligently entrusted the Rifle, five ammunition magazines, and ammunition to the Shooter, a reckless person.

219. SAN DIEGO GUNS knew or had reason to know, based on the circumstances of

1 the sale, that the Shooter was likely to use the Rifle in a manner involving unreasonable risk of
2 physical injury to himself or others.

3 220. SAN DIEGO GUNS violated its duty to not entrust the Rifle where there is a
4 foreseeable risk of misuse by incompetent or reckless parties.

5 221. Had SAN DIEGO GUNS not negligently entrusted the Rifle, the Shooter would
6 not have been in possession of the Rifle in April 2019 and could not have used it to injure
7 plaintiffs.

8 222. As a direct and foreseeable result of Defendant SAN DIEGO GUNS' negligent
9 entrustment, Plaintiffs GOLDSTEIN and N.D. were seriously injured, and will continue to suffer
10 pain and anguish, limited range of motion, reduced capacity to carry, hold or lift, and will
11 continue to require future and further medical treatment.

12 223. As a direct and foreseeable result of Defendant SAN DIEGO GUNS' negligent
13 entrustment, all Plaintiffs have suffered, and continue to suffer, great pain of mind and body,
14 shock, severe and persistent emotional distress, physical manifestations of emotional distress, loss
15 of enjoyment of life, loss of earnings and earning capacity, and incurred substantial expenses for
16 medical and psychological treatment, therapy and counseling and other economic and/or
17 noneconomic damages in amounts in excess of the jurisdictional limits of this Court.

18 224. Plaintiffs are entitled to relief under a theory of negligent entrustment.

19 **SIXTH CAUSE OF ACTION**

20 **PUBLIC NUISANCE**

21 **(Against Defendants AMERICAN OUTDOOR BRANDS CORPORATION, SMITH &**
22 **WESSON BRANDS, INC., SAN DIEGO GUNS and DOE Defendants)**

23 225. Plaintiffs incorporate each allegation contained in this Complaint as though set
24 forth in full herein.

25 226. California defines a nuisance as anything which is "injurious to health . . . or is
26 indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere
27 with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or
28

1 use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any
2 public park, square, street, or highway.” Cal. Civ. Code § 3479.

3 227. “A public nuisance is one which affects at the same time an entire community or
4 neighborhood, or any considerable number of persons, although the extent of the annoyance or
5 damage inflicted upon individuals may be unequal.” § 3480.

6 228. AMERICAN OUTDOOR BRANDS CORPORATION (acting through its
7 subsidiary, SMITH & WESSON BRANDS, INC.), SMITH & WESSON BRANDS, INC., SAN
8 DIEGO GUNS, and all DOE Defendants, like all people and entities doing business in California,
9 had a duty not to engage in activity creating a public nuisance.

10 229. AMERICAN OUTDOOR BRANDS CORPORATION (acting through its
11 subsidiary, SMITH & WESSON BRANDS, INC.), SMITH & WESSON BRANDS, INC., SAN
12 DIEGO GUNS, and all DOE Defendants violated this duty.

13 230. SAN DIEGO GUNS violated this duty by adopting a practice selling firearms to
14 purchasers in illegal and/or negligent ways that enhanced the risk of unlawful violence to
15 members of the California community. This practice posed a significant risk to the health and
16 enjoyment of life of all members of the California community, interfered with their use of private
17 and public property and made public walkways and highways substantially more hazardous.

18 231. SMITH & WESSON’s marketing, design, and distribution of its weapons made it
19 especially likely that members of the dangerous class of consumers to which the Shooter
20 belonged would acquire and use particularly dangerous weapons like the Rifle in unlawful acts of
21 violence, posed a significant risk to the health and enjoyment of life of all members of the
22 California community, interfered with their use of private and public property and made public
23 walkways and highways substantially more hazardous, and constitutes a public nuisance under
24 California law.

25 232. Plaintiffs were uniquely injured in a special manner distinct from any harm
26 suffered by other members of the public because they endured significant bodily and/or
27 psychological trauma as a result of SAN DIEGO GUNS’s creation of a public nuisance.
28

1 233. Upon information and belief, SAN DIEGO GUNS has not changed the illegal
2 and/or negligent sales practices creating a public nuisance in any substantial way since the time of
3 the sale of the Rifle to the Shooter.

4 234. As a result, Plaintiffs are entitled to an injunction requiring SAN DIEGO GUNS
5 so as to reform these practices and/or cease operations in order to stop creating an ongoing public
6 nuisance (in addition to any monetary damages for which SAN DIEGO GUNS may be liable).

7 235. Plaintiffs endured a special injury in a manner separate and distinct from other
8 members of the public because they suffered significant bodily and/or psychological harm as a
9 result of SMITH & WESSON's creation of a public nuisance.

10 236. Upon information and belief, SMITH & WESSON continues its deceptive and
11 dangerous marketing, design, distribution and sales of military-style weapons.

12 237. As a result, Plaintiffs are entitled to an injunction requiring SMITH & WESSON
13 and DOE Defendants to reform these practices in order stop creating an ongoing public nuisance
14 (in addition to any monetary damages for which they may be liable).

15 238. Specifically, as a direct and foreseeable result of Defendants SAN DIEGO GUNS
16 and SMITH & WESSON's creation of a public nuisance, Plaintiffs GOLDSTEIN and N.D. were
17 seriously injured, and will continue to suffer pain and anguish, limited range of motion, reduced
18 capacity to carry, hold or lift, and will continue to require future and further medical treatment.

19 239. As a direct and foreseeable result of Defendants SAN DIEGO GUNS and SMITH
20 & WESSON's creation of a public nuisance, all Plaintiffs have suffered, and continue to suffer,
21 great pain of mind and body, shock, severe and persistent emotional distress, physical
22 manifestations of emotional distress, loss of enjoyment of life, loss of earnings and earning
23 capacity, and incurred substantial expenses for medical and psychological treatment, therapy and
24 counseling and other economic and/or noneconomic damages in amounts in excess of the
25 jurisdictional limits of this Court.

26 **SEVENTH CAUSE OF ACTION**

27 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

(Against Defendant JOHN T. EARNEST)

240. Plaintiffs incorporate each allegation contained in this Complaint as though set forth herein in full.

241. With malicious intent, EARNEST applied for and acquired the Rifle using an invalid hunting license with the express intention of committing a murderous hate crime and in furtherance thereof fired several bullets inside the Chabad of Poway synagogue, killing one person and injuring several. EARNEST targeted Plaintiffs for one reason: they were Jewish.

242. The foregoing conduct was deliberate and outrageous and the intent to cause Plaintiffs unfathomable emotional distress.

243. As a direct and proximate result of EARNEST's intentional act, Plaintiffs GOLDSTEIN and N.D. were seriously injured, in body and mind, and will continue to suffer pain and anguish, loss of limb, limited range of motion, reduced capacity to carry, hold or lift, and will continue to require future and further medical treatment.

244. As a direct and proximate result of Defendant EARNEST's intentional act, all Plaintiffs have suffered, and continue to suffer, great pain of mind and body, shock, severe and persistent emotional distress, physical manifestations of emotional distress, loss of enjoyment of life, loss of earnings and earning capacity, and incurred substantial expenses for medical and psychological treatment, therapy and counseling and other economic and/or noneconomic damages in amounts in excess of the jurisdictional limits of this Court.

EIGHTH CAUSE OF ACTION

ASSAULT AND BATTERY

(Against Defendant JOHN T. EARNEST)

245. Plaintiffs incorporate each allegation contained this Complaint as though set forth herein in full.

246. With malicious intent, EARNEST fired several bullets inside the Chabad of Poway synagogue, killing Lori Gilbert-Kaye and injuring Plaintiffs GOLDSTEIN and N.D.

247. As a direct and proximate result of EARNEST's unlawful act, Plaintiffs

1 GOLDSTEIN and N.D. were seriously injured, including loss of limb, physical wound and will
2 continue to suffer pain and anguish, limited range of motion, reduced capacity to carry, hold or
3 lift, and will continue to require future and further medical treatment.

4 248. As a direct and proximate result of EARNEST's unlawful act, all Plaintiffs have
5 suffered, and continue to suffer, great pain of mind and body, loss of limb, shock, emotional
6 distress, physical manifestations of emotional distress, loss of enjoyment of life, loss of earnings
7 and earning capacity, and incurred substantial expenses for medical and psychological treatment,
8 therapy and counseling and other economic and/or noneconomic damages in amounts in excess of
9 the jurisdictional limits of this Court.

10 **NINTH CAUSE OF ACTION**

11 **NEGLIGENCE AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

12 **(Against Defendant JOHN T. EARNEST)**

13 249. Plaintiffs incorporate all paragraphs of this complaint as if fully set forth herein.

14 250. EARNEST, like all people who apply to purchase a firearm in California, had a
15 duty not to engage in activity creating an unreasonable risk of harm to others, and to utilize the
16 firearm in a reasonable manner.

17 251. EARNEST breached this duty of care to all Plaintiffs by applying for and
18 acquiring a firearm based on an invalid hunting license in a negligent fashion and representing
19 that it was valid when he applied for and obtained the Rifle.

20 252. EARNEST further breached the standard of care owed to Plaintiffs when he
21 entered the Chabad of Poway synagogue after negligently using the Rifle in a careless,
22 indiscriminate and reckless manner. Such conduct directly led to the substantial injury including
23 physical and emotional harm to all Plaintiffs herein.

24 253. PLAINTIFFS are informed and believe and thereon allege that based on the matter
25 in which EARNEST brandished and fired the Rifle, knew or should have known, that could lead
26 to significant harm to the members of Chabad of Poway on April 27, 2019.

27 254. It was entirely foreseeable that EARNEST's breach of the duty of care owed to
28

1 Plaintiffs would cause significant injury and/or death to the group of PLAINTIFFS present at the
2 Chabad of Poway on April 27, 2019.

3 255. As a direct and proximate cause of EARNEST's negligent and reckless acts or
4 omissions set forth herein, Plaintiffs GOLDSTEIN and N.D. were negligently struck by bullets,
5 shrapnel or other causing amputation and other serious physical injury, and will continue to suffer
6 pain and anguish, loss of limb, limited range of motion, reduced capacity to carry, hold or lift, and
7 will continue to require future and further medical treatment.

8 256. As a direct and proximate result of EARNEST's negligent and reckless acts or
9 omissions set forth herein, all Plaintiffs have suffered, and continue to suffer, great pain of mind
10 and body, shock, loss of limb, emotional distress, physical manifestations of emotional distress,
11 loss of enjoyment of life, loss of earnings and earning capacity, and incurred substantial expenses
12 for medical and psychological treatment, therapy and counseling and other economic and/or
13 noneconomic damages in amounts in excess of the jurisdictional limits of this Court.

14 **TENTH CAUSE OF ACTION**

15 **NEGLIGENCE AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

16 **(Against Defendants JOHN A. EARNEST and LISA C. EARNEST)**

17 257. Plaintiffs incorporate each allegation contained this Complaint as though set forth
18 herein in full.

19 258. Plaintiffs are informed and believe and thereon allege that Defendants J.A.
20 EARNEST and L.C. EARNEST had the ability to monitor and control their son, JOHN T.
21 EARNEST and did in fact do so because:

- 22 • JOHN T. EARNEST lived with Defendants J.A. EARNEST and L.C. EARNEST
23 in their single-story residence in Rancho Peñasquitos in San Diego County, where
24 he shared a bedroom with his brother and prescribed his daily routine;
- 25 • JOHN T. EARNEST was financially and physically dependent on and supported
26 by Defendants J.A. EARNEST and L.C. EARNEST, who provided him with
27 shelter, food, transportation and a daily work/school schedule and financial
28

1 assistance;

- 2 • Defendants J.A. EARNEST and L.C. EARNEST accessed JOHN T. EARNEST's
- 3 room, computer and personal property; and
- 4 • Defendants J.A. EARNEST and L.C. EARNEST had actual or constructive
- 5 knowledge about JOHN T. EARNEST's vitriolic hatred of people of the Jewish
- 6 faith.

7 259. Defendants J.A. EARNEST and L.C. EARNEST owed a duty of care to Plaintiffs

8 to not furnish, provide and/or supply JOHN T. EARNEST with support and/or instrumentalities

9 which would foreseeably lead to Plaintiffs' injuries, loss of limb or death, and to take affirmative

10 actions to prevent such foreseeable injury and/or death.

11 260. Plaintiffs are informed and believe and thereon allege that Defendants J.A.

12 EARNEST and L.C. EARNEST owed a duty of care to Plaintiffs/victims of the April 27, 2019

13 shooting because:

- 14 • They acquired or assisted with the acquisition of ammunition used by JOHN T.
- 15 EARNEST during the shooting;
- 16 • They acquired or assisted with the acquisition—through an Amazon account—of
- 17 military type clothing (fatigues) that JOHN T. EARNEST wore during the
- 18 shooting to avoid detection;
- 19 • They acquired or assisted with the acquisition of the Rifle used by JOHN T.
- 20 EARNEST against the victims/Plaintiffs in the attack;
- 21 • They acquired or assisted with the acquisition—through an Amazon account—of
- 22 body armor, a protective helmet and a scope all utilized by JOHN T. EARNEST in
- 23 the attack;
- 24 • They allowed JOHN T. EARNEST to store the Rifle and other tactical gear and
- 25 equipment at their residence;
- 26 • They had actual or constructive knowledge that JOHN T. EARNEST did not have
- 27 a valid hunting license and therefore illegally obtained the Rifle;
- 28

- They had actual or constructive knowledge that JOHN T. EARNEST never displayed a prior interest in hunting—an indication that the acquisition of the Rifle, ammunition and tactical gear was not for hunting;
- They had actual or constructive knowledge of JOHN T. EARNEST’s vitriolic hatred of the people of the Jewish faith based on anti-Semitic comments he made to them and other members of their family and friends;
- They had actual or constructive knowledge that JOHN T. EARNEST frequently used a computer at home to play violent video games, post hate-filled messages online, and draft a manifesto describing his hatred of Jews and signaling his attack on Plaintiffs;
- Upon information and belief, they had actual or constructive knowledge of the manifesto’s existence and content prior to the Incident;
- Upon information and belief, they had actual or constructive knowledge that JOHN T. EARNEST displayed violent tendencies and expressed anti-Semitic beliefs, particularly because JOHN T. EARNEST attended the same high school where J.A. EARNEST was employed as a teacher;
- Upon information and belief, they had actual or constructive knowledge that the Chabad of Poway synagogue was a short ten to fifteen-minute drive from their Rancho Peñasquitos residence; and
- Upon information and belief, they had actual or constructive knowledge that the suspect sought in connection with the arson of a mosque in Escondido, California on or around March 24, 2019 drove away in a 2012 Honda Civic, that Defendants J.A. EARNEST and L.C. EARNEST owned a 2012 Honda Civic, and that the mosque was similarly a short ten to fifteen-minute drive from their Rancho Peñasquitos residence.

261. Defendants J.A. EARNEST and L.C. EARNEST breached this duty of care owed to Plaintiffs and the victims of the Incident by failing to act as reasonable individuals under the

1 same or similar circumstances. Despite their knowledge of JOHN T. EARNEST's violent
2 propensities and hatred towards the Jewish people:

- 3 • They allowed their JOHN T. EARNEST to store his Rifle at the family residence;
- 4 • They provided JOHN T. EARNEST with financial support, including funds to
- 5 purchase the Rifle, ammunition and other instrumentalities used in the Incident;
- 6 • They failed to warn any of JOHN T. EARNEST's likely victims or the police of an
- 7 impending attack; and
- 8 • They failed to take any affirmative action to protect the Plaintiffs or to alert the
- 9 authorities.

10 262. As a direct and proximate result of Defendants J.A. EARNEST and L.C.
11 EARNEST's breach of this duty of care owed to Plaintiffs and the victims of the Incident, under
12 the same or similar circumstances, Plaintiffs have suffered severe physical and emotional harm.
13 This breach is the factual and legal cause of Plaintiffs' harm because Defendants J.A. EARNEST
14 and L.C. EARNEST:

- 15 • Failed to exercise reasonable care which increased the harm to all of the Plaintiffs;
- 16 and
- 17 • But for their failure to exercise reasonable care, JOHN T. EARNEST would not
- 18 have had the opportunity nor the instrumentalities to harm the victims/Plaintiffs
- 19 herein.

20 263. As a direct and proximate result of Defendants J.A. EARNEST and L.C.
21 EARNEST's breach of this duty of care owed to Plaintiffs, Plaintiffs GOLDSTEIN and N.D.
22 were negligently struck by bullets, shrapnel or other causing amputation and other serious
23 physical injury, and will continue to suffer pain and anguish, limited range of motion, reduced
24 capacity to carry, hold or lift, and will continue to require future and further medical treatment.

25 264. As a direct and proximate result of Defendants J.A. EARNEST and L.C.
26 EARNEST's breach of this duty of care owed to Plaintiffs, all Plaintiffs have suffered, and
27 continue to suffer, great pain of mind and body, shock, emotional distress, physical
28

1 manifestations of emotional distress, loss of enjoyment of life, loss of earnings and earning
2 capacity, and incurred substantial expenses for medical and psychological treatment, therapy and
3 counseling and other economic and/or noneconomic damages in amounts in excess of the
4 jurisdictional limits of this Court.

5 **ELEVENTH CAUSE OF ACTION**

6 **NEGLIGENCE AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

7 **(Against Defendant CALIFORNIA DEPARTMENT OF JUSTICE)**

8 265. Plaintiffs incorporate each allegation contained this Complaint as though set forth
9 herein in full.

10 266. The California Tort Claims Act authorizes tort claims against the State. Cal. Gov.
11 Code §§ 815.2, 815.6.

12 267. Pursuant to Cal. Gov. Code § 911.2, all Plaintiffs herein complied with the 180-
13 day governmental tort notice requirement prior to filing this complaint, thereby exhausting their
14 administrative remedies.

15 268. At all relevant times, Defendant STATE OF CALIFORNIA, DEPARTMENT OF
16 JUSTICE owed a mandatory duty to comply with applicable statutes, regulations, and rules
17 related to the control of deadly weapons, Part 6 of the Cal. Pen. Code.

18 269. Defendant STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE breached
19 this mandatory duty when its employee or employees negligently failed to comply with Pen. Code
20 section 28220.

21 270. Plaintiffs are informed and believe and thereon allege that the STATE OF
22 CALIFORNIA, through its DEPARTMENT OF JUSTICE, owed and breached its mandatory
23 duty of care to the victims/Plaintiffs by failing to comply with Pen. Code section 28220 for the
24 following reasons:

- 25 • The California Legislature has enacted statutes regulating the purchase and
26 disposition of firearms to protect the general public. Plaintiffs are among the class
27 of persons for whose benefit these statutes were enacted;
28

- Defendant DEPARTMENT OF JUSTICE holds nondiscretionary, nondelegable duties mandated by law regarding the administration, application, compliance, oversight, background check and issuance of firearms pursuant to Cal. Pen. Code § 28220(a);
- The “hunting license loophole” through which the Shooter was able to obtain the Rifle was a newly enacted provision of Cal. Pen. Code § 27510 effective as of January 1, 2019;
- California law requires a prospective purchaser of a firearm to submit an application to purchase that firearm (known as a DEPARTMENT OF JUSTICE “Dealer Record of Sale” or “DROS” form) through a licensed dealer. The licensed dealer then submits the DROS form electronically to Defendant DEPARTMENT OF JUSTICE, which must determine whether the individual is prohibited from “possessing, receiving, owning, or purchasing a firearm.” Cal. Pen. Code § 28220;
- The Shooter completed a hunter education course and obtained a hunting license from the DEPARTMENT OF FISH AND WILDLIFE on April 13, 2019. The same day, the Shooter drove to the Defendant SAN DIEGO GUNS gun store. On information and belief, the Shooter presented the hunting license to Defendant SAN DIEGO GUNS, applied to purchase a firearm, and paid for the Rifle;
- The hunting license the Shooter presented to Defendant SAN DIEGO GUNS was not valid until July 1, 2019; and
- On information and belief, the Shooter’s hunting license, documents relating to the hunting license, and/or information relating to the hunting license were part of the Defendant DEPARTMENT OF JUSTICE’s records at the time the DEPARTMENT OF JUSTICE received the Shooter’s prospective firearm purchaser information in April 2019, specifically, when the DEPARTMENT OF JUSTICE received its own “DROS” form from Defendant SAN DIEGO GUNS;
- On information and belief, the DROS form submitted by Defendant SAN DIEGO

1 GUNS to Defendant DEPARTMENT OF JUSTICE contained information
2 informing the DEPARTMENT OF JUSTICE that the Shooter sought to obtain the
3 Rifle using a hunting license pursuant to Cal. Pen. Code § 27510, a hunting license
4 which was not valid;

- 5 • California law also requires a 10-day waiting or “cooling off” period before a
6 firearm can be delivered to a buyer. Cal. Pen. Code §§ 26815, 27540. During this
7 10-day period, Defendant DEPARTMENT OF JUSTICE conducts a state and
8 national background check on the prospective buyer to determine whether they are
9 prohibited by law from purchasing or possessing a firearm. If Defendant
10 DEPARTMENT OF JUSTICE is unable to determine a prospective buyer’s
11 eligibility to purchase or possess a firearm within 10 days, it must notify the
12 licensed dealer to delay the sale. Cal. Pen. Code § 28220 (f)(1)(A). If a person is
13 ineligible to purchase or possess a firearm, Defendant DEPARTMENT OF
14 JUSTICE must notify the licensed dealer and local police chief. Cal. Pen. Code §
15 28220(c);
- 16 • On April 26, 2019, following a 10-day waiting period, the Shooter retrieved the
17 Rifle from Defendant SAN DIEGO GUNS.

18 271. PLAINTIFFS are informed and believe and thereon allege that Defendant STATE
19 OF CALIFORNIA, through its DEPARTMENT OF JUSTICE, breached its duty of care to
20 Plaintiffs/victims of the shooting at the Chabad of Poway synagogue by failing to:

- 21 • Comply with its mandatory, nondelegable directives to “examine its records...in
22 order to determine” whether the Shooter was prohibited from “possessing,
23 receiving, owning, or purchasing a firearm” under Cal. Pen. Code § 28220(a);
- 24 • Delay or deny the Shooter from obtaining the Rifle despite the fact that it knew or
25 should have known that the hunting license issued by the DEPARTMENT OF
26 FISH AND WILDLIFE was invalid, and would not become valid until July 1,
27 2019;

- Notify Defendant SAN DIEGO GUNS that the Shooter was prohibited from “possessing, receiving, owning, or purchasing a firearm....” Cal. Pen. Code § 28220(c);
- Comply with mandatory directives to conduct an adequate background check during the 10-day waiting period to determine that the Shooter was ineligible to possess a firearm;
- Follow or implement a new statute, Cal. Pen. Code § 27510 (allowing persons under the age of 21, but at least 18 years of age, to purchase a rifle with a proper and valid hunting license), which came into effect on January 1, 2019, less than four months before the Incident;
- Take any steps to retrieve the improperly sold Rifle from Defendant JOHN T. EARNEST; and
- Follow and implement the statutory guidelines set forth in Cal. Pen. Code §§ 27510, 28220.

272. Defendant committed this breach of duty through its employees responsible for complying with Cal. Pen. Code § 28220, who acted negligently.

273. Defendant STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE’s breach of duty was a substantial factor in causing Plaintiffs’ harm as the Rifle approved for sale by the Defendant, through its Bureau of Firearms, was used by the Shooter in the attack on April 27, 2019, and caused vast physical and emotional injuries to the Plaintiffs/victims in attendance for services at the Chabad of Poway synagogue.

274. As a direct and proximate result of Defendant STATE OF CALIFORNIA’s breach of its duty of care owed to Plaintiffs, Plaintiffs GOLDSTEIN and N.D. were struck by bullets, shrapnel or other causing amputation and other serious physical injury, and will continue to suffer pain and anguish, limited range of motion, reduced capacity to carry, hold or lift, and will continue to require future and further medical treatment.

275. As a direct and proximate result of Defendant STATE OF CALIFORNIA’s breach

1 of its duty of care owed to Plaintiffs, all Plaintiffs have suffered, and continue to suffer, great pain
2 of mind and body, shock, emotional distress, physical manifestations of emotional distress, loss
3 of enjoyment of life, loss of earnings and earning capacity, and incurred substantial expenses for
4 medical and psychological treatment, therapy and counseling and other economic and/or
5 noneconomic damages in amounts in excess of the jurisdictional limits of this Court.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment and damages against Defendants as follows:

8 1. For general damages in the sum according to proof and in an amount in excess of
9 the jurisdictional limits of this Court;

10 2. For special and economic damages;

11 3. For punitive damages, except that this Complaint does not seek punitive damages
12 against Defendant STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE;

13 4. For loss of earnings;

14 5. For interest provided by law;

15 6. For all statutorily allowed damages;

16 7. For applicable restitution;

17 8. For an injunction issued against SAN DIEGO GUNS ordering SAN DIEGO
18 GUNS to reform its illegal and negligent sales practices and/or cease all operations so as to stop
19 creating a public nuisance; and

20 9. For an injunction issued against SMITH & WESSON BRANDS, INC. ordering
21 SMITH & WESSON BRANDS, INC. to cease its illegal, deceptive and/or negligent marketing
22 campaign regarding firearms manufactured in violation of the UCL and California's prohibition
23 on the creation of public nuisances;

24 10. For an injunction issued against SMITH & WESSON BRANDS, INC. and DOE
25 Defendants ordering these parties to reform the negligent distribution and sales practices
26 employed by either these parties and/or their subsidiaries and which are in violation of
27 California's prohibition on the creation of public nuisances and;
28

11. For reasonable attorney fees and costs of suit incurred, except that this Complaint does not seek attorney fees against Defendants J.A. EARNEST and L.C. EARNEST; and

12. For other and further relief as the Court deems proper.

Dated: July 22, 2021

ARTIANO SHINOFF
Daniel R. Shinoff
Maurice A. Bumbu

BY:



DANIEL R. SHINOFF

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minor, by and through his Guardian Ad
Litem, EDEN DAHAN, L.D.2, a minor, by
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N.A., a minor, by and through his Guardian
Ad Litem, HILA ALMOG, Y.A., a minor, by
and through her Guardian Ad Litem, HILA
ALMOG,

For the limited representation of claims against
SAN DIEGO GUNS, AMERICAN
OUTDOOR BRANDS CORPORATION,
SMITH & WESSON BRANDS, INC., and
Does 1 through 100.

DENTONS US LLP
Donna Vobornik (*pro hac vice*)
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Does 1 through 100.

PROOF OF SERVICE
YISROEL GOLDSTEIN, v. JOHN T. EARNEST, et al.
San Diego Superior Court, No. Case No.:37-2020-00016638-CU-PO-CTL

I am a citizen of the United States and employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1999 Harrison Street, Suite 1300, Oakland, California 94612. On July 22, 2021, I caused to be served the within document: **SECOND AMENDED COMPLAINT FOR:**

1. **PRODUCT LIABILITY**
2. **UNFAIR COMPETITION LAW [BUS. & PROF. CODE, §17200]**
3. **NEGLIGENCE; NEGLIGENCE PER SE; NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS; NEGLIGENT ENTRUSTMENT**
4. **PUBLIC NUISANCE**
5. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
6. **ASSAULT AND BATTERY**
7. **NEGLIGENCE**

DEMAND FOR JURY TRIAL

- ☒ **BY ELECTRONIC SERVICE:** By electronically transmitting the document listed above to the persons who have appeared in the above referenced case and are registered with the San Diego Superior Court's service list and by using the provider One-Legal, court-approved vendor for E-Service.
- ☒ **(BY MESSENGER SERVICE)** by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.

SERVICE LIST

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PROOF OF SERVICE
YISROEL GOLDSTEIN, v. JOHN T. EARNEST, et al.
San Diego Superior Court, No. Case No.:37-2020-00016638-CU-PO-CTL

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BY MESSENGER SERVICE (BY HAND)

SAN DIEGO CENTRAL JAIL 19726575 - 3/MED John T. Earnest PO Box 122952 San Diego, CA 92112-2952 (619) 610-1647 San Diego Central Jail (physical address) 1173 Front Street San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 22, 2021.


Adrienne Hankins