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19 Attorneys for All Plaintiffs

20 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF SANTA CLARA – UNLIMITED JURISDICTION**

22 WENDY TOWNER; FRANCISCO
23 AGUILERA; NICK MCFARLAND; JUSTIN
24 BATES; BRYNN OTA-MATTHEWS;
25 GABRIELLA GAUS; HARRY DE LA VEGA;
26 BARBARA V. AGUIRRE; ALBERTO
27 ROMERO; BARBARA J. AGUIRRE;
28 LESLEY SANCHEZ, a minor, by and through
her Guardian ad Litem, Diana Galindo; and,
LESLIE ANDRES, a minor, by and through her
Guardian ad Litem, Laura Rodriguez,

Plaintiffs,

vs.

22 GILROY GARLIC FESTIVAL
23 ASSOCIATION, INC., a California Nonprofit
24 Corporation; FIRST ALARM SECURITY &
25 PATROL, INC., a California Corporation; CITY
26 OF GILROY; CENTURY ARMS, INC.; and
27 DOES 1 to 125, Inclusive,

Defendants.

Case No.: 19CV358256

FIFTH AMENDED COMPLAINT

(1st) Negligence
(2nd) Premises Liability
(3rd) Wrongful Death
(4th) Public Entity Liability
(5th) Joint Venture Liability
(6th) Products Liability Re: WASR
Assault Rifle
(7th) Negligence Re: WASR Assault Rifle
(8th) Public Nuisance Re: WASR Assault
Rifle

Amount Demanded Exceeds \$25,000

Complaint: November 12, 2019
FAC: February 27, 2020
SAC: July 6, 2020
TAC: October 7, 2020
FAC: March 19, 2021

JURY TRIAL DEMANDED

28 COMES NOW, plaintiffs WENDY TOWNER, FRANCISCO AGUILERA, NICK

1 MCFARLAND, JUSTIN BATES, BRYNN OTA-MATTHEWS, GABRIELLA GAUS,
2 HARRY DE LA VEGA, BARBARA V. AGUIRRE, ALBERTO ROMERO, BARBARA J.
3 AGUIRRE, LESLEY SANCHEZ, a minor, by and through her Guardian ad Litem, Diana
4 Galindo, and LESLIE ANDRES, a minor, by and through her Guardian ad Litem, Laura
5 Rodriquez ("plaintiffs") who allege as follows:

6 **I.**

7 **INTRODUCTION**

8 1. The 2019 Gilroy Garlic Festival was grossly deficient in the needed and required
9 security measures and this has tragically resulted in three (3) deaths and at least twelve (12)
10 persons being injured. Those responsible for the 2019 Gilroy Garlic Festival advertised,
11 represented and promised to the public at large, including plaintiffs, that the 2019 Gilroy Garlic
12 Festival would be "a safe, family-friendly atmosphere for all Festival patrons and volunteers"
13 and that "weapons of any kind" would be prohibited. Those responsible for the 2019 Gilroy
14 Garlic Festival failed to live up to their promises to provide a "safe, family-friendly
15 atmosphere" that would be without "weapons of any kind" and they failed to adhere to the
16 most basic security requirements of having a secure perimeter that was properly monitored.

17 2. The shooter, Santino William Legan (hereinafter "the shooter") was able to easily
18 enter the Gilroy Garlic Festival with his AK-47 assault rifle, equipped with a large, seventy-
19 five (75) round drum style magazine, and at least four (4) high capacity forty (40) round
20 magazines, completely undetected by defendants until after the shooter began shooting and he
21 had already begun to inflict harm on plaintiffs. Defendants' security failures allowed this to
22 occur because the perimeter only had an inadequate, flimsy, low-height, unsupported chain
23 link fence with a back gate held shut with a zip tie, that was simple to breach, located
24 inappropriately where the shooter's presence and entrance would be concealed by a wooded
25 area, and this obvious highly vulnerable, likely unauthorized entrance point, was not properly
26 monitored. Further, defendants made this extremely vulnerable security area of their creation
27 even worse by allowing cars, box trucks, and/or other obstructions to be placed near the border
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1 of the flimsy, low-height, unsupported chain link perimeter fence, including where the shooter
2 entered that further obstructed necessary clear lines of sight to the perimeter fence and
3 provided additional cover for individuals such as the shooter to enter the Gilroy Garlic Festival
4 and commit violent criminal acts. Among other things, a proper secure perimeter fence, with
5 clear sight lines that was appropriately monitored would have prevented the shooter from
6 entering and this tragedy would not have occurred. Plaintiffs are informed and believe and
7 based thereon allege that such proper perimeter security could have been done for minimal
8 additional cost.

9 3. Plaintiff WENDY TOWNER was one of the first victims shot by the gunman. She
10 selflessly and heroically attempted to divert the shooter's attention when she realized his rifle
11 was trained on the many children congregated by the inflatable slide at the corner of the
12 festival grounds. Plaintiff FRANCISCO AGUILERA was standing near WENDY TOWNER
13 when the gunman fired in their direction. He suffered severe gunshot wounds and his femoral
14 artery was perforated by the shooter's bullets. Plaintiff BRYNN OTA-MATTHEWS was by
15 the inflatable slide, just yards away when she first heard the shots ring out. As she ran away
16 from the shooter, BRYNN OTA-MATTHEWS felt the burning sensation of a bullet as it tore
17 into her back. To this day, the bullet is lodged behind BRYNN OTA-MATTHEWS' ribcage, in
18 close proximity to her liver. Plaintiffs NICK MCFARLAND and JUSTIN BATES were by the
19 vendor booths at the time the shooting began. They both began running upon realizing the
20 horror of what was transpiring. As he ran, JUSTIN BATES felt a bullet strike the back of his
21 leg. Despite knowing he had been shot, JUSTIN BATES turned back in order to carry his
22 terrified friend to safety. NICK MCFARLAND also sustained bullet wounds as he ran from the
23 shooter. GABRIELLA GAUS was inside of the inflatable slide at the corner of the Festival
24 grounds at the time the shooter began firing. GABRIELLA GAUS began running away from
25 the shooter and as she ran a bullet struck her left shoulder and another grazed the right side of
26 her back. HARRY DE LA VEGA was near the vendor booths at the time the shooter began
27 firing and was quickly struck by several bullets in his leg, fracturing his femur bone.
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1 BARBARA V. AGUIRRE was attending the Festival the day of the shooting with her daughter
2 BARBARA J. AGUIRRE and her grandson Stephen Romero. BARBARA V. AGUIRRE was
3 shot along with BARBARA J. AGUIRRE and Stephen Romero. Tragically, Stephen Romero
4 died from his gunshot wounds. Stephen was only six (6) years old at the time. Plaintiffs
5 BARBARA J. AGUIRRE and ALBERTO ROMERO are the parents and heirs of Stephen
6 Romero. LESLEY SANCHEZ, a minor, was working at a vendor booth when the shooter
7 began firing and a bullet from his rifle struck her stomach and traveled into her abdomen and
8 out the other side of her body, shaving the bone in her hip as it passed through her. LESLEY
9 SANCHEZ still has bullet fragments inside of her. These fragments will remain inside her
10 permanently. LESLIE ANDRES was attending the Festival the day of the shooting with family
11 members. When LESLIE ANDRES saw the shooter, she began running away from the area,
12 but was struck by a bullet as she ran.

13 4. Those responsible for the 2019 Gilroy Garlic Festival failed its patrons and
14 participants by not exercising their required duty of care to protect them from the foreseeable
15 risks of mass shootings at large public events. This failure to have a reasonably safe and
16 secure perimeter that was properly monitored caused, created, and allowed to exist, a
17 dangerous, hazardous and unsafe condition which created an unreasonable and substantial risk
18 of injury to the patrons and participants at the 2019 Gilroy Garlic Festival –i.e. that due to
19 defendants’ security failures a mass shooter gained easy entrance to the event with military
20 style weaponry and carried out a mass shooting, that appropriate reasonable security would
21 have prevented.

22 5. This lawsuit is about the tragic results that did and will needlessly continue to
23 occur if event organizers (and those responsible for the event) do not take appropriate and
24 reasonable security measures to make the event reasonably safe when putting on large public
25 events. For example, the security we now see at professional sporting events, music concerts,
26 and nearly every other organized large scale public event that occurs daily has been stepped up
27 to reflect our current threats, including from a mass shooting, by utilizing secure perimeters
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1 that are properly monitored, metal detectors, and other appropriate security. We are not seeing
2 criminals bringing in military-style weapons with large stockpiles of ammunition to these
3 events as their security measures have not allowed this. A reasonably safe event requires
4 vigilant efforts to protect attendees before something happens. Unfortunately, those responsible
5 for the 2019 Gilroy Garlic Festival had grossly inadequate security and they failed plaintiffs in
6 their duty and promises to provide a reasonably safe event free of weapons resulting in the
7 tragic loss of life and injuries. This horrific incident was foreseeable, facilitated by, and made
8 possible by the negligent acts of the defendants. It should not, could not, and would not have
9 occurred but for the defendants' repeated acts and omissions as set forth herein.

10 **II.**

11 **GENERAL ALLEGATIONS**

12 **A. Parties**

13 6. Plaintiffs WENDY TOWNER, FRANCISCO AGUILERA, NICK
14 MCFARLAND, JUSTIN BATES, BRYNN OTA-MATTHEWS, GABRIELLA GAUS,
15 HARRY DE LA VEGA, BARBARA V. AGUIRRE, BARBARA J. AGUIRRE, and
16 ALBERTO ROMERO (hereinafter "plaintiffs") are individuals over the age of majority.

17 7. Plaintiffs LESLIE ANDRES and LESLEY SANCHEZ are both minors. Plaintiff
18 LESLIE ANDRES brings this complaint by and through her Guardian ad Litem, Laura
19 Rodriguez. Plaintiff LESLEY SANCHEZ brings this complaint by and through her Guardian
20 ad Litem, Diana Galindo.

21 8. Plaintiffs are informed and believe and based thereon allege that defendant
22 GILROY GARLIC FESTIVAL ASSOCIATION, INC. is a California nonprofit corporation
23 doing business in Santa Clara County, California. Defendant GILROY GARLIC FESTIVAL
24 ASSOCIATION, INC. had responsibility for hosting, co-hosting, organizing, managing,
25 sponsoring, and/or running the Gilroy Garlic Festival on July 28, 2019 when the subject tragic
26 mass shooting herein occurred.

27 9. Plaintiffs are informed and believe and based thereon allege that defendant FIRST
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1 ALARM SECURITY & PATROL, INC. (hereinafter "FIRST ALARM") is, and was at all
2 times relevant herein, a California corporation doing business in Santa Clara County,
3 California.

4 10. Plaintiffs are informed and believe and based thereon allege the following: That
5 defendant FIRST ALARM also does business under the name of First Security, a business
6 organization of form unknown; That defendant FIRST ALARM also does business under the
7 name of First Security Services, a business entity of form unknown; That defendant FIRST
8 ALARM is a company that offers private security guards, and security related services
9 throughout the Bay Area and surrounding counties; That defendant FIRST ALARM was
10 contracted to provide private security related services for the Gilroy Garlic Festival including
11 on July 28, 2019 when the subject tragic mass shooting herein occurred.

12 11. Defendant CITY OF GILROY is a public entity.

13 12. The true names and capacities of defendants sued as defendant DOES 1-125,
14 inclusive, are unknown to plaintiffs who therefore sues these defendants by such fictitious
15 names. Plaintiffs will amend this Complaint to allege their true names and capacities when
16 ascertained. Plaintiffs are informed and believe, and upon such information and belief allege
17 that each of the fictitiously named defendants is negligently, recklessly, and/or intentionally
18 responsible in some manner for plaintiffs' injuries and damages as alleged herein.

19 13. Plaintiffs are informed and believe and based thereon allege that defendants, in
20 performing the actions alleged herein, acted through their agents and employees who
21 undertook the actions alleged herein, and at the time of undertaking such actions were acting
22 within the course and scope of their employment, agency, and/or authority from defendants.

23 14. Plaintiffs are informed and believe and based thereon allege that each of the
24 defendants herein, whether named or named fictitiously, was the agent, servant, employee, co-
25 venturer, partner, or in some manner the agent and/or principal of each of the other defendants,
26 and was acting within the course and scope of said agency, representation or employment in
27 doing or failing to do the acts alleged herein. The acts and conduct alleged herein of each such
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1 defendant were known to, and authorized and ratified by, each and every remaining defendant.
2 At all times relevant hereto, defendants, and each of them, held a special relationship with
3 plaintiffs, and with each other, non-delegable in nature, and subjected plaintiffs to a peculiar
4 and high risk of harm for a breach thereof.

5 15. Plaintiffs are informed and believe and based thereon allege that the corporate
6 defendants are the alter egos of its members, shareholders, managers, officers, partners,
7 directors, agents, and/or employees who are named herein either by name or fictitiously, and
8 any separateness between any defendant named herein has ceased to exist. Plaintiffs are
9 informed and believe that the corporate defendants had such a unity of interest with its
10 members, shareholders, managers, officers, partners, directors, agents, and/or employees who
11 are named herein either by name or fictitiously, that said corporations were the alter egos of the
12 individual defendants and that the failure to recognize such alter ego relationship would lead to
13 an inequitable result.

14 16. This action is filed in this County because the subject incident and plaintiffs'
15 injuries occurred in this County and defendants were doing business in this County.

16 III.

17 FIRST CAUSE OF ACTION

18 NEGLIGENCE

19 As a First, Separate Distinct Cause of Action, for plaintiffs as against all defendants,
20 (except defendant CITY OF GILROY and DOES 50-100, inclusive) including defendants
21 DOES 1 to 49, inclusive, plaintiffs allege as follows:

22 17. Plaintiffs reallege and incorporate herein by this reference, each and every
23 allegation contained in Paragraphs 1 through 16, inclusive, of the foregoing Introduction and
24 General Allegations and make them a part of the instant Cause of Action as though fully set
25 forth.

26 A. Background

27 18. Between July 26 and July 28, 2019, the Gilroy Garlic Festival was held in Gilroy,
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1 California. The Gilroy Garlic Festival is a three-day food festival held annually since 1979 at
2 Christmas Hill Park in Gilroy, California. The Gilroy Garlic Festival draws roughly one-
3 hundred thousand (100,000) visitors and attendees to the City of Gilroy each year.

4 19. The Gilroy Garlic Festival was open to the public, upon payment of an admission
5 charge, from July 26 through July 28, 2019.

6 20. Plaintiffs were patrons, attendees, and/or vendors at the 2019 Gilroy Garlic
7 Festival on July 28, 2019.

8 21. Plaintiffs are informed and believe and based thereon allege the following
9 background information: The Uvas Creek is a twenty-nine-mile-long southward flowing
10 stream; That the creek runs adjacent to the corner of Uvas Creek Drive and Laurel Drive and
11 continues along the Christmas Hill Park in Gilroy, where the Gilroy Garlic Festival was held
12 every year since 1979; That the Uvas Creek Park Reserve abuts Christmas Hill Park; That the
13 Uvas Creek Park Reserve has a number of public pathways and trails allowing individuals
14 access to Christmas Hill Park; That there is considerable tree cover and thick foliage in the
15 Uvas Creek Park Reserve directly abutting the border of the Gilroy Garlic Festival; That Uvas
16 Creek did not contain substantial flowing water on Sunday July 28, 2019; and, as such, the
17 creek bed and adjacent levy path provided a covered method of ingress by which the shooter
18 could approach the Gilroy Garlic Festival with considerable fire power.

19 22. Plaintiffs are informed and believe and based thereon allege: That defendant
20 CITY OF GILROY owns, controls, and operates Christmas Hill Park; That defendant
21 GILROY GARLIC FESTIVAL ASSOCIATION, INC. obtained a permit from defendant
22 CITY OF GILROY for the use of Christmas Hill Park for a period encompassing July 26, 2019
23 through July 28, 2019; On July 28, 2019 the Gilroy Garlic Festival was scheduled to be open to
24 the public from 10:00 am to 6:00 p.m.; That defendant GILROY GARLIC FESTIVAL
25 ASSOCIATION, INC. is the entity responsible for hosting, organizing, managing, sponsoring,
26 and running the Gilroy Garlic Festival in cooperation and conjunction with defendant CITY
27 OF GILROY that also provides logistical support, together with defendants FIRST ALARM
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1 and other defendants; That defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC.
2 entered into a facility reservation contract with defendant CITY OF GILROY for the purpose
3 of holding the July 2019 Gilroy Garlic Festival; That the GILROY GARLIC FESTIVAL
4 ASSOCIATION, INC. is required to have security at the Gilroy Garlic Festival and has a chair
5 of security and an assistant chair of security, which are non-paid volunteer positions; That
6 defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC. entered into a contract with
7 FIRST ALARM, a private security company, to provide security for the Gilroy Garlic Festival;
8 That defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC. and other defendants
9 entered into contracts with other DOE defendants to provide other security support, logistical
10 support and/or to otherwise assist with organizing, hosting, running, and/or securing the 2019
11 Gilroy Garlic Festival; and That the original contract between defendant CITY OF GILROY
12 and the defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC. was over thirty (30)
13 years old and had never been updated to reflect the modern-day security concerns, logistical
14 realities, or organizational needs that accompany hosting an event of the Gilroy Garlic
15 Festival's current magnitude.

16 23. A special relationship existed here between defendants and plaintiffs as plaintiffs
17 were paid invitees to the Festival, including attendees, vendors and/or their families. An
18 operator or organizer of a large-scale public event has a duty to its participants and attendees to
19 provide a reasonably safe event.

20 24. GILROY GARLIC FESTIVAL ASSOCIATION, INC. in conjunction with the
21 Festival website, promised a safe event, that the 2019 Gilroy Garlic Festival would be "*a safe,*
22 *family-friendly atmosphere* for all Festival patrons and volunteers" and that "*weapons of any*
23 *kind*" *would be prohibited*. Plaintiffs, as paid invitees to the Festival, including attendees,
24 vendors and their families, were either direct and/or intended third-party beneficiaries of these
25 promises

26 **B. Duty to Provide Reasonably Safe Event**

27 25. Plaintiffs are informed and believe and based thereon allege that there were
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1 approximately two-hundred forty-four (244) mass shootings in the United States in 2019
2 before July 28, 2019, and that in 2019 there were approximately three-hundred and thirty-
3 seven (337). These frightening numbers serve as a stark reminder that horrific criminal attacks
4 are not only common but are a real and foreseeable risk anytime individuals host large public
5 events, such as the 2019 Gilroy Garlic Festival.

6 26. Operators of outdoor venues that attract large crowds, such as the 2019 Gilroy
7 Garlic Festival, are responsible for assessing their specific vulnerabilities and taking reasonable
8 precautions to mitigate risks and prevent such tragedies, like this, from occurring.

9 27. This assessment includes development, implementation, and coordination of plans
10 and programs to ensure security and emergency preparedness.

11 28. At all times relevant herein, defendants had a duty to the patrons, attendees, and
12 vendors, including plaintiffs, to provide a reasonably safe event at the Gilroy Garlic Festival.
13 At all times relevant herein, defendants had a duty of reasonable care in the protection and
14 safeguarding of the patrons, attendees, and vendors, including plaintiffs, at the Gilroy Garlic
15 Festival. At all times relevant herein, defendants had a duty to take such precautions as were
16 reasonably necessary to protect the patrons, attendees, and vendors, including plaintiffs, at this
17 large scale public event at the Gilroy Garlic Festival, including plaintiffs, from the foreseeable
18 and dangerous risk of persons entering the premises with assault style weapons with intent to
19 shoot the patrons, attendees and vendors.

20 29. Defendants assumed the duty to provide a reasonably safe environment for the
21 patrons, attendees and vendors of the Gilroy Garlic Festival merely in choosing to host a public
22 Festival event that draws large numbers of people.

23 30. Defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC, advertised and
24 represented to the public at large and plaintiffs before and during the 2019 Gilroy Garlic
25 Festival that: "It is the Garlic Festival's policy to provide a *safe*, family-friendly atmosphere
26 for all Festival patrons and volunteers... Christmas Hill Park rules prohibit bringing the
27 following items on Festival grounds ...Pocketknives and *weapons of any kind*."
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1 31. Defendants further recognized and assumed a duty to protect its patrons, attendees
2 and vendors by having policies and security measures, although they were grossly deficient, to
3 attempt to prohibit unauthorized persons from entering and to prevent firearms and other
4 dangerous weapons on the 2019 Gilroy Garlic Festival premises. By way of example,
5 defendants utilized some sort of perimeter fencing in an effort, although grossly deficient, to
6 keep unauthorized persons and criminals (including mass shooters) from entering the Gilroy
7 Garlic Festival. By way of further example, plaintiffs are informed and believe and based
8 thereon allege that defendants arranged and/or oversaw persons who performed security checks
9 of individuals prior to admitting them into 2019 Gilroy Garlic Festival, including “wandings”
10 of potential attendees with handheld metal detecting devices to prevent persons from bringing
11 in guns, including assault style weapons. In so doing, defendants recognized and assumed their
12 duty that keeping out firearms and dangerous weapons was essential to the safety of everyone
13 at the 2019 Gilroy Garlic Festival.

14 32. Plaintiffs are informed and believe and based thereon allege that the tragic events
15 of July 28, 2019 were foreseeable as defendants knew or reasonably should have known:

16 a) That persons had previously entered the Gilroy Garlic Festival premises through
17 the chain link fence near the perimeter edge bordering the Uvas Creek at or near where the
18 shooter entered; that unauthorized entry to Gilroy Garlic Festival grounds could easily be
19 achieved by going over and/or through the flimsy perimeter fencing and/or gate bordering the
20 Uvas Creek; that this was commonly known;

21 b) That persons had previously attempted to bring and/or or had brought weapons
22 into the Gilroy Garlic Festival;

23 c) That there had been previous incidents of criminal behavior and violence at the
24 Gilroy Garlic Festival in previous years;

25 d) That due to the epidemic of mass shootings at public events throughout this
26 Country, that mass shootings are reasonably foreseeable and part of the dangers that patrons,
27 attendees and vendors must be protected from at large scale public events to have a reasonably
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1 safe event;

2 e) That the chain link fence and/or gate near the perimeter edge bordering the Uvas
3 Creek where the shooter entered was inadequate to be reasonably safe as a secure perimeter
4 fence and/or gate for a large scale public event, including the inadequate nature of such fence
5 and/or gate, that it was flimsy, and too short; and/or that the gate was held shut by a zip tie;

6 f) That the inadequate, flimsy, low-height, unsupported chain link fence and/or gate
7 near the perimeter edge bordering the Uvas Creek where the shooter entered was not
8 reasonably safe as it as was easily breached by persons who would thus be able to bypass
9 security;

10 g) That the Uvas Creek Park Reserve's location, cover, and proximity to the border
11 of the 2019 Gilroy Garlic Festival could provide a means of unauthorized access to the 2019
12 Gilroy Garlic Festival perimeter and thus when left unaddressed, the condition presented a
13 foreseeable and unreasonable security threat making the 2019 Gilroy Garlic Festival not
14 reasonably safe for its patrons, attendees, and vendors, including plaintiffs;

15 h) That the inadequate, flimsy, low-height, unsupported chain link perimeter fence
16 and/or gate where the shooter entered was located inappropriately in an unsafe manner as the
17 shooter's presence and entrance would be concealed including by cover of the Uvas Creek
18 including the topography, cover and wooded area;

19 i) That it was necessary to maintain clear lines of sight to the perimeter fence and/or
20 gate; that allowing cars, box trucks, and/or other obstructions to be placed near the border of
21 the flimsy, low-height unsupported chain link perimeter fence and/or gate, including where the
22 shooter entered, would further obstruct the lines of sight to the perimeter and provide
23 additional cover for individuals such as the shooter to enter the 2019 Gilroy Garlic Festival and
24 commit violent criminal acts;

25 j) That the inadequate, flimsy, low-height unsupported chain link perimeter fence
26 and/or gate where the shooter entered was obviously a highly vulnerable and likely
27 unauthorized entrance point;
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1 k) That the inadequate, flimsy, low-height unsupported chain link perimeter fence
2 and/or gate where the shooter entered required proper monitoring;

3 l) That the inadequate, flimsy, low-height unsupported chain link perimeter fence
4 and/or gate where the shooter entered was not being properly monitored;

5 m) That if defendants breached their duties to keep the 2019 Gilroy Garlic Festival
6 reasonably safe, that catastrophic injury and harm, including through a mass shooting, could
7 occur to the patrons, attendees, and vendors, including plaintiffs, at the 2019 Gilroy Garlic
8 Festival; and/or,

9 n) That the 2019 Gilroy Garlic Festival was inadequately secured and this created an
10 event that was not reasonably safe and had an unreasonable and foreseeable risk of
11 unauthorized access to 2019 Gilroy Garlic Festival by an individual with the intention of
12 committing criminal acts, including a mass shooting.

13 33. Defendants had a duty to the patrons, attendees, and vendors, including plaintiffs,
14 to take reasonable steps to secure the 2019 Gilroy Garlic Festival against foreseeable criminal
15 acts of third parties, including mass shootings, that are likely to occur in the absence of such
16 precautionary measures.

17 34. Defendants owed a duty to the patrons, attendees, and vendors, including
18 plaintiffs, to avoid acts or omissions by their employees, agents, servants, partners, or joint
19 ventures, which created an unreasonable and foreseeable risk of criminal acts by third persons
20 at the 2019 Gilroy Garlic Festival.

21 **C. Breach of Duty to Provide Reasonably Safe Event**

22 35. Plaintiffs bring this action as a result of the July 28, 2019, shooting in Gilroy,
23 California that took place during the final day of the Gilroy Garlic Festival.

24 36. On July 28, 2019, a shooter opened fire onto unsuspecting Gilroy Garlic Festival
25 patrons, attendees, and vendors, including plaintiffs. While the shooting itself was perpetrated
26 by a civilian who engaged in a military-style assault, this horrific incident was foreseeable,
27 facilitated by, and made possible by the negligent acts of the defendants. It should not, could
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1 not, and would not have occurred but for the defendants' repeated acts and omissions as set
2 forth herein.

3 37. Plaintiffs are informed and believe and based thereon allege: That on July 28,
4 2019 the shooter drove to and parked a vehicle near the intersection of Uvas Park Drive and
5 Laurel Drive in Gilroy, California; The shooter left his vehicle carrying an AK-47 style assault
6 rifle along with a high capacity, seventy-five (75) round, drum style magazine, and multiple
7 high capacity forty (40) round magazines; That the shooter used various unsecured public
8 pathways and trails along the Uvas Creek Park Reserve to approach Christmas Hill Park, the
9 location of the Gilroy Garlic Festival; That the shooter walked behind the Gilroy Garlic
10 Festival Premises along or near the tree-lined Uvas Creek for approximately two miles
11 southeast of his car to a dirt path that borders the eastern edge of Christmas Hill Park; That the
12 dirt path that borders the eastern edge of Christmas Hill Park was separated from the Gilroy
13 Garlic Festival Grounds by a chain-link fence; That the shooter followed the dirt path southeast
14 until he reached a closed fence gate at a road leading into the Gilroy Garlic Festival that was
15 only held shut by a zip tie; That the shooter arrived at the back fence gate of the Gilroy Garlic
16 Festival at approximately 6:30 p.m.; That the shooter entered the Gilroy Garlic Festival
17 Premises with his AK-47 assault rifle, equipped with a seventy-five (75) round drum style
18 magazine, and four (4) high capacity magazines, through a back gate that was only secured by
19 a zip tie; That when the shooter entered the Gilroy Garlic Festival Premises that he was
20 wearing green and tan colored clothing and a bulletproof vest; That the back perimeter fence
21 and/or gate where the shooter entered was not being monitored; That upon entry of the Gilroy
22 Garlic Festival Premises, the shooter walked approximately 75 feet towards the inflatable slide
23 before he began shooting; That the shooter after making his way to the inflatable slide fired his
24 assault rifle once into the ground; That after the shooter fired his assault rifle once into the
25 ground, the gun jammed and the shooter struggled with his weapon for fifteen (15) to twenty
26 (20) seconds before removing the magazine and inserting a new one; That the shooter then
27 fired at least 36 rounds of ammunition and hit more than a dozen men, women and children;
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1 That no security personnel at the Gilroy Garlic Festival reached the shooter until after he had
2 gained unauthorized entry into the 2019 Gilroy Garlic Festival Premises through a back gate,
3 walked about seventy-five feet inside the Gilroy Garlic Festival Premises towards the inflatable
4 slide, fired his assault rifle once into the ground the gun, struggled with his weapon for fifteen
5 (15) to twenty (20) seconds before removing the magazine and inserting a new one, and then
6 fired numerous rounds of ammunition hitting more than a dozen men, women and children.

7 38. Plaintiffs are informed and believe and based thereon allege that on July 28, 2019
8 that no security personnel at the Gilroy Garlic Festival even noticed the shooter until after the
9 shooter had completed all of the following: i) Walked behind the Gilroy Garlic Festival
10 Premises along or near the tree-lined Uvas Creek for approximately two (2) miles to a dirt path
11 that borders the eastern edge of Christmas Hill Park wearing a bulletproof vest and carrying an
12 assault rifle, equipped with a seventy-five (75) round drum style magazine, and at least four (4)
13 high capacity magazines; ii) Gained unauthorized entry into the Gilroy Garlic Festival
14 Premises through an unsecure back fence and/or gate; iii) Walked about seventy-five (75) feet
15 inside the Gilroy Garlic Festival Premises towards the inflatable slide while wearing his bullet
16 proof vest and carrying his assault rifle equipped with a seventy-five (75) round drum style
17 magazine, and at least four (4) high capacity magazines; and iv) Fired his assault rifle.

18 39. The shooter entered the 2019 Gilroy Garlic Festival grounds through a de facto
19 back entrance, carrying an AK-47 style assault rifle equipped with a large, seventy-five (75)
20 round drum style magazine and at least four (4) high capacity forty (40) round magazines.
21 Three people were killed and a dozen were seriously injured. More specifically, plaintiffs all
22 suffered serious physical injuries and emotional distress due to multiple gunshot injuries from
23 the barrage of bullets, along with other debilitating injuries.

24 40. Plaintiff WENDY TOWNER saw the shooter inside the 2019 Gilroy Garlic
25 Festival grounds near the perimeter edge bordering the Uvas Creek. WENDY TOWNER was
26 near the vendor booths at the time. The shooter's focus was on the many children and
27 individuals near the inflatable slide at the corner of the 2019 Gilroy Garlic Festival grounds.
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1 WENDY TOWNER, realizing that many children were near the slide, including her own child,
2 heroically attempted to divert the shooter's attention by yelling at him. Thankfully, this
3 prevented the shooter from firing in the direction of the many children in that area. Tragically,
4 however, the shooter instead began unloading his high capacity magazine at WENDY
5 TOWNER and FRANCISCO AGUILERA.

6 41. WENDY TOWNER sustained serious gunshot wounds to her leg. WENDY
7 TOWNER's calf muscle was torn apart by the bullets from the shooter's rifle, and she was
8 thrown to the ground from the force of their impact. In a state of shock, WENDY TOWNER
9 remained motionless on the ground as large volumes of blood poured from her wounds.

10 42. Standing next to WENDY TOWNER was FRANCISCO AGUILERA. He too
11 was struck by the shooter's barrage. FRANCISCO AGUILERA's femoral artery was
12 perforated, and FRANCISCO AGUILERA crashed to the ground. He immediately lost
13 consciousness due to the magnitude of his rapid blood loss.

14 43. As WENDY TOWNER lay on the ground next to FRANCISCO AGUILERA, the
15 shooter approached their bodies. The shooter's gun jammed, giving them critical seconds. As
16 the shooter hovered over them and changed magazines he asked if they were "ok". His voice
17 sounded cold and unsympathetic. Had WENDY TOWNER uttered a word, it is certain the
18 shooter would have shot them both dead.

19 44. Plaintiffs NICK MCFARLAND and JUSTIN BATES were approximately twenty
20 feet from the shooter when he began firing his assault rifle into the crowd. They too were
21 located at one of the vendor booths on the 2019 Gilroy Garlic Festival grounds. Suddenly, the
22 shooter directed his fire in their direction. As the shots rang out, they could hear and feel the
23 bullets whizz past them. JUSTIN BATES began running from the area as the shooter fired on
24 him. As he ran, JUSTIN BATES suddenly felt heat in the back of his leg. JUSTIN BATES
25 knew he had been shot. Despite this, JUSTIN BATES heroically and selflessly turned back
26 towards the shooter in order to help carry his friend to safety. She had frozen in terror at the
27 sight of the shooter.
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1 45. NICK MCFARLAND was with JUSTIN BATES at the time the shooter began
2 firing. NICK MCFARLAND began running and sustained wounds to his right calf from bullet
3 fragments.

4 46. Plaintiff BRYNN OTA-MATTHEWS was on the inflatable slide at the time the
5 shooter began firing his weapon. Upon hearing the first shots fired, BRYNN OTA-
6 MATTHEWS quickly realized the horrific reality of what was taking place just yards away.
7 BRYNN OTA-MATTHEWS began running away from the shooter, towards the parking lot
8 adjacent to the 2019 Gilroy Garlic Festival grounds. As she ran, BRYNN OTA-MATTHEWS
9 felt the heat of a bullet tear into her back. To this day, BRYNN OTA-MATTHEWS still has
10 the bullet lodged near her ribcage, in close proximity to her liver.

11 47. Plaintiff GABRIELLA GAUS was in the inflatable slide at the corner of the
12 Festival Grounds at the time the shooter began firing his rifle into the crowd. GABRIELLA
13 GAUS was barefoot at the time but began running away from the shooter. As she ran, a bullet
14 struck GABRIELLA GAUS in her left shoulder and another grazed the right side of her back.
15 GABRIELLA GAUS sustained serious, permanent gunshot injuries to her person and was
16 forced to undergo surgery to remove the bullet lodged in her left shoulder. Bullet fragments
17 also remain permanently lodged in GABRIELLA GAUS' body.

18 48. Plaintiff HARRY DE LA VEGA sustained severe and serious, permanent gunshot
19 injuries to his person, including that HARRY DE LA VEGA sustained gunshot wounds to his
20 front/inside right thigh. The bullets fractured HARRY DE LA VEGA'S right femur bone and
21 he was forced to undergo surgery to his right femur where a metal rod was inserted. HARRY
22 DE LA VEGA remained in the hospital until the end of August 2019 and still has shrapnel
23 lodged in his leg.

24 49. Plaintiff BARBARA J. AGUIRRE was with her mother, plaintiff BARBARA V.
25 AGUIRRE, and her son Stephen Romero when the shooter began firing. Both BARBARA J.
26 AGUIRRE and BARBARA V. AGUIRRE sustained severe and serious permanent gunshot
27 injuries to their person. BARBARA V. AGUIRRE'S injuries include gunshot wounds to her
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1 right foot. BARBARA J. AGUIRRE's injuries include gunshot injuries to her left hand,
2 permanent injuries, loss of bone, disfigurement, nerve damage, scarring, pain and suffering and
3 loss of some function. Tragically, BARBARA J. AGUIRRE'S son, Stephen Romero (also the
4 son of plaintiff ALBERTO ROMERO), was shot in the chest and later died from his injuries.

5 50. Plaintiff LESLEY SANCHEZ, a minor, sustained severe and serious, permanent
6 gunshot injuries to her person, including a gunshot wound to the stomach wherein the bullet
7 traveled into her abdomen and out the other side of her body, shaving a bone in her hip as it
8 passed through and leaving permanent bullet fragments in her body.

9 51. Plaintiff LESLIE ANDRES, a minor, sustained severe and serious, permanent
10 gunshot injuries to her person, including a gunshot wound to her right leg above the knee on
11 the outside of the thigh. The bullet passed through soft tissue and exited her leg.

12 52. Plaintiffs survived their initial harrowing encounters with the shooter, only to be
13 thrown into the midst of a chaotic and dangerous environment facilitated by the defendants'
14 utter lack of appropriate response for emergency situations. For example, other patrons of the
15 2019 Gilroy Garlic Festival rushed to WENDY TOWNER and FRANCISCO AGUILERA's
16 aid. Unable to find medical personnel or emergency personnel, the patrons were forced to use
17 water mixed with bleach from the utensil wash station to wash WENDY TOWNER's wounds.
18 WENDY TOWNER, FRANCISCO AGUILERA, and BRYNN OTA-MATTHEWS were all
19 loaded into civilian vehicles for transport, but were not able to reach a hospital for over an hour
20 following the shooting despite being in desperate need of such emergency medical treatment.

21 53. Plaintiffs are informed and believe and based thereon allege that defendants were
22 negligent and acted in breach of defendants' duties of care, through their negligent, careless,
23 reckless, and/or wanton, conduct in their ownership, use, possession, renting, leasing,
24 operating, supplying, furnishing, designing, constructing, maintaining, repairing, servicing,
25 conducting, inspecting, managing, supervising, entrusting, hiring, training, controlling, policies
26 and procedures for, and/or safety plans for the 2019 Gilroy Garlic Festival so as to cause,
27 create, and/or allow to exist the event to be unsafe for its patrons, attendees, and vendors,
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1 including plaintiffs, including by, but not limited to, the following:

2 a) That defendants directly or indirectly, approved, were responsible for, aware of,
3 directed, controlled, oversaw, and/or supervised, the use of the chain link fence and/or gate
4 near the perimeter edge bordering the Uvas Creek where the shooter entered that was
5 inadequate to be reasonably safe as a secure perimeter fence and/or gate for a large scale public
6 event, including the inadequate nature of such fence and/or gate, that it was flimsy, too short,
7 improperly and/or inadequately secured, and was easily breached by persons who would thus
8 be able to bypass security;

9 b) That defendants directly or indirectly, approved, were responsible for, aware of,
10 directed, controlled, oversaw, and/or supervised, the unreasonably unsafe location of the
11 inadequate, flimsy, low-height unsupported chain link perimeter fence and/or gate where the
12 shooter entered, which was an unreasonably unsafe location, as there were not clear lines of
13 sight maintained, the fence and/or gate were insufficiently secured, and the shooter's presence
14 and entrance would be concealed including by cover of the Uvas Creek including the
15 topography, cover and wooded area;

16 c) That defendants compounded this already unsafe perimeter fence and/or gate of
17 their making, by further allowing a number of cars, box trucks, and/or other obstructions to be
18 placed near the border of the flimsy, low-height, unsupported chain link perimeter fence and/or
19 gate where the shooter entered, further obstructing lines of sight to the perimeter and providing
20 additional cover for individuals such as the shooter in the subject incident to enter the 2019
21 Gilroy Garlic Festival and commit violent criminal acts;

22 d) That defendants directly or indirectly, approved, were responsible for, aware of,
23 directed, controlled, oversaw, supervised, and/or failed to act to reasonably secure against the
24 safety threats created by Uvas Creek Park Reserve's location, and proximity to the border of
25 the 2019 Gilroy Garlic Festival that would provide a means of unauthorized access to the 2019
26 Gilroy Garlic Festival perimeter when not adequately secured, and thus presented a foreseeable
27 and unreasonable security threat making the 2019 Gilroy Garlic Festival not reasonably safe
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1 for its patrons, attendees, and vendors, including plaintiffs;

2 e) That defendants directly or indirectly, approved, were responsible for, aware of,
3 directed, controlled, oversaw, supervised, and/or failed to act to reasonably secure against the
4 safety threats created by the inadequate, flimsy, low-height, unsupported chain link perimeter
5 fence and/or inadequate and inadequately secured perimeter gate where the shooter entered that
6 was obviously a highly vulnerable and likely unauthorized entrance point;

7 f) That defendants directly or indirectly, approved, were responsible for, aware of,
8 directed, controlled, oversaw, supervised, and/or failed to act to reasonably monitor the
9 inadequate, flimsy, low-height, unsupported chain link perimeter fence and/or gate where the
10 shooter entered that required proper monitoring; defendants had no security personnel
11 stationed so that they would continuously monitor this highly vulnerable perimeter fence
12 and/or gate in the area where the shooter entered;

13 g) That the shooter was able to easily enter the 2019 Gilroy Garlic Festival with his
14 AK-47 assault rifle equipped with a large, seventy-five (75) round drum style magazine and at
15 least four (4) high capacity forty (40) round magazines completely undetected by defendants
16 until after the shooter began shooting and he had already inflicted the harm to plaintiffs;

17 h) That defendants directly or indirectly, approved, were responsible for, aware of,
18 directed, controlled, oversaw, supervised, and/or failed to keep the 2019 Gilroy Garlic Festival
19 reasonably safe from catastrophic injury and harm, including through a mass shooting;

20 i) That defendants directly or indirectly, approved, were responsible for, aware of,
21 directed, controlled, oversaw, supervised, and/or failed to act such that the 2019 Gilroy Garlic
22 Festival employed inadequate and outdated security policies, procedures and safeguards to
23 prevent and detect improper, illegal, and/or prohibited entry into the 2019 Gilroy Garlic
24 Festival despite numerous prior instances of such improper entry into the 2019 Gilroy Garlic
25 Festival; and/or

26 j) That defendants directly or indirectly, approved, were responsible for, aware of,
27 directed, controlled, oversaw, supervised, and/or failed to act such that the 2019 Gilroy Garlic
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1 Festival was inadequately and unreasonably secured and this created an event that was not
2 reasonably safe and had an unreasonable and foreseeable risk of unauthorized access to 2019
3 Gilroy Garlic Festival by an individual with the intention of committing criminal acts,
4 including a mass shooting; Such failures occurred not only with defendants being aware of the
5 risks of harm, but more egregiously this horrific incident was facilitated by, and made possible
6 by the negligent acts of the defendants. It should not, could not, and would not have occurred
7 but for the defendants' repeated acts and omissions as set forth herein.

8 54. Further, plaintiffs are informed and believe and based thereon allege that
9 defendants were negligent and acted in breach of defendants' duties of care, through their
10 negligent, careless, reckless, and/or wanton, conduct in their ownership, use, possession,
11 renting, leasing, operating, supplying, furnishing, designing, constructing, maintaining,
12 repairing, servicing, conducting, inspecting, managing, supervising, entrusting, hiring, training,
13 controlling, policies and procedures for, and/or safety plans for the 2019 Gilroy Garlic Festival
14 so as to cause, create, and/or allow to exist the event to be unsafe for its patrons, attendees, and
15 vendors, including plaintiffs, including by, but not limited to, the following additional conduct:

16 a) The defendants unacceptably ignored the grievous lessons of the countless,
17 widely publicized shootings at public and outdoor events through-out California and the United
18 States in recent years. They chose to operate their outdoor, public 2019 Gilroy Garlic Festival,
19 which now draws approximately 100,000 people annually, using a thirty-four-year-old
20 contract, which did not and could not contemplate the modern-day realities of an event of its
21 magnitude;

22 b) Defendants failed to follow proper procedures and guidelines promulgated for the
23 purpose of ensuring security and the implementation of protective measures at outdoor venues
24 such as the 2019 Gilroy Garlic Festival;

25 c) Defendants failed to maintain a secure perimeter, properly monitor the perimeter,
26 properly secure perimeter fences and/or gate(s), and/or address specific vulnerabilities in
27 perimeter security. These failures, and others, allowed for a de facto back entrance to the 2019
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1 Gilroy Garlic Festival utilized by the shooter and thus directly facilitated this tragedy;

2 d) Defendants knew or should have known of the vulnerabilities in their security and
3 of the many security guidelines, procedures, and protective measures recommended for events
4 such as the Gilroy Garlic Festival;

5 e) Defendants failed to implement protective measures that would have prevented
6 these tragic and foreseeable events from transpiring altogether, including that defendants'
7 security measures were woefully deficient in managing the large number of patrons visiting the
8 2019 Gilroy Garlic Festival. As a result, this enabled individuals to gain unauthorized access to
9 the 2019 Gilroy Garlic Festival grounds and to bring prohibited items onto the property
10 including a military-style rifle and multiple rounds of ammunition. Additionally, this enabled,
11 individuals to engage in a violent shooting spree while on 2019 Gilroy Garlic Festival grounds;

12 f) Defendants failed to conduct a proper threat analysis, vulnerability assessment,
13 consequence analysis, risk assessment, and/or security audit of the venue;

14 g) Defendants had reason to know of the history of the threat of an active shooter
15 situation at outdoor venues which increased the likelihood of this incident occurring;

16 h) Defendants failed to determine the physical features or operational attributes
17 which left the venue open to exploitation and attack;

18 i) Defendants failed to implement an appropriate vulnerability assessment strategy;

19 j) Defendants failed to assess residual gaps in security or planning to determine
20 unresolved vulnerabilities;

21 k) Defendants failed to implement an appropriate Emergency Response and/or
22 develop standard operating procedures and checklists to cover potential emergencies, including
23 an active shooter situation such as what occurred here;

24 l) Defendants failed to establish a proper threat response protocol for when the
25 venue is open to the public;

26 m) Defendants failed to identify the chain-of-command relative to responding to
27 active shooter situations and roles, responsibilities, and methods of contact for the decision
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1 makers;

2 n) Defendants failed to ensure that emergency equipment and supplies were
3 available to support emergency response requirements;

4 o) Defendants failed to conduct training exercises with employees and volunteers to
5 practice the security and emergency response plans to ensure there were adequate resources
6 available to implement the plan and that all venue operation units could implement their
7 responsibilities under the plan;

8 p) Defendants failed to conduct training and exercises with law enforcement and
9 emergency responders to familiarize them with the venue and its security and emergency
10 procedures;

11 q) Defendants failed to review, test, and update all plans, including security plans
12 and the emergency response plan, including to be commensurate with the increased volume of
13 visitors coming to the 2019 Gilroy Garlic Festival, notwithstanding the GILROY GARLIC
14 FESTIVAL ASSOCIATION, INC.'s active efforts in soliciting such business;

15 r) Defendants failed to maintain a record of security-related incidents and/or
16 regularly review the record to identify patterns or trends that would reveal specific
17 vulnerabilities in perimeter security such as the one exploited by the shooter herein;

18 s) Defendants failed to incorporate security awareness and appropriate response
19 procedures for security situations into employee and volunteer training programs, including but
20 not limited to:

21 (i) Instructions for maintaining alertness to and being able to recognize
22 situations that may pose a security threat;

23 (ii) Instructions for maintaining alertness to surveillance activities that
24 could be an indicator of potential attacks;

25 (iii) Contact and notification protocols for suspicious situations and
26 emergencies;

27 (iv) Caution in providing venue information to outsiders;
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1 (v) Failing to train all employees and volunteers on suspicious activity
2 reporting; and/or,

3 (vi) Failing to maintain up-to-date security training with refresher courses.

4 t) Defendants failed to provide security information and training to contractors,
5 vendors, volunteers, and temporary employees at the venue and/or advise them to be alert to
6 suspicious activity or items, and instruct them on how to report such incidents;

7 u) Defendants failed to maintain an adequately sized, equipped, and trained security
8 staff based on the threat that was specific to the 2019 Gilroy Garlic Festival;

9 v) Defendants failed to coordinate security staff operations with local law
10 enforcement and State and Federal agencies such as the FBI, Department of Homeland
11 Security, and the Joint Terrorism Task Force;

12 w) Defendants failed to develop a security staff schedule that included proper patrols
13 of the venue, including in specifically vulnerable areas;

14 x) Defendants failed to adequately define the perimeter and areas within the venue
15 that required access control for pedestrians and vehicles;

16 y) Defendants failed to identify especially sensitive or critical areas, such as the area,
17 fence and/or gate along the 2019 Gilroy Garlic Festival perimeter where the shooter entered the
18 grounds;

19 z) Defendants failed to identify an area extending out from the venue perimeter that
20 could be used to further restrict access to the venue when necessary;

21 aa) Defendants failed to establish emergency access lanes for fire, police, and EMS
22 personnel and/or allow emergency services vehicles to be parked near entrance points and near
23 critical areas to ensure timely response to this incident;

24 bb) Defendants failed to post security personnel at critical or vulnerable areas,
25 including the area where the shooter entered the 2019 Gilroy Garlic Festival grounds, to
26 observe suspicious behavior and secure the perimeter;

27 cc) Defendants failed to adequately evaluate the need for perimeter barriers around
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1 the venue;

2 dd) Defendants failed to consider natural features, including the wooded area of the
3 Uvas Creek bordering the 2019 Gilroy Garlic Festival, which inhibited security at the Gilroy
4 Garlic Festival;

5 ee) Defendants failed to implement the appropriate level of barrier security for the
6 perimeter of the 2019 Gilroy Garlic Festival;

7 ff) Defendants failed to maintain a clear area at perimeter barriers to enable
8 continuous monitoring and to inhibit concealment of people, weapons, and/or ammunition;

9 gg) Defendants failed to inspect perimeter barriers regularly;

10 hh) Defendants failed to clear zones adjacent to sensitive or critical areas, including
11 the area where the shooter entered the 2019 Gilroy Garlic Festival;

12 ii) Defendants failed to keep zones, such as the area where the shooter entered the
13 2019 Gilroy Garlic Festival, free of obstructions to allow for continuous monitoring and to
14 inhibit concealment of people, weapons and ammunition;

15 jj) Defendants failed to consider the requirements for fire protection and emergency
16 vehicle access in the design of building their flimsy perimeter enclosure at the 2019 Gilroy
17 Garlic Festival;

18 kk) Defendants failed to develop a communication and notification plan that covers
19 voice, data, and/or video transfer of information related to safety and security;

20 ll) Defendants failed to provide a simple and straightforward means for people to
21 communicate the presence of a potential threat, vulnerability, or an emergency;

22 mm) Defendants failed to ensure there were systems of communication that provided a
23 timely means to communicate with all people at the venue including employees, security
24 personnel, emergency response teams, and patrons in order to notify and instruct what to do in
25 an emergency situation;

26 nn) Defendants failed to develop a process for communicating to employees and
27 security personnel the current security situation;
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1 oo) Defendants failed to design a monitoring, surveillance, and inspection program
2 commensurate with the magnitude of the 2019 Gilroy Garlic Festival and its security
3 requirements;

4 pp) Defendants failed to ensure security personnel regularly inspected the site
5 perimeter and vulnerable areas along the perimeter, including where the shooter gained access
6 to the 2019 Gilroy Garlic Festival;

7 qq) Defendants failed to assign security personnel to vulnerable areas, including
8 where the shooter gained access to 2019 Gilroy Garlic Festival, to prevent unauthorized access;

9 rr) Defendants failed to assess the need for surveillance cameras to provide coverage
10 for the perimeter, sensitive and critical areas, and the buffer zone around the venue;

11 ss) Defendants failed to provide surveillance coverage for the perimeter, sensitive
12 and critical areas around the venue, including where the shooter gained entry to the 2019
13 Gilroy Garlic Festival;

14 tt) Defendants failed to include coverage of a buffer zone around the venue to
15 prevent unauthorized access, such as occurred here, from taking place;

16 uu) Defendants failed to train personnel to interpret video and identify potential
17 security related events;

18 vv) Defendants failed to monitor in live time and review recordings regularly for
19 unusual activities or patterns;

20 ww) Defendants failed to mount digital security cameras on high structures within the
21 venue or along vulnerable areas or the perimeter, such as where the shooter gained entry to
22 2019 Gilroy Garlic Festival;

23 xx) Defendants failed to monitor people entering and leaving the 2019 Gilroy Garlic
24 Festival and/or train monitors to detect suspicious behavior;

25 yy) The "security checks" performed at valid entry points were inadequate, and were
26 performed by individuals without appropriate training or expertise, such that many attendees
27 were able to gain unauthorized entry to the 2019 Gilroy Garlic Festival through recognized and
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1 supposedly "secured" points of entry;

2 zz) Defendants failed to take precautionary measures in the form of, inter alia, an
3 evacuation plan, adequate numbers of emergency medical personnel on site for an event of its
4 magnitude, an emergency plan, proper training of personnel for an active shooter event or its
5 aftermath, and/or proper means for communication and coordination of staff in the event of an
6 emergency;

7 aaa) Failing to employ adequate safety and security measures;

8 bbb) Failing to design, build, provide, and mark adequate exits in case of emergency;

9 ccc) Failing to warn its patrons, attendees, vendors, employees, licensees, and invitees,
10 including plaintiffs, of the nature and character of the threat posed by a criminal act or attack,
11 when they knew or in the exercise of reasonable care should have known of the unreasonable
12 and foreseeable risk of such a criminal act or attack;

13 ddd) Failing to adequately police, patrol, guard, deter, and otherwise provide
14 reasonable protection for its patrons, attendees, vendors, employees, licensees, and invitees,
15 including plaintiffs, when defendants knew or should have known of foreseeable criminal acts;

16 eee) Failing to reasonably hire and/or retain and/or supervise adequate security
17 personnel to patrol and/or monitor the premises of the 2019 Gilroy Garlic Festival, thereby
18 protecting its patrons, attendees, vendors, employees, licensees, and invitees, including
19 plaintiffs;

20 fff) Failing to have proper procedures in place for hiring, training, directing, and/or
21 supervising employees, police officers, security personnel, volunteers, or other staff
22 responsible for security and/or emergency response at the 2019 Gilroy Garlic Festival;

23 ggg) Failing to have a sufficient number of security personnel in critical areas to deter
24 crime, thereby protecting its patrons, attendees, vendors, employees, licensees, and invitees,
25 including plaintiffs;

26 hhh) Failing to have adequate mechanisms for security personnel, staff, employees,
27 attendees and others within the community to report real threats or other security concerns
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related to the 2019 Gilroy Garlic Festival;

iii) Failing to properly hire, train, direct, and supervise employees, volunteers, security personnel, police officers, and other individuals responsible for security at the 2019 Gilroy Garlic Festival to adequately supervise the 2019 Gilroy Garlic Festival grounds in such a way that would prevent acts of violence;

jjj) Failing to implement or follow adequate security policies, security measures, and security procedures necessary to protect plaintiffs and other patrons, attendees, vendors, employees, licensees, and invitees at the 2019 Gilroy Garlic Festival;

kkk) Failing to take additional security measures after being put on notice that the security measures in force were inadequate;

lll) Failing to adequately provide an overall security plan that would meet the known industry standards and customs for safety at events similar in scale and magnitude to the 2019 Gilroy Garlic Festival;

mmm) Failing to adequately screen or monitor those entering the premises for the possession of weapons;

nnn) Failing to implement reasonable crime prevention through environmental design concepts which would have hardened the 2019 Gilroy Garlic Festival grounds against foreseeable violent crime such as the subject incident; and/or

ooo) Acting or failing to act consistently with the relevant policies, procedures, guidelines, and training relating to the protection of human life that were in effect at the time of the shooting.

D. Defendants' Could Have Had a Safe Event for Minimal Additional Cost

55. Plaintiffs are informed and believe and based thereon allege that it was practicable, prudent and reasonable for defendants to provide a reasonably safe event at the 2019 Gilroy Garlic Festival including by having adequate perimeter barriers that were properly monitored to prevent unauthorized and undetected access into the Gilroy Garlic Festival by criminals, including mass shooters with military-style weapons and extensive rounds of

ammunition. A proper secure perimeter fence and gates that were appropriately monitored would have prevented the shooter from entering and this tragedy would not have occurred. Plaintiffs are informed and believe and based thereon allege that this could have been done for minimal additional cost.

E. Defendants' Failures Proximately Caused the Tragic Shootings

56. As a result of the aforesaid breaches by defendants, plaintiffs tragically fell victim to the depraved shooter who was able to foreseeably take advantage of the unsafe and unsecure conditions created by defendants, and the shooter was able to enter the 2019 Gilroy Garlic Festival undetected with his AK-47 assault rifle equipped with a large, seventy-five (75) round drum style magazine, and at least four (4) high capacity forty (40) round magazines, through the inadequate, flimsy, low-height, unsupported chain link perimeter fence and/or inadequate and inadequately secured gate, located in an unsecure area that was not adequately monitored, and began firing his automatic, AK-47 style assault rifle into the crowd striking plaintiffs.

57. Plaintiffs are informed and believe and based thereon allege that defendants' negligence and misconduct as set forth herein was the proximate cause and/or substantial factor in causing the injuries and damages to plaintiffs as set forth herein.

F. Plaintiffs' Injuries and Damages

58. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness of defendants, plaintiffs WENDY TOWNER, FRANCISCO AGUILERA, NICK MCFARLAND, JUSTIN BATES, BRYNN OTA-MATTHEWS, GABRIELLA GAUS, HARRY DE LA VEGA, BARBARA V. AGUIRRE, BARBARA J. AGUIRRE, LESLEY SANCHEZ, a minor, by and through her Guardian ad Litem, Diana Galindo, and LESLIE ANDRES, a minor, by and through her Guardian ad Litem, Laura Rodriguez sustained severe and serious injury to their persons, including gunshot injuries, all potentially life threatening, all permanent, serious and severe, to plaintiffs' damage in sums in excess of the jurisdictional minimum of this court, to be established according to proof at trial.

59. As a direct and proximate result of the negligence, carelessness, recklessness,

1 wantonness of defendants, plaintiffs realized significant delays in obtaining access to and
2 receiving medical assistance.

3 60. As a further direct and proximate result of the negligence, carelessness,
4 recklessness, wantonness of defendants, plaintiffs have been required to employ the services of
5 hospitals, rehabilitation facilities, physicians, surgeons, nurses and other professional services
6 and plaintiffs have been compelled to incur expenses for ambulance service, machines, x-rays
7 and other medical supplies and services. As a further direct and proximate result of the
8 negligence and carelessness of defendants, plaintiffs are in need of future medical treatment,
9 services, care, and other services and expenses in amounts to be shown according to proof at
10 the time of trial of this matter.

11 61. As a further direct and proximate result of the negligence, carelessness,
12 recklessness, wantonness of defendants, plaintiffs have loss of past, present, and future wages
13 and loss of earning capacity in amounts to be shown according to proof at the time of trial of
14 this matter.

15 62. As a further direct and proximate result of the negligence, carelessness,
16 recklessness, wantonness of defendants, plaintiffs have suffered extreme shock, emotional
17 distress, and pain and suffering.

18 63. As a further direct and proximate result of the negligence, carelessness,
19 recklessness, wantonness of defendants, plaintiffs suffered serious emotional distress as a
20 direct victim of defendants' negligence. Plaintiffs' emotional distress includes but is not
21 limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock,
22 humiliation, and shame rising to the level that a reasonable person would be unable to cope.
23 Plaintiffs have sustained general damages in the sum in excess of the jurisdictional minimum
24 of this Court, as hereinbefore and hereinafter set forth.

25 64. As a further direct and proximate result of the negligence, carelessness,
26 recklessness, wantonness of defendants, plaintiffs have suffered serious emotional distress as
27 bystanders. Plaintiffs' emotional distress includes but is not limited to, suffering, anguish,
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1 fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame as well as
2 physical injury.

3 WHEREFORE, plaintiffs pray for judgment against the defendants as hereinafter set
4 forth.

5 **IV.**

6 **SECOND CAUSE OF ACTION**

7 **PREMISES LIABILITY**

8 As a Second, Separate Distinct Cause of Action, for plaintiffs as against all defendants,
9 (except defendant CITY OF GILROY and DOES 50-100, inclusive), plaintiffs allege as
10 follows:

11 65. Plaintiffs reallege and incorporate herein by this reference, each and every
12 allegation contained in Paragraphs 1 through 16, inclusive, of the foregoing Introduction and
13 General Allegations, and Paragraphs 18 through 64, inclusive, of the foregoing First Cause of
14 Action, and makes them a part of the instant Cause of Action as though fully set forth.

15 66. Plaintiffs are informed and believe and based thereon allege the real property on
16 which the subject catastrophic incident occurred is owned by defendant CITY OF GILROY
17 and is commonly known as Christmas Hill Park and as the site of annual Gilroy Garlic Festival
18 (hereinafter "GILROY GARLIC FESTIVAL PROPERTY").

19 67. Plaintiffs are informed and believe and based thereon allege that defendants
20 owned, operated, entrusted, rented, leased, furnished, supplied, designed, constructed, repaired,
21 modified, serviced, managed, controlled, supervised, maintained, inspected, occupied, used
22 and/or possessed the GILROY GARLIC FESTIVAL PROPERTY.

23 68. Defendants were under a duty to exercise ordinary care in their ownership,
24 operation, entrusting, renting, leasing, furnishing, supplying, designing, constructing, repairing,
25 modifying, servicing, managing, controlling, supervising, maintaining, inspecting, occupying,
26 use and/or possession of the GILROY GARLIC FESTIVAL PROPERTY in order to avoid
27 exposing persons to an unreasonable risk of harm. The failure to perform this duty is
28

1 negligence.

2 69. Plaintiffs are informed and believe and based thereon allege that on or about July
3 28, 2019, and prior thereto, defendants so negligently and carelessly owned, operated,
4 entrusted, rented, leased, furnished, supplied, designed, constructed, repaired, modified,
5 serviced, managed, controlled, supervised, maintained, inspected, occupied, used, and/or
6 possessed the GILROY GARLIC FESTIVAL PROPERTY as to cause, create, and/or allow to
7 exist a dangerous, hazardous and unsafe condition which created an unreasonable and
8 substantial risk of injury to persons having occasion to attend the 2019 Gilroy Garlic Festival,
9 including plaintiffs.

10 70. Plaintiffs are informed and believe and based thereon allege that defendants were
11 negligent in their ownership, operation, entrusting, renting, leasing, furnishing, supplying,
12 designing, constructing, repairing, modifying, servicing, managing, controlling, supervising,
13 maintaining, inspecting, occupying, using and/or possessing the GILROY GARLIC
14 FESTIVAL PROPERTY for the 2019 Gilroy Garlic Festival by any or all the following: a)
15 That the GILROY GARLIC FESTIVAL PROPERTY was not safe, including due to the unsafe
16 and unsecure conditions created by defendants, that allowed the shooter to enter the GILROY
17 GARLIC FESTIVAL PROPERTY, carrying his AK-47 assault rifle, equipped with a large,
18 seventy-five (75) round drum style magazine, and at least four (4) high capacity forty (40)
19 round magazines, completely undetected until after the gunman began shooting, by gaining
20 entry through the inadequate, flimsy, low-height, unsupported chain link perimeter fence
21 and/or inadequate and inadequately secured gate, located in an unsecure area that was not
22 adequately monitored; b) Failure to use reasonable care to keep the GILROY GARLIC
23 FESTIVAL PROPERTY in a reasonably safe condition; c) Failure to use reasonable care to
24 discover any unsafe conditions; d) Failure to remedy and repair unsafe conditions; and/or e)
25 Failure to give adequate warning of anything that could be reasonably expected to harm others.

26 71. Plaintiffs are informed and believe and based thereon allege that defendants were
27 aware or reasonably should have been aware of a condition concealed to plaintiffs on the
28

1 GILROY GARLIC FESTIVAL PROPERTY, that the 2019 Gilroy Garlic Festival was not
2 safe, including due to the unsafe and unsecure conditions created by defendants, that allowed
3 the shooter to enter the 2019 Gilroy Garlic Festival with a military style weapon undetected,
4 through the inadequate, flimsy, low-height, unsupported chain link perimeter fence and/or gate,
5 located in an unsecure area that was not adequately monitored.

6 72. Plaintiffs are informed and believe and based thereon allege that defendants were
7 required to have the GILROY GARLIC FESTIVAL PROPERTY comply with appropriate
8 safety measures that would make this large-scale public event reasonably safe for the patrons,
9 attendees, and vendors, including plaintiffs. Defendants failed to so act.

10 73. Plaintiffs had the right to assume that defendants would exercise due care in their
11 ownership, operation, entrusting, renting, leasing, furnishing, supplying, designing,
12 constructing, repairing, modifying, servicing, managing, controlling, supervising, maintaining,
13 inspecting, occupying, use and/or possession of the GILROY GARLIC FESTIVAL
14 PROPERTY in order avoid exposing persons to an unreasonable risk of harm, including that
15 defendants had taken proper precautions for the safety of the patrons, attendees, and vendors,
16 including plaintiffs, and that defendants would use reasonable care in guarding them against
17 injury. Defendants failed to so act.

18 74. Plaintiffs are informed and believe and based thereon allege that defendants'
19 negligence and misconduct as set forth herein was the proximate cause and/or substantial
20 factor in causing the injuries and damages to plaintiffs as set forth herein.

21 75. As a direct and proximate result of the negligence, carelessness, recklessness,
22 wantonness of defendants, plaintiffs sustained severe and serious injury to their persons,
23 including gunshot injuries, all permanent, serious and severe, to plaintiffs' damage in sums in
24 excess of the jurisdictional minimum of this court, to be established according to proof at trial.

25 76. As a direct and proximate result of the negligence, carelessness, recklessness,
26 wantonness of defendants, plaintiffs realized significant delays in obtaining access to and
27 receiving medical assistance.
28

1 77. As a further direct and proximate result of the negligence, carelessness,
2 recklessness, wantonness of defendants, plaintiffs have been required to employ the services of
3 hospitals, rehabilitation facilities, physicians, surgeons, nurses and other professional services
4 and plaintiffs have been compelled to incur expenses for ambulance service, machines, x-rays
5 and other medical supplies and services. As a further direct and proximate result of the
6 negligence and carelessness of defendants, plaintiffs are in need of future medical treatment,
7 services, care, and other services and expenses in amounts to be shown according to proof at
8 the time of trial of this matter.

9 78. As a further direct and proximate result of the negligence, carelessness,
10 recklessness, wantonness of defendants, plaintiffs have loss of past, present, and future wages
11 and loss of earning capacity in amounts to be shown according to proof at the time of trial of
12 this matter.

13 79. As a further direct and proximate result of the negligence, carelessness,
14 recklessness, wantonness of defendants, plaintiffs have suffered extreme shock, emotional
15 distress, and pain and suffering.

16 80. As a further direct and proximate result of the negligence, carelessness,
17 recklessness, wantonness of defendants, plaintiffs suffered serious emotional distress as direct
18 victims of defendants' negligence. Plaintiffs' emotional distress includes but is not limited to,
19 suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and
20 shame rising to the level that a reasonable person would be unable to cope. Plaintiffs have
21 sustained general damages in the sum in excess of the jurisdictional minimum of this Court, as
22 hereinbefore and hereinafter set forth.

23 81. As a further direct and proximate result of the negligence, carelessness,
24 recklessness, wantonness of defendants, plaintiffs have suffered serious emotional distress as
25 bystanders. Plaintiffs' emotional distress includes but is not limited to, suffering, anguish,
26 fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame as well as
27 physical injury.
28

1 WHEREFORE, plaintiffs pray for judgment against the defendants as hereinafter set
2 forth.

3 V.

4 **THIRD CAUSE OF ACTION**

5 **WRONGFUL DEATH**

6 As a Third, Separate Distinct Cause of Action, for plaintiffs BARBARA J. AGUIRRE
7 and ALBERTO ROMERO as against all defendants, plaintiffs allege as follows:

8 82. Plaintiffs reallege and incorporate herein by this reference, each and every
9 allegation contained in Paragraphs 1 through 16, inclusive, of the foregoing Introduction and
10 General Allegations, and Paragraphs 18 through 64, inclusive, of the foregoing First Cause of
11 Action, Paragraphs 66 through 81, inclusive, of the foregoing Second Cause of Action,
12 Paragraphs 83 through 87, inclusive, of the foregoing Third Cause of Action, Paragraphs 89
13 through 108, inclusive, of the foregoing Fourth Cause of Action, Paragraphs 110 through 112,
14 inclusive, of the foregoing Fifth Cause of Action, Paragraphs 115 through 253, inclusive, of the
15 foregoing Sixth Cause of Action, Paragraphs 256 through 266, inclusive, of the foregoing
16 Seventh Cause of Action, and Paragraphs 268 through 278, inclusive, of the foregoing Seventh
17 Cause of Action and makes them a part of the instant Cause of Action as though fully set forth.

18 83. Plaintiffs BARBARA J. AGUIRRE and ALBERTO ROMERO are the natural
19 parents and heirs of Stephen Romero.

20 84. Stephen Romero was present at the Gilroy Garlic Festival on July 28, 2019 with
21 his mother BARBARA J. AGUIRRE and his grandmother BARBARA V. AGUIRRE when
22 the shooting occurred.

23 85. As set forth in the First and Second Causes of Action herein, the acts and/or
24 omissions of defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC., defendant
25 FIRST ALARM SECURITY & PATROL, INC., and defendant DOES 1-49, inclusive, were a
26 proximate cause and substantial factor in causing Stephen Romero to sustain severe and
27 serious injury to his person in the form of a gunshot wound, ultimately resulting in his death.
28

1 As set forth in the Fourth Causes of Action herein, the acts and/or omissions defendant CITY
2 OF GILROY and DOES 50-100, Inclusive, were a proximate cause and substantial factor in
3 causing Stephen Romero to sustain severe and serious injury to his person in the form of a
4 gunshot wound, ultimately resulting in his death. As set forth in the Sixth, Seventh and Eighth
5 Causes of Action herein, the acts and/or omissions defendant CENTURY ARMS, INC. and
6 defendant DOES 101-125, inclusive were a proximate cause and substantial factor in causing
7 Stephen Romero to sustain severe and serious injury to his person in the form of a gunshot
8 wound, ultimately resulting in his death.

9 86. As a further direct and proximate result of the defendants' acts and/or omissions,
10 plaintiffs BARBARA J. AGUIRRE and ALBERTO ROMERO have been deprived of the love,
11 companionship, comfort, care, assistance, protection, affection, society, advice, counsel, moral
12 support, and have the loss of future services of said decedent, Stephen Romero, to plaintiffs'
13 great loss and damage.

14 87. As a further direct and proximate result of the defendants' acts and/or omissions,
15 plaintiffs BARBARA J. AGUIRRE and ALBERTO ROMERO have suffered pecuniary
16 damages in the form of funeral, burial, and medical expenses as a result of the death of their
17 son, Stephen Romero. As a further direct and proximate result of said defendants' conduct, and
18 each of them, defendants have caused plaintiffs BARBARA J. AGUIRRE and ALBERTO
19 ROMERO the loss of future services, earnings, gifts and support, to their great loss and
20 damage.

21 WHEREFORE, plaintiffs pray for judgment against the defendants as set forth below.

22 **V.**

23 **FOURTH CAUSE OF ACTION**

24 **PUBLIC ENTITY LIABILITY**

25 As a Fourth, Separate Distinct Cause of Action, for plaintiffs as against defendant CITY
26 OF GILROY and DOES 50-100 Inclusive, plaintiffs allege as follows:

27 88. Plaintiffs reallege and incorporate herein by this reference, each and every
28

1 allegation contained in Paragraphs 1 through 16, inclusive, of the foregoing Introduction and
2 General Allegations, and Paragraphs 18 through 64, inclusive, of the foregoing First Cause of
3 Action, Paragraphs 66 through 81, inclusive, of the foregoing Second Cause of Action,
4 Paragraphs 83 through 87, inclusive, of the foregoing Third Cause of Action, and Paragraphs
5 110 through 112, inclusive, of the Fifth Cause of Action, and makes them a part of the instant
6 Cause of Action as though fully set forth.

7 89. Plaintiffs duly presented claims for the damages sought herein to defendant CITY
8 OF GILROY. Said claims were denied.

9 90. At all times relevant herein, defendant CITY OF GILROY and/or DOES 50-60,
10 Inclusive, owned, controlled, and/or maintained the property on which a dangerous condition
11 existed. Defendant CITY OF GILROY owed plaintiffs a non-delegable duty to maintain their
12 property free from dangerous conditions.

13 91. The condition was created by employees of said public entities.

14 92. The defendants sued herein as DOES 61-100 Inclusive, were the agents and/or
15 employees of defendant CITY OF GILROY and all times relevant herein acted within the
16 scope of such agency or employment.

17 93. The liability of defendant CITY OF GILROY and its employees is based on the
18 factual and legal basis set forth herein, including, but not limited to, Government Code §815.2
19 (public entities vicariously liable for the acts and omissions of its employees), §815.4 (public
20 entities vicariously liable for the acts and omissions of its independent contractors), §820
21 (public employee liability), and §830, §835, §835.2 (injury caused by dangerous condition of
22 property).

23 94. On July 28, 2019, and prior thereto, the area owned, controlled and/or maintained
24 (including as defined by Government Code Section 830(c)) by said defendants was in a
25 dangerous condition (as defined by Government Code Section 830(a)) that created a substantial
26 risk of type of injury hereinafter alleged when the property was used in a manner that was
27 reasonably foreseeable in that, among other things:
28

1 a) Mass shootings at public events are foreseeable, known targets and are part of the
2 risks that must be taken into account when hosting such large-scale public events. Defendant
3 CITY OF GILROY had actual and constructive notice of many prior mass shootings.
4 Conditions of property that may once have been acceptable for large-scale public events are
5 now dangerous, and were dangerous as of July 28, 2019, if they allow easy access by those
6 carrying weapons with intent on perpetrating criminal conduct such as mass shootings;

7 b) Defendant CITY OF GILROY was the owner of and controls the property on
8 which the Gilroy Garlic Festival was held on July 26, 2019 through July 28, 2019 known as
9 Christmas Hill Park. The property on which the 2019 Gilroy Garlic Festival was held was in a
10 dangerous condition at the time of the injuries set forth herein. The injuries set forth herein
11 were proximately caused by such dangerous condition. Such dangerous condition created a
12 reasonably foreseeable risk of the kind of injury that was incurred herein;

13 c) Plaintiffs are informed and believe and based thereon allege that a negligent or
14 wrongful act or omission of an employee of the defendant CITY OF GILROY acting within
15 the scope of his/her employment created the dangerous condition, and/or defendant CITY OF
16 GILROY had actual or constructive notice of the dangerous condition under Government Code
17 §835.2 with sufficient time prior to the injuries herein to have taken measures to protect against
18 the dangerous condition;

19 d) Plaintiffs were paid invitees to the Festival, including attendees, vendors and their
20 families and were using the premises in the intended and foreseeable manner; and/or

21 e) On July 28, 2019, the shooter was able to easily enter the 2019 Gilroy Garlic
22 Festival with his AK-47 assault rifle, equipped with a large, seventy-five (75) round drum style
23 magazine, and at least four (4) high capacity forty (40) round magazines, *completely*
24 *undetected* by anyone until after the shooter began shooting and he had already begun to inflict
25 harm on plaintiffs. Defendant CITY OF GILROY's property was in a dangerous condition for
26 this large-scale public event including, but not limited to, by the following: Failing to have
27 adequate safe environmental and/or infrastructure characteristics for this large scale public
28

1 event; Failing to make safe and/or address unsafe environmental and/or infrastructure
2 characteristics of the premises and perimeter for this large scale public event; Failing to erect
3 barriers that would keep out and deter intruders and criminals; The barrier that was constructed
4 was grossly deficient to keep out and deter intruders and criminals from entering the Gilroy
5 Garlic Festival; There was an inadequate, flimsy, low-height, barrier that was simple to breach,
6 located inappropriately where the shooter's presence and entrance would be concealed by a
7 wooded area; There was no adequate monitoring of the perimeter barrier on either side by non-
8 police personnel and/or live-time monitored cameras and/or other forms of monitoring; Failing
9 to trim trees, foliage and brush so that the perimeter barrier around the Gilroy Garlic Festival
10 would not be concealed; and/or defendant CITY OF GILROY made this extremely vulnerable
11 area of their creation even worse by allowing cars, box trucks, and/or other obstructions to be
12 placed near the border of the flimsy, low-height, unsupported barrier, including where the
13 shooter entered that further obstructed necessary clear lines of sight to the perimeter barrier and
14 provided additional cover for individuals such as the shooter to enter the Gilroy Garlic Festival
15 and commit violent criminal acts.

16 95. Such dangerous condition of defendant CITY OF GILROY's property created a
17 substantial risk of injury when such property was used with due care in a manner in which it is
18 reasonably foreseeable that it will be used – as a venue for a large-scale public event, since
19 defendant CITY OF GILROY allowed the shooter easy undetected access to the 2019 Gilroy
20 Garlic Festival.

21 96. It is a matter of common knowledge that a criminal intent on committing mass
22 shootings at public events will target venues that do not have adequate perimeter barriers.
23 Defendant CITY OF GILROY had actual and/or constructive notice that the subject perimeter
24 barrier was inadequate to prevent persons (including mass shooters) from easily entering the
25 Gilroy Garlic Festival facilities.

26 97. Defendant CITY OF GILROY by having said unreasonable and inadequate
27 perimeter barrier without clear sight lines created a substantial risk that a mass shooting would
28

1 occur at the 2019 Gilroy Garlic Festival and thus constituted a dangerous condition of public
2 property.

3 98. Defendant CITY OF GILROY did not provide any warnings about this dangerous
4 condition – to the contrary defendant CITY OF GILROY (including through its joint venture
5 for the Gilroy Garlic Festival), advertised, represented and promised to the public at large,
6 including plaintiffs, that the 2019 Gilroy Garlic Festival would be “*a safe, family-friendly*
7 *atmosphere* for all Festival patrons and volunteers” and that “*weapons of any kind*” would be
8 *prohibited*.

9 99. There was a failure to provide safeguards (including as set forth in Government
10 Code Section 830(b)) for such dangers which would not be reasonably apparent to, and would
11 not be anticipated by, a person using due care.

12 100. A proper secure perimeter barrier with clear sight lines would have prevented the
13 shooter from entering and this tragedy would more likely than not have not occurred. Plaintiffs
14 are informed and believe and based thereon allege that such proper secure perimeter barrier
15 with clear sight lines could have been done for reasonable cost. The lack of a proper secure
16 perimeter barrier with clear sight lines created a dangerous condition in which it was
17 foreseeable that a criminal shooting would occur; and defendant CITY OF GILROY had
18 sufficient notice of the dangerous condition to have time to take measures to protect against it.

19 101. Defendant CITY OF GILROY’s acts and omissions in maintaining their Festival
20 property foreseeably, unreasonably, and/or substantially increased the risk of criminal conduct
21 by third parties, such as occurred here, including by not having an adequate perimeter barrier
22 with clear sight lines, by allowing the perimeter barrier fence to be obstructed by the cover
23 provided by the heavily wooded area by the Uvas Creek and by cars, box trucks, and/or other
24 obstructions. Such acts and omissions were known to defendant CITY OF GILROY and these
25 created a foreseeable, unreasonable, increased and substantial risk of a criminal gaining entry
26 to the Festival with the intent of inflicting serious injury and death to attendees as occurred
27 herein, unless defendant CITY OF GILROY had taken reasonable steps to trim the foliage,
28

1 brush and trees, have an adequate perimeter barrier with clear sight lines, direct the location of
2 the perimeter barrier away from the creek border, not allowing cars, box trucks, and/or other
3 obstructions to be placed near the perimeter barrier, move the Festival to a more suitable
4 location, and/or take other appropriate measures, all of which defendant CITY OF GILROY
5 failed to do.

6 102. Defendant CITY OF GILROY's acts and omissions in maintaining their Festival
7 property allowed for the use of the Festival property in a defective condition, unsafe, and/or
8 dangerous for use as grounds for the Festival. When the Festival began over thirty (30) years
9 ago, it was a small-scale community event, accommodating merely a few thousand individuals
10 annually. The Festival's size and attendance has substantially grown in the many years
11 following its inception, and now regularly accommodates approximately one-hundred thousand
12 (100,000) patrons over the course of a weekend. Despite this growth in attendance, defendant
13 CITY OF GILROY failed to take reasonable and/or necessary steps to ensure that the Festival
14 property was/is reasonably safe, suitable, and appropriate for purposes of hosting the Festival
15 given modern-day concerns, logistical realities, and/or organizational needs. Defendant CITY
16 OF GILROY's acts and/or omissions created a substantial risk of criminal activity such as
17 occurred here and directly and proximately caused the injuries sustained by plaintiffs.
18 Defendant CITY OF GILROY had the authority and it was defendants' responsibility to take
19 adequate measures to protect the public against the dangerous condition they created.

20 103. Defendant CITY OF GILROY is liable for plaintiffs' injuries under Government
21 Code §830, §835, and §835.2 due to the dangerous condition of their property that held the
22 2019 Gilroy Garlic Festival. Defendant CITY OF GILROY is also responsible under
23 Government Code §815.2 for the acts and omissions of its employees within the scope of their
24 employment. Defendant CITY OF GILROY's employees named herein as DOES 61-100 are
25 also responsible under Government Code §840.2 and §840.4 for the acts and omissions set
26 forth herein. Defendant CITY OF GILROY is also responsible under Government Code
27 §815.4 for the acts and omissions of its independent contractors, including the other defendants
28

herein. Per Gov. Code §820, except as otherwise provided by statute, a public employee is liable for injury caused by his act or omission to the same extent as a private person.

104. [Omitted per Order of Court striking paragraph].

105. [Omitted per Order of Court striking paragraph].

106. [Omitted per Order of Court striking paragraph].

107. Defendant CITY OF GILROY further negligently exercised its retained control for all of the reasons set forth herein so as to affirmatively contribute to the plaintiffs' injuries and the death of Stephen Romero.

108. Further, Defendant CITY OF GILROY had contractual duties to ensure a safe event. Defendant CITY OF GILROY breached its duties for all of the reasons set forth herein and this was a proximate cause and substantial factor in allowing the subject mass shooting to occur.

WHEREFORE, plaintiffs pray for judgment against the defendants as hereinafter set forth.

VI.

FIFTH CAUSE OF ACTION

JOINT VENTURE LIABILITY

As a Fifth, Separate Distinct Cause of Action, for plaintiffs as against defendant CITY OF GILROY, defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC., and defendant DOES 1-100, inclusive, plaintiffs allege as follows:

109. Plaintiffs reallege and incorporate herein by this reference, each and every allegation contained in Paragraphs 1 through 16, inclusive, of the foregoing Introduction and General Allegations, and Paragraphs 18 through 64, inclusive, of the foregoing First Cause of Action, Paragraphs 66 through 81, inclusive, of the foregoing Second Cause of Action, Paragraphs 83 through 87, inclusive, of the foregoing Third Cause of Action, and Paragraphs 89 through 108, inclusive, of the foregoing Fourth Cause of Action makes them a part of the instant Cause of Action as though fully set forth.

110. Plaintiffs are informed and believe and based therein alleged that Defendant CITY OF GILROY had a joint venture with defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC. for the 2019 Gilroy Garlic Festival, implied through their conduct, including that:

- a) Defendant CITY OF GILROY and defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC. combined their property, skill, and/or knowledge with the intent to carry out a single business undertaking – the [REDACTED] 2019 Gilroy Garlic Festival;
- b) Defendant CITY OF GILROY and defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC. each had and ownership interest in the [REDACTED] 2019 Gilroy Garlic Festival;
- c) Defendant CITY OF GILROY and defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC. had joint control over the 2019 Gilroy Garlic Festival even if either of them they agreed to delegate any part of such control;
- d) Defendant CITY OF GILROY and defendant GILROY GARLIC FESTIVAL ASSOCIATION agreed how to share the profits and losses of the 2019 Gilroy Garlic Festival and did so;
- e) Defendant CITY OF GILROY provided the 2019 Gilroy Garlic Festival grounds, and hosted, organized, managed, ran, facilitated, promoted, sponsored, assisted with and agreed how to share in the profits and losses from the 2019 Gilroy Garlic Festival, all in conjunction with defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC.;
- f) Defendant CITY OF GILROY and defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC. have a written agreement dated June, 1985 that had an initial term of two years and automatically renewed thereafter for further two year terms, relating to their joint management and control of the Gilroy Garlic Festival;
- g) Defendant CITY OF GILROY and defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC. have a written agreement dated June, 1985 that expressly states that they have an ongoing joint venture relationship and shows that it was the intention of

- 1 the parties to have a joint venture relationship;
- 2 h) Defendant CITY OF GILROY had joint management and control over the 2019 Gilroy
- 3 Garlic Festival with defendant GILROY GARLIC FESTIVAL ASSOCIATION
- 4 including, but not limited to, the short-term and long-term plans for the festival, security,
- 5 facility use, and safety conditions;
- 6 i) Defendant CITY of GILROY's property, skill and/or knowledge that were combined
- 7 with defendant GILROY GARLIC FESTIVAL ASSOCIATION's property, skill and/or
- 8 knowledge included, but were not limited to, providing the site for the festival, providing
- 9 police services, fire department services, Park and Recreation Department Services, and
- 10 other city services, and planning and plans for the festival that were combined with
- 11 defendant GILROY GARLIC FESTIVAL ASSOCIATION's skill and/or knowledge in
- 12 jointly controlling, managing, maintaining, and running the festival;
- 13 j) Defendant CITY of GILROY received monies for costs associated with the 2019 Gilroy
- 14 Garlic Festival, including, but not limited to, police services, fire department services,
- 15 Park and Recreation Department Services, and other city services; and
- 16 k) Defendant CITY OF GILROY and defendant GILROY GARLIC FESTIVAL
- 17 ASSOCIATION jointly maintained and improved the Christmas Hill Park for the purpose
- 18 of benefiting the Gilroy Garlic Festival.

19 111. Defendant CITY OF GILROY is therefore also responsible for the tortious

20 conduct of its joint-venturer defendant GILROY GARLIC FESTIVAL ASSOCIATION, INC.,

21 including any actions of its employees, agents, and/or independent contractors, which are

22 imputed to it with respect to the 2019 Gilroy Garlic Festival concerning any actions for which

23 defendant CITY OF GILROY may be liable under any statutory authority, including, but not

24 limited to, Government Code §815.2 (public entities vicariously liable for the acts and

25 omissions of its employees), §815.4, §840.2 and/or §840.4 (public entities vicariously liable

26 for the acts and omissions of its independent contractors), §820 (public employee liability),

27 and/or §830, §835, §835.2 (injury caused by dangerous condition of property).

28

112. Defendant GILROY GARLIC FESTIVAL ASSOCIATION is therefore also responsible for the tortious conduct of its joint-venturer defendant CITY OF GILROY which is imputed to it with respect to the 2019 Gilroy Garlic Festival concerning any action by defendant CITY OF GILROY and its employees.

WHEREFORE, plaintiffs pray for judgment against the defendants as hereinafter set forth.

VII.

SIXTH CAUSE OF ACTION

PRODUCTS LIABILITY RE: WASR ASSAULT RIFLE

113. As a Sixth, Separate Distinct Cause of Action, for plaintiffs as against defendant CENTURY ARMS, INC. and defendant DOES 101-125, inclusive (collectively referred to in this Sixth Cause of Action as "Defendants") plaintiffs allege as follows:

114. Plaintiffs reallege and incorporate herein by this reference, each and every allegation contained in Paragraphs 1 through 16, inclusive, of the foregoing Introduction and General Allegations, and Paragraphs 18 through 64, inclusive, of the foregoing First Cause of Action, Paragraphs 66 through 81, inclusive, of the foregoing Second Cause of Action, Paragraphs 83 through 87, inclusive, of the foregoing Third Cause of Action, Paragraphs 89 through 108, inclusive, of the foregoing Fourth Cause of Action, and Paragraphs 110 through 112, inclusive, of the foregoing Fifth Cause of Action makes them a part of the instant Cause of Action as though fully set forth.

Introduction

115. This case is about the deliberate, unlawful and irresponsible actions of defendants CENTURY ARMS, INC. and Does 101-125 that funneled uniquely lethal WASR-10 semi-automatic assault rifles to criminals and helped cause the mass shooting at the Gilroy Garlic Festival on July 28, 2019 (the "Attack").

116. Plaintiffs were directly and foreseeably harmed by defendants' knowing violation of applicable federal and/or state laws and their failure to exercise reasonable care by

1 implementing appropriate safety measures to prevent the misuse of such firearms in unlawful
2 acts of gun violence.

3 117. Defendants knowingly breached the duty to exercise the highest degree of
4 reasonable care in preventing the diversion of firearms to dangerous actors that they had
5 voluntarily assumed when they entered the firearms business.

6 118. The laws Defendants knowingly violated, either directly or as accomplices and/or
7 co-conspirators, by channeling WASR-10 firearms to criminals operating inside California,
8 include, but are not necessarily limited to: 1) a federal prohibition on the assembly of firearms
9 not suitable for lawful "sporting purposes" and including one or more imported parts (18
10 U.S.C. § 922(r)); 2) a federal ban on the provision of "machinegun[s]" (as defined in the
11 National Firearms Act (the "NFA," 26 U.S.C. Ch. 53) to the general public (18 U.S.C. §
12 922(b)(4)) and 3) California's ban on the possession of "assault weapon[s]." Cal. Pen. Code.
13 §§ 30510, 30515, 30605.

14 119. One or more of Defendants may also have violated additional laws including, but
15 not limited to, state unfair trade practice laws by engaging in advertising actively encouraging
16 the unlawful or dangerous use of firearms. *E.g.*, Cal. Bus. & Prof. Code. § 17200 *et seq.*

17 120. Defendants' knowing violations of these and/or similar statutes and/or their
18 failure to adopt additional, reasonable safeguards enabled a dangerous individual, the Shooter,
19 operating in and around California to acquire a specific WASR-10 firearm (the "Rifle") barred
20 under California law from a Nevada gun dealer on July 9, 2019.

21 121. As a consequence of Defendants' violations of their duties, the Shooter was also
22 able to illicitly transport the Rifle into California and, ultimately and to use the Rifle to
23 perpetrate the Attack.

24 122. Plaintiffs and/or their loved ones were harmed or killed in the Attack.

25 123. The Plaintiffs' harms were a direct and foreseeable consequence of Defendants'
26 unlawful and negligent actions.

27 124. Had Defendants complied with relevant federal and/or state statutes limiting
28

1 public access to firearms like the Rifle and/or implemented other reasonable safeguards to
2 prevent the diversion of such especially dangerous firearms to criminals like the Shooter prior
3 to July of 2019, the Shooter would, upon information and belief, not have had access to the
4 Rifle on the day of the Attack.

5 125. Additionally, since well before the Attack, Defendants, upon information and
6 belief, had received copious actual and/or constructive notice that their unlawful and reckless
7 practices were channeling firearms – and in particular, WASR-10 firearms like the Rifle – both
8 to the criminal market in general and to the California criminal market specifically (via
9 interstate trafficking).

10 126. Defendants also had compelling actual or constructive notice from multiple, well-
11 publicized incidents of gun violence which occurred prior to the Attack that mass shooters
12 disproportionately choose semi-automatic assault rifles like the Rifle to perpetrate crimes like
13 the Attack.

14 127. A mass shooting committed by a criminal like the Shooter with a semi-automatic
15 assault rifle like the Rifle illicitly trafficked into California was thus not only a foreseeable but
16 a probable consequence of the Defendants continuing to knowingly violate applicable laws and
17 failing to adopt reasonable safeguards to prevent the diversion of firearms to dangerous parties.

18 128. Despite these clear warnings, Defendants, rather than reforming their business
19 practices so as to reduce the flow of firearms like the Rifle to criminals likely to misuse them
20 in acts of unlawful violence in jurisdictions including California, chose to place profit over
21 public safety by continuing to unlawfully and recklessly supply the criminal market leading up
22 to July of 2019.

23 129. Defendants' breach of their duties thus directly and proximately contributed to the
24 Attack and caused Plaintiffs' harms.

25 130. Upon information and belief, Defendants have continued to persist in their
26 negligent and unlawful misconduct following the Attack and, as a result, WASR-10 assault
27 rifles continue to contribute to an ongoing public nuisance of gun violence within California.
28

131. Plaintiffs are entitled to redress against the Defendants for the harms foreseeably flowing from their unlawful and negligent actions.

132. This suit does not implicate or challenge the right of responsible companies to manufacture, market, distribute and/or sell firearms lawfully and responsibly while complying with all relevant laws and reasonable safety standards.

133. Instead, Plaintiffs seek to hold Defendants accountable for harm resulting directly and foreseeably from their actions in manufacturing, marketing, distributing and/or selling firearms in an unlawful and irresponsible manner.

Jurisdiction and Venue

134. This Court has general jurisdiction over all of the Defendants.

135. Defendant CENTURY ARMS, INC., is a Vermont Corporation. Defendant CENTURY ARMS, INC., also does business under the name Century Arms.

136. Plaintiffs are informed and believe that ROMARM S.A. is a public or private entity of form unknown to plaintiffs at this time.

137. Defendants conducted general business, activities within the State of California that are so substantial, continuous and systematic in nature as to allow this Court to exercise jurisdiction over the Defendants even if Plaintiffs' harms did not arise from Defendants' activities within the State of California.

138. Specifically, Defendant CENTURY ARMS, INC., made special “California Compliant” models of WASR-10 rifles designed to comply with California’s ban on assault weapons after importing and modifying stripped-down ROMARM, S.A. rifles.

139. Upon information and belief, these Defendants marketed, sold and shipped large quantities of these firearms to customers residing in the State of California either directly or through intermediaries including, but not limited to, the Doe Defendants and local Federal Firearms Licensees (“FFLs” or licensed dealers) in the years leading up to the Attack.

140. ROMARM, S.A. also sent numerous WASR-10 firearms to defendant CENTURY ARMS, INC. with the knowledge and expectation that many would be converted into such

1 “California Compliant” models and resold into California in the years leading up to the Attack.

2 141. Even though the Rifle used in the Attack may not have been a “California
3 Compliant” model, Defendants’ general course of conduct involving “California Compliant”
4 models establishes general jurisdiction as to Defendants in California.

5 142. This Court also has specific personal jurisdiction over Defendants due to their
6 activities in manufacturing, marketing, distributing and/or selling WASR-10 firearms like the
7 Rifle which violate California’s ban on assault weapons.

8 143. Defendants have purposefully availed themselves of the jurisdiction of this Court
9 by targeting their activities, either directly or indirectly, at the California criminal firearms
10 market and creating a regular, illicit flow of firearms – including WASR-10 assault rifles like
11 the Rifle which violate the California assault weapons ban – into California.

12 144. Specifically, upon information and belief, Defendants have intentionally flooded
13 states surrounding California – including Nevada – with models of WASR-10 assault rifles like
14 the Rifle which cannot be lawfully possessed in California and far in excess of relevant
15 demand for such WASR-10 assault rifles by lawful purchasers in these surrounding states.

16 145. Upon information and belief, Defendants all knowingly engaged in this
17 distribution strategy with full awareness of the fact that the versions of the WASR-10 assault
18 rifles barred in California but easily accessible in the surrounding states would be especially
19 attractive to violent criminals operating in California and with the express intention that the
20 excess firearms not purchased by lawful consumers in Nevada and other states surrounding
21 California would be diverted to the criminal firearms market in general (and the California
22 criminal firearms market specifically by virtue of interstate trafficking).

23 146. Upon information and belief, Defendants prior to 2019, were providing a version
24 of the WASR-10 which complied with California’s ban on assault weapons to California
25 consumers while selling the “California Compliant” model at a higher price than non-
26 compliant model(s) in surrounding states.

27 147. Upon information and belief, Defendants all also had actual or constructive
28

1 knowledge that the above price differential created further incentive for criminals to buy illicit
2 versions of WASR-10 rifles like the Rifle in states like Nevada for transport into California.

3 148. Upon information and belief, defendants also all had actual or constructive
4 knowledge, prior to 2019, that their firearms sold in Nevada or other states surrounding
5 California – including WASR-10 firearms – were requesting being recovered from crime scenes
6 within California due to information including, but not limited to trace¹ requests from federal
7 and/or state law enforcement agencies including, but not limited to, the Bureau of Alcohol,
8 Tobacco, Firearms and Explosives (“ATF”).

9 149. Upon information and belief, other sources of which Defendants had actual or
10 constructive knowledge corroborated this trafficking pattern.

11 150. Defendants, upon information and belief, at minimum, willfully blinded
12 themselves to clear signals indicating that they were supplying the California criminal market
13 and persisted in supplying and assisting criminals operating in California with firearms like the
14 Rifle by over-saturating the market in surrounding states while instituting no controls to
15 prevent the diversion of firearms to criminals.

16 151. As a result, Defendants had either actual or constructive knowledge that their
17 business practices were routinely and consistently causing a regular flow of firearms –
18 including WASR-10 firearms – into the California criminal market and, by persisting in these
19 practices, continued to purposefully avail themselves of the jurisdiction of the California
20 courts.

21 152. Pursuant to California Code of Civil Procedure § 393, venue is proper in this
22 Court because the actions underlying this complaint and the harms sued upon took place in
23 Santa Clara County.

24 **Parties**

25 153. Upon information and belief, defendant CENTURY ARMS, INC. is

26
27 ¹ In a typical trace request, a law enforcement agency like the ATF will seek to identify the
28 chain of distribution of a firearm recovered from a crime scene or during the course of a
criminal investigation from its manufacturer through to the FFL who sold the gun at retail.

1 headquartered in Delray Beach, Florida and serves as the exclusive distributor of ROMARM
2 S.A. firearms throughout the United States (including in California).

3 154. Upon information and belief, defendant CENTURY ARMS maintains a facility
4 for modifying, warehousing and/or shipping imported ROMARM S.A. firearms in Georgia,
5 Vermont.

6 155. Upon information and belief, ROMARM S.A. is a foreign firearms manufacturer
7 operating out of Romania which manufactured the Rifle and other similar WASR-10 assault
8 rifles with the intent of selling many such rifles throughout United States and, specifically, in
9 California, through one or more intermediaries.

10 156. Upon information and belief, defendant CENTURY ARMS, INC. and
11 ROMARM S.A. coordinate in a scheme involving defendant CENTURY ARMS, INC.
12 breaking down, modifying, and reassembling WASR-10 assault rifles received from
13 ROMARM S.A. in order to undermine federal firearms law while maintaining a veneer of
14 legitimacy.

15 157. Upon information and belief, defendant CENTURY ARMS, INC. imported,
16 modified, reassembled and distributed the Rifle in accordance with this scheme and in
17 violation of one or more federal and/or state laws.

18 158. Defendant Does 101-125 are fictitious identities assigned to any currently
19 unknown intermediaries in the chain of distribution between defendant CENTURY ARMS,
20 INC. and the retail seller of the Rifle.

21 **Factual Allegations**

22 **A. Defendants Voluntarily Assumed a Duty to Exercise the Highest Degree of**
23 **Reasonable Care -- Including Following All Relevant Federal and/or State Laws**
24 **-- When Manufacturing, Marketing, Distributing and/or Selling Firearms Like**
25 **the Rifle**

26 159. Defendants involved in the chain of distribution of firearms like the Rifle
27 assumed a duty to carefully learn and comply with all relevant federal and/or state firearms
28 laws which are designed to minimize the risk of products like the Rifle falling into the hands of

1 dangerous individuals like the Shooter.

2 160. These laws include, but are not limited to,

3 • a federal prohibition on the assembly of firearms not suitable for lawful “sporting
4 purposes” from imported parts (18 U.S.C. § 922(r));

5 • a federal ban on the provision of “machinegun[s]” (as defined in the NFA) to the
6 general public (18 U.S.C. § 922(b)(4)) and

7 • California’s ban on the possession of assault weapons Cal. Pen. Code. §§ 30510,
8 30515, 30605.

9 161. Defendants knowingly violated these laws.

10 162. Independent of any statutorily defined aspects of the relevant standard of care,
11 Defendants also voluntarily assumed a duty to implement additional, reasonable safeguards in
12 order to minimize the risk that dangerous products like the Rifle would fall into the hands of
13 dangerous individuals like the Shooter.

14 163. Defendants violated their standard of care by failing to implement these
15 safeguards.

16 **B. Defendants Knowingly Violated Federal or State Laws (Directly or as**
17 **Accessories) and Failed to Implement Reasonable Safeguards In Order to Target**
18 **and Profit from the Criminal Firearms Market**

19 **i. Defendant CENTURY ARMS, INC. Conspired in a Scheme to Assemble**
20 **and Sell WASR-10 Rifles Like the Rifle to the Public in Violation of 18**
21 **U.S.C. § 922(r)**

22 164. Federal law generally bars the importation of firearms which are not “suitable for
23 or readily adaptable to sporting purposes” (*see* 18 U.S.C. § 925(d)(3)), with some exceptions
24 that are not relevant to this case.

25 165. The ATF “has determined that certain features designed for military application
26 are indicative of non-sporting rifles and shotguns” and has further identified that “[f]eatures
27 which are not recognized as sporting include, but are not limited to, folding or telescoping
28 stocks, pistol grips that protrude conspicuously beneath the action of the weapon, a bayonet or
bayonet mount, a flash suppressor or threaded barrel designed to accommodate a flash

1 suppressor, a grenade launcher and night sights.” ATF Firearms Guide on *Importation of*
2 *Firearms & Ammunition*, [https://www.atf.gov/firearms/firearms-guides-importation-](https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-and-implements-war-import)
3 [verification-firearms-ammunition-and-implements-war-import](https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-and-implements-war-import) (last reviewed Sep. 22, 2016);
4 *see also* ATF Associate Director (Compliance), *Report and Recommendation on the*
5 *Importability of Certain Semiautomatic Firearms* at 6 (Jul. 6, 1989),
6 <https://www.atf.gov/file/61761/download> (identifying the ability to accept detachable, large
7 capacity magazines as another feature associated with military, rather than sporting,
8 applications).

9 166. In an effort to prevent firearms importers from circumventing the importation ban,
10 a related provision of the Gun Control Act of 1968 renders it “unlawful for any person to
11 assemble from imported parts any semiautomatic rifle or any shotgun which is . . . not
12 particularly suitable for or readily adapted to sporting purposes” for resale to the general
13 public. *See* 18 U.S.C. § 922(r).

14 167. These laws reflect Congress’s recognition of the fact that firearms not “suitable
15 for or readily adapted to sporting purposes” pose an unreasonable risk to public safety because
16 they are disproportionately attractive to and useful to criminal actors like the Shooter who wish
17 to utilize them in incidents like the Attack or other unlawful acts of violence.

18 168. Non-sporting features like a “folding or telescoping stock” and/or a “pistol grip[]
19 that protrude[s] conspicuously beneath the action of the weapon” and the ability to accept large
20 capacity, detachable magazines make firearms like the Rifle more effective in military combat
21 or mass shooting scenarios like the Attack, while serving no or little benefit to civilian users of
22 such firearms employing them for lawful ends like hunting.

23 169. Defendant CENTURY ARMS, INC. and ROMARM S.A. knowingly cooperated
24 to violate 18 U.S.C. § 922(r) by assembling firearms like the Rifle from 1) imported parts with
25 2) features rendering them not suitable for “sporting purposes.”

26 170. An accomplice or co-conspirator who indirectly assists in the commission of an
27 offense is as responsible for the ultimate statutory violation as the principal. *See* 18 U.S.C. § 2.
28

171. ROMARM S.A. manufactures and exports stripped down versions of WASR-10 assault rifles which lack features that might render them barred under the “sporting purposes” test – such as, for example, a “folding or telescoping stock” and/or a “pistol grip[] that protrude[s] conspicuously beneath the action of the weapon.”

172. ROMARM S.A. then ships such stripped-down rifles to defendant CENTURY ARMS, INC. with the intention and expectation that defendant CENTURY ARMS, INC. will disassemble the imported firearms and then reassemble them while 1) introducing a number of non-sporting features with primarily military applications and 2) replacing a number of the foreign-manufactured parts of the firearms with American-made parts.

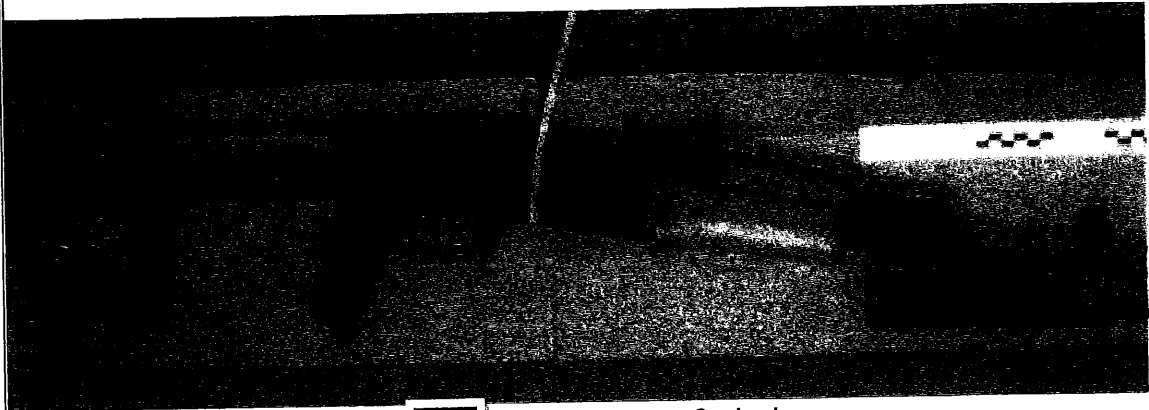
173. Upon information and belief, defendant CENTURY ARMS, INC. then performs the disassembly and reassembly process before distributing WASR-10 rifles, either directly or through intermediary distributors like the Doe Defendants, to retailers throughout the country.

174. This disassembly and reassembly process seeks to undermine federal firearms importation laws by exploiting an erroneous ATF regulation which suggests that the “sporting purposes” test does not apply as long as the completed firearms have ten or less imported parts.

175. However, under the plain language of § 922(r), it is illegal to assemble any semi-automatic rifle which, like the Rifle, a) incorporates *any* foreign-made parts and b) includes features rendering it not suitable for “sporting purposes.”

176. Thus, the named Defendants knowingly violated § 922(r) either directly or as accessories by supplying WASR-10 rifles like the Rifle to the public after modifying them in accordance with the scheme described above to include both a) one or more imported parts and b) one or more non-sporting features.

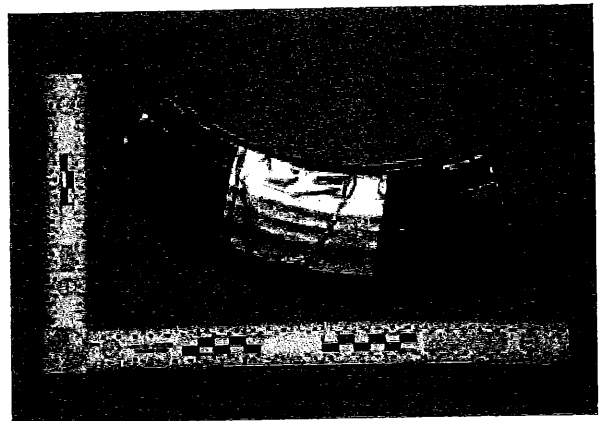
177. Here, the Rifle, as used by the Shooter in the Attack, had, upon information and belief, both a) one or more imported parts and b) one or more non-sporting features including a “folding or telescoping stock,” a “pistol grip[] that protrude[s] conspicuously beneath the action of the weapon” and the ability to accept large capacity detachable magazines. *See* photographs below:



The rifle [REDACTED] used to shoot 21 festival goers



[REDACTED] loaded drum magazine with 75-round capacity



[REDACTED] taped high-capacity magazines

178. Upon information and belief, all of the relevant imported parts and non-sporting features were not materially altered by the Shooter or any other party after they left the possession of defendant CENTURY ARMS, INC.

ii. **Defendants Knowingly Coordinated to Violate § 922(b)(4)'s Prohibition on the Sale of "Machinegun[s]" to Members of the General Public**

179. 18 U.S.C. § 922(b)(4) prohibits the sale of a "machinegun" to any member of the public who, like the Shooter, has not been specifically authorized by the Attorney General. *Id.*

180. This provision incorporates the NFA definition of "machinegun" as:

any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part

1 designed and intended solely and exclusively, or combination of parts designed and
2 intended, for use in converting a weapon into a machinegun, and any combination of
3 parts from which a machinegun can be assembled if such parts are in the possession or
under the control of a person.
(26 U.S.C. § 5845(b))

4 181. ATF has specifically recognized that the “designed to shoot” language in NFA’s
5 definition of “machinegun[s]” includes “includes those weapons which have not previously
6 functioned as machineguns but possess design features which facilitate full automatic fire by a
7 simple modification or elimination of existing component parts.” ATF Rul. 82-8 at 1.

8 182. A WASR-10 firearm like the Rifle, constitutes a “machinegun” even if designed
9 to fire in a semi-automatic fashion, because, as per ATF’s guidance, it “possess[es] design
10 features which facilitate full automatic fire by a simple modification or elimination of existing
11 component parts.”

12 183. For example, a WASR-10 firearm like the Rifle can be easily modified to
13 accomplish this goal by individuals with minimal financial resources and little to no
14 gunsmithing expertise through methods including but not limited to:

- 15 • replacing the manufacturer-installed sear system inside the firearm (which enables
16 semi-automatic fire) with a third-party sear system which enables automatic fire;
- 17 • shaving down part of the manufacturer-installed sear system to change the way it
18 functions and
- 19 • attaching an external device such as a “bump stock” or trigger crank to the
20 firearm.

21 184. Whether or not the Rifle used in the Attack was, in fact, modified to fire in a fully
22 automatic fashion, its ready susceptibility to such modification rendered it a “machinegun” as
23 sold, prohibiting its sale to the general public.

24 185. Thus, Defendants violated § 922(b)(4), either directly or as accomplice and/or co-
25 conspirators, by providing, either directly or through intermediaries, “machinegun[s]” like the
26 Rifle for sale to members of the public not authorized by the Attorney General (like the
27 Shooter).
28

iii. **Defendants Coordinated to Assist Individuals Like the Shooter in Unlawfully Possessing Assault Weapons Banned Under California Law Within California**

186. California bans the possession of assault weapons (Cal. Pen. Code. § 30605(a)), which are defined to mean 1) a certain type of gun which contains certain features (Cal. Pen. Code. § 30515) and/or 2) be one of a list of enumerated firearms or their analogues. Cal. Pen. Code. § 30510.

187. As relevant here, an “assault weapon” under California law includes a semi-automatic, centerfire rifle with a detachable magazine which has one or more disqualifying features including, *inter alia*, “[a] folding or telescoping stock” or “[a] pistol grip that protrudes conspicuously beneath the action of the weapon.” Cal. Pen. Code § 30515(a)(1).

188. An assault weapon also includes “all AK series” weapons regardless of their manufacturer. *See* Cal. Pen Code § 30510(a)(1), (f).

189. There is great overlap between those features which render a firearm like the Rifle a prohibited assault weapon under Cal. Pen. Code § 30515(a)(1) and those features which ATF has deemed render a gun a “non-sporting” firearm that poses a disproportionate risk to public safety.

190. Upon information and belief, including the above photographs, the Rifle, as used by the Shooter in the Attack, was a prohibited assault weapon under one or both of §§ 30510(a)(1), 30515(a)(1) because 1) the Rifle was a variant of the AK-47 and 2) was a semi-automatic, centerfire rifle with a detachable magazine which included one or more disqualifying features including a “[a] folding or telescoping stock” and/or “[a] pistol grip that protrudes conspicuously beneath the action of the weapon.”

191. Upon information and belief, Defendants knowingly coordinated to enable the unlawful possession of assault weapons by criminals like the Shooter operating within California.

192. Defendant CENTURY ARMS, INC. and Defendant Does 101-125 intentionally engaged in a distribution scheme which floods states around California – including Nevada --

1 with weapons constituting assault weapons under California law and provide more weapons to
2 these states than would be consistent with demand by lawful consumers in those states.

3 193. These Defendants engaged in these practices with actual or constructive
4 knowledge that firearms – and, in particular, assault weapons barred under California law -- are
5 routinely trafficked to jurisdictions with strong gun violence prevention laws (like California)
6 from states with weaker gun violence prevention laws (like Nevada) and used in crimes in
7 those destinations.

8 194. They also engage in this distribution scheme while engaging in marketing and/or
9 pricing strategies that encouraged criminals operating in and around California to acquire
10 weapons like the Rifle which cannot lawfully be possessed within California from these
11 surrounding jurisdictions.

12 195. Further, upon information and belief, these Defendants continued to manufacture
13 and distribute firearms like the Rifle while failing to implement reasonable safeguards to
14 prevent the interstate trafficking of firearms like the Rifle into the California criminal market.

15 196. In so doing, they virtually guaranteed that weapons like the Rifle would be
16 transferred into the California criminal market and unlawfully possessed and used by parties
17 like the Shooter.

18 197. Upon information and the belief, all of the Defendants, thus, with either actual or
19 constructive knowledge, aided and abetted individuals like the Shooter so as to enable their
20 unlawful possession of assault weapons within California in order to profit from supplying the
21 California criminal market.

22 **iv. Defendants Violated Statutory Law and the Relevant Standard of Care**

23 198. All of the above statutes – as well as other potentially relevant state and/or federal
24 firearms laws– were designed to prevent the risk of gun violence generally, and, in particular,
25 mass shootings like the Attack committed with exceptionally dangerous military-style
26 weapons.

27 199. All of the above statutes – as well as any similar state and/or federal firearms
28

1 laws— were designed to protect all members of the public, including these Plaintiffs.

2 200. Other potentially relevant statutes, such as those pertaining to wrongful marketing
3 (e.g., Cal. Bus. & Prof. Code. § 17200 *et seq.*) were also designed to protect members of the
4 public like the Plaintiffs from harm including the misuse of dangerous instruments like the
5 Rifle.

6 201. Because Defendants violated one or more of these or similar, relevant statutes in a
7 way which proximately lead to Plaintiffs' harm, Plaintiffs are entitled to a presumption that
8 these violations rendered Defendants negligent under Cal. Evid. Code. § 669 (a).

9 202. Defendants were also negligent for failing to follow aspects of the standard of
10 reasonable care independent of any statutory violation by failing to implement any reasonable
11 safeguards so as to prevent diversion of WASR-10 firearms and other guns to the California
12 criminal market.

13 203. For example, defendant CENTURY ARMS, INC. and defendants Does 101-125,
14 upon information and belief, deliberately chose to distribute their guns through a patently
15 dangerous distribution network in which guns were being sold illegally and recklessly, and
16 persons who were prohibited from obtain guns (or certain types of guns) were able to obtain
17 them.

18 204. Defendants failed to implement reasonable supervision procedures over
19 downstream distributor and dealer networks despite strong indications of likely criminal
20 commerce in firearms within these distributor and dealer networks—including, but not limited
21 to, trace data revealing that a disproportionately large number of military-style weapons like
22 the Rifle were being diverted from these networks into the California criminal market.

23 **C. Defendants Had Copious Notice that Their Violations Were Leading to Their**
24 **Firearms Being Disproportionately Used in Unlawful Gun Violence – Including**
25 **in Incidents Within California –But They Persisted in their Unlawful and**
26 **Negligent Conduct**

27 205. Upon information and belief, Defendants, prior to 2019, received copious actual
28 or constructive notice from information including, but not limited to, trace requests, that their

1 negligent and unlawful distribution practices regarding WASR-10 assault rifles and other
2 firearms were fueling gun violence in California and other jurisdictions with strong gun
3 violence prevention regimes.

4 206. For example, a 2011 report from the Center on Public Integrity described how the
5 WASR-10 has been the most common gun purchased in the United States to later be connected
6 to crimes occurring in Mexico.

7 207. Mexico, like California, has strong gun violence prevention laws.

8 208. Reports from the ATF reveal that in a four-year time frame in the mid-2000s, over
9 500 WASR-10 rifles initially purchased in the United States were later recovered from
10 Mexican crime scenes and/or during criminal investigations.

11 209. This accounted for over 17% of all such guns recovered during this time frame --
12 more than any other pistol or rifle during this period.

13 210. Many of the WASR-10 rifles recovered during criminal investigations in Mexico
14 were, like the Rifle, configured to include various non-sporting features with primarily military
15 applications (such as the ability to accept high capacity magazines).

16 211. Upon information and belief, this is because such non-sporting features render
17 WASR-10 firearms more effective tools for narcotraffickers who need to prepare for military-
18 style combat such as firearms battles with Mexican police and security forces.

19 212. Upon information and belief, in addition to Defendants having actual or
20 constructive notice of this and/or similar media reports, the ATF and/or other law enforcement
21 agencies contacted Defendants (including defendant CENTURY ARMS, INC.) as part of its
22 trace requests to track each one of these recovered firearms through the chain of distribution
23 down to the initial seller.

24 213. These trace requests constituted specific, frequent and continuous indicators to
25 relevant Defendants that their negligent and unlawful business practices were supplying
26 WASR-10 firearms to the criminal market in general.

27 214. The above data also compellingly demonstrated to Defendants the common
28

1 phenomenon of firearms being illicitly trafficked from jurisdictions with comparatively weaker
2 laws (like various United States jurisdictions) to jurisdictions with comparatively stronger gun
3 violence prevention laws (like California, and Mexico).

4 215. Upon information and belief, Defendants, prior to 2019, also had specific actual
5 or constructive notice that their negligent and/or unlawful distribution practices were
6 channeling semi-automatic assault rifles like the WASR-10 into California from sources in the
7 surrounding states.

8 216. 2017 data from the ATF confirmed that Nevada is a major source state for crime
9 guns later recovered in California – linking 1,554 California crime guns to sales in Nevada.

10 217. Only Arizona exceeded Nevada as a source of California crime guns in this data.

11 218. This flow of firearms from source states like Nevada into jurisdictions like
12 California has devastating consequences.

13 219. In 2017, researchers at the University of California at Berkeley found that within
14 14 days after the start of a Nevada gun show, hospital admissions for gunshot wounds at
15 California hospitals within two hours of the Nevada border jumped by 70%.

16 220. Federal court cases prior to 2019 also provided Defendants with actual and/or
17 constructive notice both of the general phenomenon of firearms trafficking from source states
18 like Nevada into California – and one even specifically identified WASR-10 rifles as
19 particularly likely to be transported in such trafficking schemes.

20 221. Specifically, in *United States v. Carranza*, 2011 U.S. Dist. LEXIS 100951 (Aug.
21 5, 2011) *rec'n adpt'd* by 2011 U.S. Dist. LEXIS 101113 (Sept. 7, 2011), a federal court found
22 that ATF had reasonable suspicion sufficient to support the arrest of an individual buying a
23 large quantity of assault rifles – including five defendant CENTURY ARMS INC. AK-47 type
24 rifles firearms – from two different Nevada gun stores in a short time period.

25 222. The Court emphasized testimony from an ATF agent that such “assault style rifles
26 are in high demand by drug trafficking organizations in Mexico and *also by persons in*
27 *California where the sale of assault style rifles is prohibited.*” *Carranza*, 2011 U.S. Dist.
28

1 LEXIS 100951 at *31-32 (emphasis added).

2 223. Similarly, in 2018, at least three Nevada residents were indicted in federal court
3 for a firearms trafficking scheme supplying criminals in and around the Bay Area.

4 224. Upon information and belief, in addition to Defendants having actual or
5 constructive notice of the above cases and/or media reports, the ATF and/or other law
6 enforcement agencies contacted various Defendants (including Century Arms) as part of their
7 trace requests to track each one of the firearms recovered during criminal investigations in
8 California through the chain of distribution down to the initial seller.

9 225. These contacts from law enforcement, upon information and belief, constituted
10 specific, frequent and continuous indicators to all relevant Defendants that their negligent and
11 unlawful business practices were supplying large quantities of firearms -- including WASR-10
12 firearms like the Rifle -- to the California criminal market.

13 226. Defendants, upon information and belief, also had actual or constructive
14 knowledge of a well-publicized string of mass shootings -- including in California -- that
15 provided, prior to 2019, compelling proof that semi-automatic assault rifles like the Rifle are
16 the preferred firearm of mass shooters because of their ability to inflict so much damage on
17 multiple targets in a short time frame.

18 227. These shootings included, but are not limited to, the following incidents:

- 19 • In December, 2007 a shooter armed with a WASR-10 semi-automatic assault rifle
20 killed 8 people at a shopping mall in Omaha, Nebraska before taking his own life.
- 21 • In July 2012, a shooter armed with a semi-automatic assault rifle and several other
22 guns attacked a movie theater in Aurora Colorado, killing 12 people and injuring 70 others.
- 23 • In December 2015 a shooter armed with a semi-automatic assault rifle attacked
24 the Inland Regional Center in San Bernardino, California, killing 14 people and injuring 22
25 others. This rifle was modified by the mass shooter to fire automatically and was modified via
26 the "shaving down" method described *supra*.
- 27 • In February 2017, a young man armed with a semi-automatic assault rifle attacked
28

1 Marjory Stoneman Douglas High School in Parkland, Florida, killing 17 people and injuring 17
2 others.

3 228. Although it postdates the Attack, a mass shooter attacked a Walmart in El Paso,
4 Texas using a WASR-10 firearm in August 2019 and killed 22 people while wounding 24
5 others in an incident which further underscores the unique susceptibility of firearms like the
6 Rifle to misuse in mass shootings

7 229. Despite this knowledge, Defendants deliberately chose to continue engage in their
8 dangerous business practices, and chose to not take any action to reduce the risk of their
9 firearms being misused in a tragedy like the Attack.

10 230. One or more of Defendants may have chosen to exacerbate the risk by recklessly
11 marketing firearms in ways which emphasized their effectiveness in military-style assaults like
12 the Attack.

13 231. Taken collectively, all of the information available to the relevant Defendants
14 made it abundantly clear, prior to 2019, that if they continued to violate relevant statutes like
15 those described herein and to failed to institute additional, reasonable safeguards it would be
16 highly likely -- if not inevitable -- that a firearm like the Rifle would be illicitly trafficked into a
17 jurisdiction like California and used in an incident like the Attack.

18 232. Upon information and belief, Defendants callously persisted in their unlawful and
19 negligent conduct either with actual or constructive knowledge of the likelihood that an
20 incident like the Attack would result.

21 233. Specifically, at minimum, Defendants, willfully blinded themselves to relevant
22 red flags indicating that firearms -- including, in particular, semi-automatic firearms like the
23 Rifle -- were being unlawful diverted to the California criminal market and used in crimes.

24 234. Upon information and belief, Defendants have continued in the negligent and
25 unlawful practices described herein without any significant change even after the Attack and
26 up until the filing of this Amended Complaint.

27 ///

D. Upon Information and Belief, Defendants' Continued Violations of Relevant Statutes and Deliberate Decision to Continue to Sell and Distribute Guns Without Reasonable Safeguards Directly and Foreseeably Led to the Attack

235. Defendants' knowing violations of relevant statutes and/or failure to institute reasonable safeguards directly led to Plaintiffs' harm.

236. For example, in terms of statutory violations:

- Upon information and belief, had defendant CENTURY ARMS, INC. not knowingly violated 18 U.S.C. § 922(r), either directly or as accessories, by assembling a semi-automatic rifle with non-sporting features and including one or more imported parts, the Rifle would not have been available for sale to the Shooter on July 9, 2019 and could not have been used to harm the Plaintiffs in the Attack;

- Upon information and belief, had Defendants not knowingly violated § 922(b)(4), either directly or as accomplices/co-conspirators, by providing a "machinegun" to the Shooter, the Shooter also would not have been to use the Rifle in the Attack and

- Upon information and belief, had Defendants not aided violation of Cal. Pen. Code. § 30605 by unlawful users like the Shooter by continuing to supply downstream distributors and/or dealers with firearms like the Rifle while, at minimum, blinding themselves to red flags that these actors assisting in the illegal possession of assault weapons by criminals like the Shooter within California, the Shooter also would not have had access to the Rifle and could not have used it in the Attack.

237. Some or Defendants may also have violated additional statutes in ways which directly contributed to the Attack – including, for example, Cal. Bus. & Prof. Code. § 17200 *et seq.*

238. Defendants' failure to implement appropriate, additional safeguards when manufacturing, marketing, distributing and/or ultimately, selling exceptionally dangerous WASR-10 assault rifles so as to minimize their risk of misuse by individuals like the Shooter in incidents like the Attack also directly contributed to Plaintiffs' harm.

239. Specifically, upon information and belief, had Defendants instituted appropriate

1 safeguards, including, but not limited to, those outlined above in terms of supervising
2 downstream distributors and retailers of their products and instituting checks against interstate
3 firearms trafficking and acquisition of assault rifles by malicious actors, the Shooter would,
4 upon information and belief, not have been able to arm himself with the Rifle.

5 240. For example, upon information and belief, had defendant CENTURY ARMS,
6 INC. stopped supplying non-California compliant WASR-10 firearms to states surrounding
7 California in light of trace data, media reports and other information illustrating the substantial
8 risk that firearms like the Rifle would be diverted to the California criminal market and used in
9 acts of violence like the Attack, the Shooter could not have acquired the Rifle.

10 241. As identified above, trace data, media reports and/or other sources readily
11 available to Defendants prior to 2019 demonstrate a mass shooting incident like the Attack
12 perpetrated with an assault rifle like the Rifle illicitly trafficked into California was an
13 eminently foreseeable consequence of Defendants' choices to break the law and to fail to
14 implement additional, reasonable safeguards.

15 242. Defendants callously and recklessly persisted in their misconduct leading up to
16 2019 – and thereby, directly and foreseeably placed the Rifle in the Shooter's hands.

17 243. Plaintiffs' are entitled to redress from Defendants to compensate them for the
18 harms which foreseeably resulted from Defendants' unlawful and negligent misconduct.

19 244. Each Defendant owed all members of the public, including Plaintiffs, a duty not
20 to manufacture, market, distribute and/or sell products which pose an unreasonable risk of
21 danger relative to their benefits.

22 245. Here, the Rifle, as designed, was defective in that the risks that it would be
23 misused in an unlawful act of gun violence like the Attack outweighed any conceivable
24 benefits associated with the design.

25 246. The fact that the risks of the Rifle, as designed, outweighed any conceivable
26 benefit, is precisely why it is a prohibited "non-sporting" firearm under 18 U.S.C. § 922(r), a
27 prohibited "machinegun" under § 922(b)(4) and a prohibited "assault weapon" Cal. Pen. Code.
28

1 §§ 30510, 30515, 30605.

2 247. Upon information and belief, safer alternative designs – such as designs which did
3 not include the ability to accept a large capacity detachable magazine, did not have a
4 conspicuous pistol grip and/or did not have a folding stock – were technologically and
5 economically feasible prior to 2019.

6 248. Defendants violated their duty not to manufacturer, distribute, market and/or sell
7 defective products by selling unreasonably dangerous and/or illegal WASR-10 weapons like
8 the Rifle to the public.

9 249. But for Defendants' violation of this duty, the Shooter would not have had access
10 to the Rifle and could not have used it to harm the plaintiffs.

11 250. An individual like the shooter using a firearm like the Rifle in a military-style
12 assault like the Attack was a foreseeable consequence of Defendants' to manufacturer,
13 distribute, market and/or sell defective products with features making them particularly
14 effective tools for such assaults.

15 251. As a direct and proximate result of Defendants' misconduct, Plaintiffs have
16 suffered, and continue to suffer, great pain of mind and body, shock, severe and persistent
17 emotional distress, physical manifestations of emotional distress, loss of enjoyment of
18 life, loss of earnings and earning capacity, and incurred substantial expenses for medical
19 psychological treatment, therapy and counseling and other economic and/or noneconomic
20 damages in amounts in excess of the jurisdictional limits of this Court.

21 252. Plaintiffs are entitled to relief under a theory of products liability.

22 253. The conduct of defendants, and each of them, as aforesaid, was tantamount to
23 fraud, oppression and malice pursuant to California Civil Code section 3294, and therefore
24 entitles plaintiffs to an award of punitive damages against each said defendant, in order to
25 make an example and otherwise deter said conduct from occurring in the future, in an amount
26 according to proof.

27 WHEREFORE, plaintiffs pray for judgment against the defendants as hereinafter set
28

1 forth.

2 **IX.**

3 **SEVENTH CAUSE OF ACTION**

4 **NEGLIGENCE RE: WASR ASSAULT RIFLE**

5 254. As a Seventh, Separate Distinct Cause of Action, for plaintiffs as against
6 defendant CENTURY ARMS, INC. and defendant DOES 101-125, inclusive (collectively
7 referred to in this Seventh Cause of Action as "Defendants") plaintiffs allege as follows:

8 255. Plaintiffs reallege and incorporate herein by this reference, each and every
9 allegation contained in Paragraphs 1 through 16, inclusive, of the foregoing Introduction and
10 General Allegations, and Paragraphs 18 through 64, inclusive, of the foregoing First Cause of
11 Action, Paragraphs 66 through 81, inclusive, of the foregoing Second Cause of Action,
12 Paragraphs 83 through 87, inclusive, of the foregoing Third Cause of Action, Paragraphs 89
13 through 108, inclusive, of the foregoing Fourth Cause of Action, Paragraphs 110 through 112,
14 inclusive, of the foregoing Fifth Cause of Action, and Paragraphs 115 through 252, inclusive,
15 of the foregoing Sixth Cause of Action makes them a part of the instant Cause of Action as
16 though fully set forth.

17 256. Each Defendant owed Plaintiffs—and all members of the public—a duty to abide
18 by the highest standard of reasonable care in providing especially dangerous WASR-10
19 firearms like the Rifle to the public (either directly or indirectly).

20 257. This included not only following federal and/or state laws embodying aspects of
21 this standard of care but also instituting additional, reasonable safeguards unrelated to any
22 statute to prevent the misuse of firearms like the Rifle.

23 258. Each Defendant violated this standard of care in one or more ways.

24 259. First, each Defendant failed to adhere to the required standard of care by
25 knowingly violating, either directly or as an accomplice or co-conspirator, one or more federal
26 and/or state firearms laws including, but not limited to, 18 U.S.C. § 922(r), (b)(4); Cal. Pen.
27 Code. § 30605.
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260. Each Defendant also chose to sell or distribute guns in a dangerous manner without reasonable safeguards.

261. Each Defendant's violation of its duty of care directly and proximately caused Plaintiffs' harm.

262. Specifically, upon information and belief, the Shooter would not have had access to the Rifle and could not have used it to perpetrate the Attack but for each Defendant's violations of their duty of care by knowingly breaking one or more/relevant firearms laws and/or failing to institute reasonable safeguards in regards to the manufacture, marketing, distribution and sale of firearms like the Rifle.

263. A mass shooting like the Attack in which an individual like the Shooter uses a firearm like the Rifle to inflict catastrophic harm on parties like the Plaintiffs is a natural and foreseeable consequence of Defendants' violations of the relevant standard of care

264. As a direct and proximate result of Defendants' misconduct, 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 psychological treatment, therapy and counseling and other economic and/or noneconomic damages in amounts in excess of the jurisdictional limits of this Court.

265. Plaintiffs are entitled to relief under a theory of negligence.

266. As per Cal. Evid. Code. § 669(a), the aforementioned statutory violations (and violations of any other relevant statutes) entitle Plaintiffs to a presumption that each Defendant who violated one or more relevant statutes acted negligently.

WHEREFORE, plaintiffs pray for judgment against the defendants as hereinafter set forth.

X.

EIGHTH CAUSE OF ACTION

PUBLIC NUISANCE RE: WASR ASSAULT RIFLE

266. As an Eight, Separate Distinct Cause of Action, for plaintiffs as against defendant

1 CENTURY ARMS, INC. and defendant DOES 101-125, inclusive (collectively referred to in
2 this Seventh Cause of Action as “Defendants”) plaintiffs allege as follows:

3 267. Plaintiffs reallege and incorporate herein by this reference, each and every
4 allegation contained in Paragraphs 1 through 16, inclusive, of the foregoing Introduction and
5 General Allegations, and Paragraphs 18 through 64, inclusive, of the foregoing First Cause of
6 Action, Paragraphs 66 through 81, inclusive, of the foregoing Second Cause of Action,
7 Paragraphs 83 through 87, inclusive, of the foregoing Third Cause of Action, Paragraphs 89
8 through 108, inclusive, of the foregoing Fourth Cause of Action, Paragraphs 110 through 112,
9 inclusive, of the foregoing Fifth Cause of Action, and Paragraphs 115 through 253, inclusive,
10 of the foregoing Sixth Cause of Action makes them a part of the instant Cause of Action as
11 though fully set forth.

12 268. California defines a nuisance as anything which is “injurious to health . . . or is
13 indecent or offensive to the senses, or an obstruction to the free use of property, so as to
14 interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free
15 passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or
16 basin, or any public park, square, street, or highway.” Cal. Civ. Code § 3479.

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

20 270. Defendants, like all commercial parties targeting the California market either
21 directly or indirectly with their products, were under an obligation to avoid conduct creating a
22 public nuisance in California.

23 271. Defendants, upon information and belief, intentionally violated and continue to
24 violate this duty by channeling large numbers of firearms – including especially dangerous
25 WASR-10 assault rifles – into the California criminal market through reckless and/or unlawful
26 business practices including, but not limited to, those described in this Complaint.

27 272. This directly and foreseeably interferes with the health, safety, and enjoyment of
28

1 life and property of all California residents by dramatically increasing the prevalence of
2 unlawful acts of gun violence including, but not limited to, mass shootings like the Attack.

3 273. Plaintiffs suffered a unique and distinct harm different than that faced by other
4 members of the public as a direct and proximate consequence of the nuisance created by
5 Defendants, such that the nuisance was "specially injurious" to these Plaintiffs. Cal Civ. Code
6 § 3493.

7 274. Defendants have, upon information and belief, persisted in their course of conduct
8 creating a nuisance following the attack and continue their misconduct at the time of the filing
9 of this Amended Complaint.

10 275. As a direct and proximate result of Defendants' misconduct, Plaintiffs have
11 suffered, and continue to suffer, great pain of mind and body, shock, severe and persistent
12 emotional distress, physical manifestations of emotional distress, loss of enjoyment of
13 life, loss of earnings and earning capacity, and incurred substantial expenses for medical
14 psychological treatment, therapy and counseling and other economic and/or noneconomic
15 damages in amounts in excess of the jurisdictional limits of this Court.

16 276. Plaintiffs are entitled to relief under a theory of nuisance.

17 277. Because of the ongoing nature of the nuisance created by Defendants, this relief
18 may incorporate both monetary damages for the harm the Plaintiffs have already suffered and
19 injunctive relief against Defendants requiring cessation or reform of Defendants' negligent and
20 unlawful business practices contributing to the nuisance.

21 268. The conduct of defendants, and each of them, as aforesaid, was tantamount to
22 fraud, oppression and malice pursuant to California Civil Code section 3294, and therefore
23 entitles plaintiffs to an award of punitive damages against each said defendant, in order to
24 make an example and otherwise deter said conduct from occurring in the future, in an amount
25 according to proof.

26 WHEREFORE, plaintiffs pray for judgment against the defendants as hereinafter set
27 forth.
28

PRAYER

WHEREFORE, plaintiffs pray for judgment and damages against the defendants as follows:

1. For plaintiffs' general damages in the sums according to proof in amounts in excess of the jurisdictional limits of this Court;
2. For plaintiffs' special and economic damages, including, but not limited to, sums incurred and to be incurred for services of hospitals, physicians, surgeons, nurses, attendant care, therapy and other medical supplies and services in amounts according to proof;
3. For loss of earnings, both past, present and future, and loss of earnings capacity, in amounts according to proof;
4. As to plaintiffs BARBARA J. AGUIRRE and plaintiff ALBERTO ROMERO only, for plaintiffs' special and economic damages, including but not limited to, plaintiffs' loss of income, support, gifts and services from their son and funeral, burial, and medical expenses;
5. For interest provided by law, including, but not limited to, California Civil Code Section 3291;
6. For all statutorily allowed damages;
7. For costs of suit;
8. For applicable restitution against defendant CENTURY ARMS, INC. and defendant DOES 101-125 inclusive;
9. For an injunction requiring defendant CENTURY ARMS, INC. and defendant DOES 101-125, inclusive to abate the public nuisance they have created by stopping the provision of WASR-10 firearms like the Rifle to the public in violation of relevant statutes such as those identified herein and/or without reasonable safeguards to prevent their misuse;
10. For reasonable attorney fees against defendant CENTURY ARMS, INC. and defendant DOES 101-125;
11. For Punitive damages against defendant CENTURY ARMS, INC. and defendant DOES 101-125, inclusive; and,

12. For such other and further relief as the Court may deem proper.

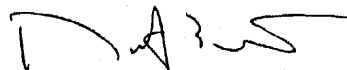
DEMAND FOR JURY TRIAL

PLAINTIFFS HEREBY demand a trial by jury, on all issues triable by a jury, in the
above entitled action.

DATED: 7-22-21

SCARLETT LAW GROUP

By



RANDALL H. SCARLETT, ESQ.
ROBERT E. ORMISTON, ESQ.
RANDALL A. SCARLETT, ESQ.