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19 IN AND FOR THE COUNTY OF SAN FRANCISCO

20 PEOPLE OF THE STATE OF
CALIFORNIA,

21 Plaintiff,

22 v.

23 BLACKHAWK MANUFACTURING
24 GROUP INC.; GS PERFORMANCE, LLC;
25 MDX CORPORATION; and DOES 1-25,

26 Defendants.
27
28

Case No. CGC-21-594577

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THE
PEOPLE'S APPLICATION FOR A
PRELIMINARY INJUNCTION**

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1 **I. INTRODUCTION**

2 Defendants sell firearms in California, but they refuse to follow laws that regulate how
3 firearms may be sold. In violation of Federal and California law, they refuse to engrave serial
4 numbers on the firearms they sell, refuse to run background checks or keep records of their
5 customers, and refuse to install required safety features. Defendants thus engage in unlawful
6 business practices in violation of Business and Professions Code sections 17200 and 17500.
7 These practices are contributing to a wave of unserialized, untraceable and unsafe firearms—
8 commonly called ghost guns—sweeping across the state. The Court should enjoin this conduct.

9 To be clear, the sale of finished firearms is not at issue here. Defendants, however, sell
10 parts kits that allow consumers to readily build fully functional firearms capable of shooting the
11 same ammunition as traditional guns. Using commonly available tools and without any prior
12 training, consumers can readily convert Defendants’ handgun parts kits into functional firearms in
13 less than a half an hour. The consumer need only drill a couple of holes and file away some
14 plastic on the key component of the gun (called the “frame” for handguns and “receiver” for long
15 guns) and then attach readily available parts to complete the firearm.

16 A preliminary injunction is warranted here because “it is reasonably probable [the People]
17 will prevail on the merits.” *IT Corp. v. Cty. of Imperial* (1983) 35 Cal. 3d 63, 72. Indeed, the
18 People will show that Defendants are violating or undermining three statutes. **First**, Defendants
19 are violating the federal Gun Control Act of 1968 (GCA). Defendants’ parts kits are “designed
20 to” and “may readily be converted to expel a projectile by the action of an explosive.” 18 U.S.C.
21 § 921(a)(3), making them subject to the GCA’s strictures. There can be little dispute that
22 Defendants’ parts kits both are “designed to” and “may readily be converted” to functional
23 firearms, and there is *no* dispute that Defendants’ do not comply with the GCA’s requirement that
24 firearms be engraved with a serial number and sold only after running a background check to
25 confirm the purchaser can legally possess firearms.

26 **Second**, Defendants are violating the California Assembly of Firearms Law (AFL), which
27 was passed precisely to address Defendants’ attempt evade the GCA and requires that consumers
28 who privately manufacture handguns submit to background checks and engrave serial numbers on

1 their firearms. Defendants violate the AFL by, among other reasons, selling parts kits that lack
2 the required steel plate to meet serialization requirements and aiding and abetting end consumers
3 in making an end-around the AFL’s firearm ownership recording requirement.

4 **Third**, Defendants are violating California’s Unsafe Handgun Act (UHA). Handguns
5 manufactured in California must contain certain safety components, and they must also undergo
6 rigorous safety testing before they can be approved for manufacture or sale in this State.
7 Defendants’ parts kits do not contain the safety features unambiguously required by California
8 law, and when assembled, they have not passed the required safety tests. These safety
9 requirements are designed to help prevent the risk of accidental discharges and resulting serious
10 injury or death. By selling their products, Defendants cause the unlawful manufacture of unsafe
11 handguns and violate the UHA.

12 The People’s likelihood of success on their UCL claim is clear. The harm that flows from
13 Defendants’ business practices, is presumed under the law and, in any event, made clear by the
14 public safety emergency caused by ghost gun trafficking. Defendants allow unserialized and
15 untraceable firearms that lack important safety features required by law to flood our streets.
16 Accordingly, the Court should enjoin Defendants from violating the GCA, AFL, or UHA and
17 from aiding and abetting the violation of the AFL and the UHA.

18 **II. FACTUAL BACKGROUND**

19 **A. Firearms are a regulated product**

20 Three regulatory schemes are relevant to this case.

21 **1. The Federal Gun Control Act**

22 The Gun Control Act of 1968 (GCA) is the comprehensive federal regulatory framework
23 that governs the manufacture, sale, and possession of firearms. Under the GCA, anyone who
24 manufactures or sells a firearm must hold a Federal Firearms License and follow the rules set
25 forth in the GCA and its implementing regulations.

26 The GCA provides that “firearms” include “(A) any weapon (including a starter gun)
27 which will or is designed to or may readily be converted to expel a projectile by the action of an
28 explosive; [or] (B) the frame or receiver of any such weapon[.]” 18 U.S.C. § 921(a)(3). As this

1 definition recognizes, firearms can be sold as fully or nearly functional objects (subdivision (A)),
2 or they can be sold on a component-by-component basis (subdivision (B)). To ensure that the
3 GCA applies to firearms sold on a component-by-component basis, the GCA regulates “frames”
4 and “receivers,” which are like the chasses of handguns and rifles, respectively. In this way,
5 when an individual seeks to acquire a firearm through a series of “a la carte” purchases, the GCA
6 reaches the sale by regulating the “frame or receiver” of the firearm.

7 On April 11, 2022, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF),
8 exercising its interpretative authority under the GCA, promulgated a rule (“Final Rule”)
9 containing a regulatory definition of the term “firearm, which “include[s] a weapon parts kit that
10 is designed to or may readily be completed, assembled, restored, or otherwise converted to expel
11 a projectile by the action of an explosive.” 27 C.F.R. § 478.11 (2022).¹ The ATF also made
12 clear that “a partially complete, disassembled, or nonfunctional frame or receiver, including a
13 frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored,
14 or otherwise converted to function as a frame or receiver” is a “frame” and thus “firearm” under
15 the GCA. 27 C.F.R. § 478.12(c).

16 The GCA imposes requirements upon firearms manufacturers and retailers. Manufacturers
17 and retailers must hold Federal Firearms Licenses. 18 U.S.C. § 922(a)(1)(A). Manufacturers
18 must stamp or otherwise affix a unique serial number to the frames and receivers they
19 manufacture. 18 U.S.C. § 923(i). Retailers must conduct a background check before selling a
20 frame or receiver (whether sold as part of a fully functional firearm or as a standalone product) to
21 a buyer. 18 U.S.C. §§ 921(a)(3), 923(g)(1)(A). Specifically, they must have every buyer complete
22 ATF’s Form 4473. The retailer submits the information provided on Form 4473 to the National
23 Instant Criminal Background Check System (NICS) or a comparable government-run system to
24 conduct a background check. 18 U.S.C. § 922(t)(1); *see* Pen. Code §§ 28215-28220 (California

25 _____
26 ¹ The Final Rule is in this case’s docket. *See* May 3 Declaration of Neha Sabharwal in support of
27 Plaintiff’s Supplemental Brief in support of its Opposition to Defendants’ Demurrer, Ex. A. It is
28 also available at [https://www.atf.gov/firearms/docs/rulemaking/final-rule-2021r-05f-definition-
frame-or-receiver-and-identification/download](https://www.atf.gov/firearms/docs/rulemaking/final-rule-2021r-05f-definition-frame-or-receiver-and-identification/download). The Final Rule was published in the Federal
Register on April 26, 2022. It will be effective on August 24, 2022. Given the relevance of the
Final Rule, this brief cites to the Code of Federal Regulations as amended by the Final Rule.

1 requirement). A retailer cannot complete the sale if the background check system identifies the
2 buyer as ineligible to possess the firearm. Pen. Code § 26815(d).

3 The GCA requires retailers to maintain sales records that include the name, age, and
4 residence of the buyer so that law enforcement can later trace firearms by their serial numbers. 18
5 U.S.C. §§ 922(b)(5) & 923(g)(1)(A). Retailers must also meet buyers in person and ensure that
6 each handgun buyer (i.e., any buyer who is not a Federal Firearms Licensee) is provided with a
7 “secure gun storage or safety device.” 18 U.S.C. § 922(z)(1). Retailers have an independent
8 affirmative obligation not to sell firearms (including frames or receivers) to an underage person or
9 any person ineligible to possess the firearm, where the retailer knows or has reasonable cause to
10 believe that the buyer is ineligible to possess a firearm.² 18 U.S.C. § 922(b)(1), (d).

11 **2. California’s Assembly of Firearms Law**

12 California’s Assembly of Firearms Law (AFL) governs the private manufacturing of
13 firearms and defines “manufacturing” to mean “to fabricate or construct a firearm, or to fit
14 together the component parts of a firearm to construct a firearm.” Pen. Code § 29180(a). Under
15 the AFL, any person who “privately manufactures” a firearm in California must apply to the DOJ
16 to obtain a unique serial number; “complete[] a firearms eligibility check . . . demonstrating that
17 the applicant is not prohibited by state or federal law from possessing, receiving, owning, or
18 purchasing a firearm”; provide proof that they are of legal age to possess the firearm; and have a
19 valid firearm or handgun safety certificate. Pen. Code § 29182(b)(1), (2) & (4). The serial
20 number must be engraved on the firearm’s frame or receiver, and, if the firearm is assembled
21 from polymer plastic, “3.7 ounces of material type 17-4 PH stainless steel shall be embedded
22 within the plastic.” Pen. Code § 29180(b)(2)(A) and (B).

23 **3. California’s Unsafe Handgun Act**

24 California’s Unsafe Handgun Act (UHA) aims to reduce accidental firearm injuries by
25 ensuring that handguns contain specific safety features and pass certain safety tests. The UHA

26
27 ² Ineligibility can stem from a felony conviction, being a fugitive, certain mental-health-related
28 adjudications, immigration status, a dishonorable discharge, and certain domestic-violence-related
convictions or adjudications. 18 U.S.C. § 922(d), (g).

1 makes it unlawful to “manufacture[] or cause[] to be manufactured ... [or] offer[] or expose[] for
2 sale ... an unsafe handgun” in California. Pen. Code § 32000(a). California DOJ maintains a
3 roster of handguns that have been determined “not to be unsafe handguns” and that thus “may be
4 sold in this state.” Pen. Code § 32015(a).

5 There are several requirements that a handgun must meet before it can appear on the roster
6 of not unsafe handguns. The UHA requires that any new make and model of semi-automatic
7 handgun³—such as handguns built from Defendants’ products—contain a chamber load indicator
8 (showing whether there is a bullet in the chamber) and a magazine disconnect mechanism
9 (preventing the handgun from firing a round left in the chamber when the magazine is removed
10 from the handgun). Pen. Code § 32010(d). The UHA also requires that a handgun must pass
11 safety tests to meet a “firing requirement” and a “drop safety requirement.” Pen. Code
12 § 31910(b)(2)-(3). The firing requirement ensures that the handgun does not malfunction when
13 firing. Declaration of Special Agent Supervisor Salvador Gonzalez (“Gonzalez Decl.”) ¶ 16. The
14 drop safety requirement ensures that the handgun’s safety feature works by prohibiting it from
15 discharging when dropped. *Id.* For a handgun to appear on the roster, the manufacturer must first
16 submit three exemplars of the new handgun model to an independent laboratory certified by
17 California DOJ, which conducts the firing and drop tests. *See* Pen. Code § 31905(a). The UHA
18 applies to privately manufactured handguns. Pen. Code § 29182(e)(2).

19 **B. Ghost Guns**

20 Ghost guns are fully functional, privately manufactured firearms that are capable of firing
21 but lack a serial number and are sold without background checks or the record-keeping required
22 by the GCA. Ghost gun parts kits are sets of set of parts, whether sold together as a single
23 product or sold as separate products, that are designed to or may readily be completed, assembled,
24 restored, or otherwise converted to a fully functional firearm.

25 A key component of a parts kit is the frame blank or receiver blank. As described above,
26 frames and receivers are akin to the weapon’s chassis; these components are subject to regulation

27 ³ A handgun model that is sufficiently similar to a model already on the roster and made by the
28 same manufacturer may be approved to the roster under a separate process. Pen. Code § 32030.

1 under the GCA. A blank is an unfinished frame or receiver that must still be partially
2 manufactured before becoming a finished, functional component. Frame blanks and receiver
3 blanks are sometimes called “80% frames” or “80% lowers,” but, as explained in more detail
4 below, the work left to finish a so-called “80% lower” is minimal.

5 Another common component of ghost gun parts kits sold along with the frame or receiver
6 blank is the jig. *E.g.*, Declaration of Inspector Timothy Weaver (“Weaver Decl.”) Exs. B & U
7 (Blackhawk frame and jig), Ex. Q (MDX Arms frame, jig and drill bits). A jig is a simple
8 machining template that guides customers in transforming the frame or receiver blank into a
9 functional, finished frame or receiver. Blackhawk’s “Jig Instructions” sheet, for example, shows
10 the few steps involved in using a jig to finish a frame, which amount to essentially drilling a few
11 holes and filing away material from the frame blank. Weaver Decl. Ex. C. The jig makes it easy
12 for an untrained customer to convert a frame blank to a finished frame.

13 Parts kits also include the other components necessary to manufacture a fully functional
14 firearm. These generally contain “lower parts” or a “lower parts kit” such as the weapon’s
15 trigger. Declaration of Senior Inspector Eric Tejada (“Tejada Decl.”) ¶ 9. They also contain the
16 slide, which includes the weapon’s barrel. *Id.* The slide is oftentimes called the “upper.” *E.g.*,
17 Weaver Decl., Ex. L.

18 **C. Defendants’ Ghost Guns**

19 Defendants sell frames and receivers, blanks, and parts kits over the Internet. Defendant
20 Blackhawk sells numerous varieties of handgun frame blanks and rifle receiver blanks and their
21 corresponding parts. *See* Weaver Decl. Exs. F-H. MDX Arms advertises a variety of handgun
22 frame blanks and corresponding parts. *Id.* Exs. R & S. GS Performance marketed frame blanks
23 and accompanying parts sets for its SS80 firearm. *Id.* Exs. J & K. Defendants sell parts kits that
24 customers may manufacture into a fully functional handgun in less than thirty minutes. Yet, none
25 of the Defendants sell their parts kits with a serial number or in compliance with the GCA’s
26 point-of-sale requirements, and none of their kits contain the stainless steel plate required by the
27 AFL or the safety features required by the UHA. In this regard, Defendants’ practices are
28 materially identical.

1 Investigators working on behalf of the People purchased either a complete parts kit or a
2 frame blank plus a jig through each Defendant’s website. The investigators purchased these
3 products without filling out ATF Form 4473. No Defendant asked the investigators any questions
4 about his eligibility to possess a firearm under federal or state law. Each Defendant shipped the
5 purchased product(s) via FedEx or another standard shipping method. No Defendant had a
6 representative meet the investigators in person as a part of the transaction. No Defendant
7 included a safe storage device along with the purchase. No frame blank had a serial number, and
8 no parts kit had a magazine disconnect mechanism. No purchased product included any warnings
9 or other literature regarding the AFL or the UHA. *See* Declaration of Chief Steven Tull (“Tull
10 Decl.”) ¶¶ 13-15, 18 (describing Blackhawk and MDX purchases) and Declaration of Jacinto P.
11 Fernandez, Jr. (“Fernandez Decl.”) ¶¶ 17-20, 28 (describing Glockstore purchase).

12 1. Blackhawk

13 Blackhawk is a California corporation that operates in Garden Grove, California and on
14 the internet at www.80percentarms.com. Blackhawk sells a handgun parts kit called the GST-9,
15 modeled on the popular Glock 9mm handgun. On the product page for the “GST-9: 80% Pistol
16 Build Kit,” Blackhawk proclaims:

17 The complete GST-9 pistol kit is everything you need to build a top-tier handgun,
18 at a production level price. . . . All that’s left for you to buy is one of our top-of-
19 the-line GST-9 Jigs! **Our goal was for you to be able to go from opening the
20 mail, to a competition or defense ready pistol in under 15 minutes.**

21 Weaver Decl. Ex. B (emphasis supplied). The parts kit, which Blackhawk continues to deliver,
22 contains a polymer frame blank, a grip extension, a slide and barrel, and a “Lower Parts Kit.”

23 Below the list of components, Blackhawk’s website notes:

24 Due to recently changed ATF regulations, we cannot legally include the jig or
25 frame rails with the GST-9 frame. The jig and GST-9 frame must be purchased on
26 our website as two separate items. Each jig includes one set of GST-9 frame rails.
27 You will need to purchase one jig for every GST-9 frame you plan to build.

28 *Id.* The final sentence is a hyperlink to the jig’s product page. Weaver Decl. ¶ 8(i), Ex. U.

Blackhawk also links to an instruction manual, which provides step-by-step instructions on how
to finish the frame using the jig. *Id.*, ¶¶ 8(ii), Ex. C.

The People obtained a parts kit from Blackhawk that constitutes the “GST-9: 80% Pistol

1 Build Kit” advertised on its website. This parts kit is made up of two products. The first product
2 contained a GST-9 frame blank and a finished slide. The second product contained the remaining
3 parts necessary to manufacture a fully functional firearm, as well as a jig and tools for use during
4 the manufacturing process. Tejada Decl. ¶ 35. Using this parts kit, an investigator converted the
5 Blackhawk GST-9 frame blank into a fully functional, finished frame in 25 minutes and 1 second.
6 *Id.* ¶ 54. To do so, the investigator put the frame blank into the accompanying jig, which
7 identified where the holes needed to be drilled. *Id.* ¶¶ 9, 39-43. Using drill bits Blackhawk
8 supplied, he drilled three holes into the frame blank. The investigator then a Dremel tool (a rotary
9 multi-tool used to grind and cut) and a round file—both widely available—to create a cavity on
10 the frame blank to house the recoil spring. Using pliers, a hammer, and a punch, the investigator
11 inserted the remaining components, such as the trigger assembly, into the frame. *Id.* at ¶¶ 44-53.
12 Once the frame was complete, the investigator attached the finished slide which was included in
13 the parts kit) to the frame and made a small adjustment to the trigger pin. The investigator
14 subsequently was able to fire the GST-9. *Id.* at ¶¶ 56-59.

15 2. GS Performance

16 GS Performance, which operates as Glockstore, is a Tennessee corporation that operates a
17 retail facility in San Diego and a retail website at www.glockstore.com. Until recently, *see infra*
18 p. 18, it sold a handgun parts kit called the SS80. On the product page for the “SS80 80%
19 Lower,” GS Performance proclaimed: “Here’s the brand new 80% Lower that you’ve been
20 waiting for... the build-your-own Single Stack 80% Lower that you complete with Glock 43
21 parts.” Weaver Decl. Ex. J. It also stated, “Now is your best time to purchase the SS80 lower. . .
22 . Federal law states that you can build a firearm for personal use.” *Id.* The product page for the
23 SS80 frame blank contained links to the remaining parts needed to manufacture a functional
24 firearm: (1) the “SS80 Builders Tool Set,” which contains the jig and “all the items you’ll need to
25 prepare the SS80 lower to accept Glock 43 parts;” (2) the “Complete Upper for Glocks,” which is
26 the slide and barrel of the gun; and (3) the “G43 Complete Lower Parts Kit,” which contains a
27 trigger and related components and was assembled by GS Performance for the SS80. Weaver
28 Decl., ¶ 11, Exs. J-M. The GS Performance website included links to YouTube videos containing

1 instructions on how to assemble its parts kits. *See* Declaration of Vesna Cuk (“Cuk Decl.”), Ex.
2 A.

3 The process of manufacturing GS Performance’s SS80 was similar to the process for the
4 Blackhawk GST-9. The People purchased the four products comprising the SS80 parts kit.
5 Fernandez Decl. at ¶¶ 2-28; Declaration of Bella Cruz (“Cruz Decl.”) at ¶¶ 2-7. An investigator
6 placed the frame blank from the parts kit into GS Performance’s jig, drilled two holes, filed away
7 material so that the slide could sit on the frame, and inserted the remaining components
8 (including the trigger) using common tools (like a hammer). Tejada Decl. ¶¶ 71-84. The process
9 of finishing the frame took 27 minutes and 33 seconds. *Id.* at ¶ 85. The investigator attached the
10 finished slide that came in the parts kit to the finished lower. The investigator then determined
11 that the slide was defective when it was delivered such that the investigator could not fire the
12 weapon. He replaced the defective GS Performance slide with a factory Glock 43 slide and was
13 able to fire the weapon. *Id.* at ¶¶ 86-88.

14 3. MDX Arms

15 MDX Arms is a California corporation that operates in Riverside, California and on the
16 internet at www.mdxarms.com. MDX Arms is primarily a retailer of third-party ghost gun
17 products. MDX’s “G19 LF19 with RMR Cut Build Kit - No Frame” includes a slide, front and
18 rear sights, a slide parts kit, and a barrel. Weaver Decl. Ex. P. The product page for this kit
19 contains an option to add a lower parts kit, and it contains a link to the Polymer80 PF940CVI
20 Textured Compact Pistol Frame for Glock Gen 3 G19/23. *Id.* ¶ 13 & Ex. Q. The People
21 purchased these two items. Tull Decl. ¶ 12. On the product page for the Glock 19/23 frame
22 blank, MDX Arms states: “MDX Arms does not sell firearms. This is not a firearm and will ship
23 directly to you without [a Federal Firearms License] needed[.]” Weaver Decl., Ex. Q.

24 An investigator assembled a fully functional weapon from the MDX Arms parts kit in
25 essentially the same manner described above for the Blackhawk and GS Performance weapons.
26 After inserting the polymer frame blank into the jig, the investigator drilled three holes at the
27 locations determined by the jig. Tejada Decl. at ¶¶ 16-18. He then used a Dremel tool, knife, and
28 file to remove polymer material from the frame to create an opening where the upper assembly

1 could sit. *Id.* at ¶¶ 19-20. He inserted the trigger and other lower parts. *Id.* at ¶ 22-28. The process
2 took 24 minutes and 40 seconds. *Id.* at ¶ 29. The investigator then attached the finished slide to
3 the frame, and he was able to fire the weapon. *Id.* at ¶¶ 31-32.

4 **D. Defendants’ post-litigation conduct**

5 After the People filed this complaint, some Defendants altered their commercial conduct.
6 Defendant GS Performance first posted on its website that it would not ship SS80s to California
7 addresses. GS Performance recently took down the SS80 product page from its website.
8 Declaration of Travis Silva ¶ 2. It also took down the YouTube videos described above, *see*
9 *supra*, pp. 16-17. Weaver Decl. ¶ 10. As of the filing of this motion, Blackhawk appears to
10 continue to sell frame blanks and jigs, upper slides, and lower parts on its website. Its website
11 states that it is not taking orders for full parts kits, but that it is continuing to deliver parts kits
12 already ordered. Declaration of Travis Silva (“Silva Decl.”), ¶ 3. MDX Arms’ website continues
13 to sell full parts kits by selling frame blanks with jigs and upper and lower parts kits. *Id.* ¶ 4.

14 **E. Public Safety**

15 Ghost guns are prevalent across the country, in California, and in the Bay Area. Across
16 the country, approximately 20,000 ghost guns were recovered by law enforcement in criminal
17 investigations last year alone, a ten-fold increase since 2016.⁴ The number of ghost guns seized in
18 California has dramatically increased since 2015. According to California DOJ’s Bureau of
19 Firearms (BOF), which tracks ghost gun seizures across the state, **26** ghost guns were reported in
20 2015. Gonzalez Decl, at ¶ 46. Since then, these numbers have only grown, from **167** in 2016 and
21 **345** in 2017 to **4,671** in 2020 and **12,388** in 2021. *Id.*. BOF has also seen a rise in the number of
22 prohibited persons found in possession of ghost guns in the state. *Id.*, at ¶ 48.

23 Local trends are similar. In 2015, the San Francisco Police Department (SFPD) did not
24 seize a single ghost gun. It seized 6 in 2016, 50 in 2018, then 217 in 2021. Declaration of SFPD
25 Chief William Scott (“Scott Decl.”) ¶ 11. This explosion is not confined to San Francisco. The
26

27 ⁴ *See* <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-cracks-down-on-ghost-guns-ensures-that-atf-has-the-leadership-it-needs-to-enforce-our-gun-laws/>.
28

1 San Mateo County District Attorney’s office estimates that one-third of all firearms-related
2 crimes prosecuted in 2021 involved ghost guns. Declaration of San Mateo County District
3 Attorney Steve Wagstaffe (“Wagstaffe Decl.”) at ¶ 5; *see also* Declaration of BART Police Chief
4 Edgardo Alvarez at ¶ 5 (increase in ghost gun seizures on BART).

5 Ghost guns pose a threat to public safety and impede law enforcement’s ability to prevent
6 and solve crime. The availability of ghost guns has made it easier for felons and other prohibited
7 persons to get firearms. Scott Decl. at ¶ 7. Moreover, law enforcement traditionally uses serial
8 numbers on recovered firearms to trace their ownership; ghost guns deprive investigators of this
9 crucial investigative tool because they lack serial numbers. *See id.* at ¶ 9. Ghost guns also limit
10 law enforcement’s ability to track patterns of firearms trafficking, which can be essential to crime
11 prevention. *See id.* Finally, serial numbers often help to protect law enforcement officers
12 themselves when executing search warrants and responding to tips; law enforcement often checks
13 whether individuals residing at an identified residence have registered firearms in order to ensure
14 officer safety when approaching the residence. Wagstaffe Decl. ¶ 12.

15 Ghost guns are also inherently dangerous—to both private citizens and law enforcement
16 officers recovering these firearms—by virtue of the variable assembly and manufacturing quality
17 and absence of quality control inspection, testing, or sampling. Scott Decl. ¶ 10. Poor
18 manufacturing can result in unintentional discharges and related injuries, and the models sold by
19 Defendants also lack important safety features required by California law to help prevent such
20 accidents and reduce the risk of resulting injury or death. Gonzalez Decl. ¶¶ 25, 33, 37, 40.

21 **III. LEGAL STANDARD**

22 **A. Preliminary injunction**

23 The Court begins by assessing the likelihood that the People will succeed on the merits.
24 *IT Corp.*, 35 Cal.3d at 69. “Where a governmental entity . . . establishes that it is reasonably
25 probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to
26 the public outweighs the potential harm to the defendant.” *Id.* at 72. Only “[i]f the defendant
27 shows that it would suffer grave or irreparable harm from the issuance of the preliminary
28 injunction,” must the court balance the harms to the parties. *Id.*

1 “[T]here is no hard-and-fast rule that a party’s discontinuance of illegal behavior makes
2 injunctive relief against him or her unavailable.” *Robinson v. U-Haul Co. of California*, (2016) 4
3 Cal.App.5th 304, 315. “Where, as here, a company has not taken action to bind itself legally to a
4 violation-free future, there may be reason to doubt the bona fides of its newly established law-
5 abiding policy.” *Id.* at 316.

6 **B. The UCL**

7 The UCL, Business and Professions Code section 17200, *et seq.*, prohibits “any unlawful,
8 unfair, or fraudulent business act or practice.” *Cel-Tech Communications, Inc. v. Los Angeles*
9 *Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180. The UCL adopts “sweeping language . . . to
10 enable judicial tribunals to deal with the innumerable new schemes which the fertility of man’s
11 invention would contrive.” *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 111-12
12 (internal quotations omitted). Claims under the UCL’s “unlawful” prong “‘borrow[]’ violations of
13 other laws and treats these violations, when committed pursuant to business activity, as unlawful
14 practices independently actionable under” the UCL. *Farmers Ins. Exch. v. Superior Ct.* (1992) 2
15 Cal.4th 377, 383. Violations of federal law can serve as predicate offenses under the unlawful
16 prong. *E.g., Rubio v. Capital One Bank*, (9th Cir. 2010) 613 F.3d 1195, 1204.

17 The UCL also proscribes business activity that, even if not necessarily unlawful, is
18 “unfair.” California courts apply a variety of tests to determine whether a business practice is
19 unfair. Some courts define “unfair” as a practice that “offends an established public policy” or is
20 “immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers” (the
21 “traditional” test). *Community Assisting Recovery, Inc. v. Aegis Security Ins. Co.* (2001) 92
22 Cal.App.4th 886, 894. Other courts have determined “unfairness” through a balancing test, by
23 weighing the “impact [of the practice or act] on its alleged victim . . . against the reasons,
24 justifications and motives of the alleged wrongdoer.” *Pastoria v. Nationwide Ins.* (2003) 112
25 Cal.App.4th 1490, 1498 (internal quotations omitted). “In brief, the court must weigh the utility
26 of the defendant’s conduct against the gravity of the harm to the alleged victim.” *Gray v. Dignity*
27 *Health*, (2021) 70 Cal.App.5th 225, 238. Still other courts ask whether: the consumer injury is
28 substantial; the injury is not outweighed by any countervailing benefits to consumers or

1 competition; and the injury could not reasonably have been avoided by consumers themselves.
2 *Camacho v. Automobile Club of Southern California* (2006) 142 Cal.App.4th 1394, 1403. And
3 finally, some courts have applied a test that considers whether the unfair business practice
4 violates a policy that is “tethered to [a] . . . legislatively declared policy.” *Gregory v. Albertson’s,*
5 *Inc.* (2002) 104 Cal.App.4th 845, 851 (quoting *Cel-Tech*, 20 Cal.4th at 186-187).⁵

6 This Court may enjoin “[a]ny person who engages, has engaged, or proposed to engage in
7 unfair competition.” Bus. & Prof. Code §§ 17202, 17203. An “action filed by the People seeking
8 injunctive relief . . . is fundamentally a law enforcement action designed to protect the public
9 [whereby] [t]he purpose of injunctive relief is to prevent continued violations of the law.” *People*
10 *v. Pacific Land Research Co.*, (1977) 20 Cal.3d 10, 17. Because “equitable remedies of the UCL
11 are subject to the broad discretion of the trial court,” *Zhang v. Superior Court*, (2013) 57 Cal. 4th
12 364, 371, courts can address the “many forms” that unfair business practices and false advertising
13 may take by “fashion[ing] remedies to prevent their ‘use or employment’ in whatever context
14 they may occur.” *Consumers Union of U.S., Inc. v. Alta-Dena Certified Dairy*, (1992) 4
15 Cal.App.4th 963, 972.

16 **IV. LEGAL ARGUMENT**

17 **A. The People are likely to show Defendants’ conduct is an unlawful and unfair** 18 **business practice with respect to the Gun Control Act.**

19 **1. Defendants’ Unlawful Conduct**

20 Defendants unlawfully fail to comply with the requirements of the GCA when they sell
21 their parts kits. This is an unlawful business practice.

22 ⁵ Other Court of Appeal decisions decline to require plaintiffs to tether a claim based on
23 “established public policy” to a specific constitutional, statutory, or regulatory provision because
24 that test, as articulated in *Cel-Tech*, applied only to competitor actions alleging anticompetitive
25 practices, not to consumer cases, and would improperly limit the scope of the “unfair” standard in
26 the consumer context. *E.g., Smith v. Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th
27 700, 718-719 & nn. 22-23 (describing the “unfair” standard as “intentionally broad, . . . allowing
28 courts maximum discretion to prohibit new schemes to defraud”); *Camacho*, 142 Cal.App.4th at
1402 (criticizing *Gregory*’s focus on positive law as inconsistent with the fact that UCL courts sit
in equity). The People maintain that *Gregory* impermissibly extends the tethering requirement
outside the circumstances outlined in *Cel-Tech*, *see* 20 Cal.4th at 187 n.12, but the disagreement
between *Gregory* and cases like *Smith* and *Camacho* makes no difference here, where,
Defendants violate public policies that are closely tethered to specific statutory schemes.

1 Defendants' parts kits meet the GCA's definition of "firearm." Under the federal statute,
2 "firearm" means "(A) any weapon (including a starter gun) which will or *is designed to* or *may*
3 *readily be converted to* expel a projectile by the action of an explosive [or] (B) the frame or
4 receiver of any such weapon." 18 U.S.C. § 921(a)(3) (emphasis added). Likewise, "a weapon
5 parts kit that is designed to or may readily be completed, assembled ... or otherwise converted to
6 expel a projectile by the action of an explosive" is a "firearm." 27 C.F.R. § 478.11 (2022). The
7 standard for showing that a parts kit may "readily" be completed, assembled or converted to an
8 operable firearm is not stringent. The People must only show that the process was "fairly or
9 reasonably efficient, quick, and easy." 27 C.F.R. § 478.11 (2022).⁶

10 **First**, it cannot be seriously questioned that Defendants' parts kits are "designed to" expel
11 a projectile by the action of an explosive. That is the sole use for which Defendants' parts kits are
12 made, marketed, and sold as common sense and Defendants' own marketing practices make clear.
13 *E.g.*, Weaver Decl., Ex. B ("Our goal was for you to be able to go from opening the mail, to a
14 competition or defense ready pistol in under 15 minutes.").

15 **Second**, Defendants' parts kits "may readily be converted to expel a projectile by the
16 action of an explosive." 18 U.S.C. § 921(a)(3); *accord* 27 C.F.R. 478.11 (2022) ("firearm"
17 includes any "weapon parts kit" that "may readily be completed, assembled [or] converted to
18 expel a projectile by the action of an explosive.")⁷ All the factors relevant to determining
19 whether parts kits may "readily" be converted to expel a projectile weigh in the People's favor:

- 20 • **Time.** When it is possible to transform a collection of parts into a fully functional firearm in
21 an hour or less, that collection of parts "may readily be converted" such that it is a firearm.
22 *United States v. Mullins*, (8th Cir. 2006) 446 F.3d 750, 755 ("easily less than an hour");
United States v. Reed, (10th Cir. 1997) 114 F.3d 1053, 1056-57 ("fifteen to twenty minutes");

23 ⁶ Indeed, even an inoperable weapon can be a "firearm" under the GCA as long as the faulty
24 component can be replaced with a functional one, *United States v. Ruiz*, (5th Cir 1993) 986 F.2d
25 905, 910 (inoperable weapon a "firearm" where permanently-disabled hammer could be
26 replaced); *United States v. Yannott*, (6th Cir 1994) 42 F.3d 999, 1006 (weapon with broken firing
27 pin was "firearm" because firing pins can be replaced), or it could be made to operate at a later
28 date, *United States v. Reed*, (10th Cir. 1997) 114 F.3d 1053, 1056-57.

⁷ The People's argument here focuses on Defendants' parts kits. However, under the Final Rule,
Defendants' frame blanks are likely "firearms" because they are "designed to or may readily be
completed, assembled, restored, or otherwise converted to function as a frame or receiver." 27
C.F.R. § 478.12(c).

1 *United States v. Catanzaro*, (D. Conn. 1973) 368 F.Supp. 450, 452-53 (one hour); *see also* 27
2 C.F.R. § 478.11 (2022) (“how long it takes to finish the process” is a relevant factor). Indeed,
3 one court, construing an analogous statute, held that a machine gun that would take **eight**
4 **hours** to repair met the statutory definition for “machine gun” because it could be “readily
5 restored to shoot.” *United States v. Smith*, (8th Cir. 1973) 477 F.2d 399, 400. It took the
6 People’s investigator **less than a half hour** to assemble fully functional handguns from
7 Defendants’ parts kits. Tejada Decl. ¶¶ 29, 31, 54-59, 85-88.

- 8 • Ease. Another factor relevant to determining whether a parts kit may “readily” be converted
9 is “how difficult it is to do so.” 27 C.F.R. § 478.11 (2022). An investigator was easily able to
10 finish the Defendants’ frame blanks using their parts and online instructions. *See supra*, pp.
11 15-18. And, using readily available YouTube videos, he was easily able to produce a fully
12 functional firearm from the finished frames. Tejada Decl. ¶¶ 29, 31, 54-59, 85-88.
- 13 • Expertise. An investigator assembled functioning firearms from Defendants’ kits with no
14 prior armory experience with Glock-style firearms. Tejada Decl. ¶ 8. Before assembling
15 Defendants’ firearms, he had never finished a frame before and had never assembled a firearm
16 from a parts kit. *Id.*
- 17 • Equipment. The tools required to convert a collection of parts into a functional weapon is also
18 relevant. 27 C.F.R. § 478.11 (2022). When only common tools are used, courts find that the
19 parts are readily convertible. *Mullins*, 446 F.3d at 755 (hack saw and Dremel tool); *United*
20 *States v. 16,179 Molso Italian .22 Caliber Winler Derringer Convertible Starter Guns*, (2d
21 Cir. 1971) 443 F.2d 463, 465 (electric drill). The investigator needed only common tools like
22 a hammer, pliers, a knife, and a Dremel tool to convert Defendants’ handgun parts kits into
23 functioning firearms. Tejada Decl. ¶¶ 29, 55, 86.
- 24 • Parts availability. Another relevant factor is whether additional parts are required, and how
25 easily they can be obtained. 27 C.F.R. § 478.11 (2022); *see also United States v. Wick*, (9th
26 Cir. 2017) 697 F. App’x 507, 508 (Mem.) (UZI parts kit was a “firearm” because the “kits
27 contained all of the necessary components to assemble a fully functioning firearm with
28 relative ease”). Here, with one exception, the People’s investigator built functioning firearms
from Defendants’ products using only Defendants’ parts. Tejada Decl. ¶¶ 12, 35, 66, 90. In
the one instance when he needed a replacement slide because Defendant’s part was faulty, he
used a factory slide to complete the weapon. *Id.* ¶¶ 86-88.
- Expense. Consumers can purchase parts kits in the same price range as firearms purchased
through the normal GCA channel, 27 C.F.R. 478.11 (2022) (“how much it costs” is relevant
factor); *compare* Tull Decl. ¶¶ 12 (MDX Arms parts kit sold for \$570) *and* Weaver Decl., Ex.
B (Blackhawk parts kit sold for \$799) *with* Silva Decl., Ex. A (price of comparable Glock
handgun, sold through FFL channel, \$499 before FFL fees). In effect, the consumer’s cost of
evading the GCA by purchasing Defendants’ parts kits is negligible, given that Defendants’
customers avoid incurring the cost of submitting to a background check, maintaining
eligibility for firearm possession, or being responsible for reporting lost or stolen firearms.
- Scope and Feasibility. Finally, as described in Inspector Tejada’s declaration, very little
needed to be done to Defendants’ parts kits to finish them. 27 C.F.R. § 478.11 (2022) (“the
extent to which the subject of the process must be changed to finish it” is a relevant factor).
“Finishing” the frame blanks required little more than drilling a few holes and filing away
some excess material. *E.g.*, Tejada Decl. ¶¶ 17-29. Nor did the manufacturing process
destroy Defendants’ parts or cause them to malfunction. Tejada Decl. ¶ 92; *see* 27 C.F.R.

1 § 478.11 (2022) (“whether the process would damage or destroy the subject of the process, or
2 cause it to malfunction” is a relevant factor). To the contrary, an investigator built fully
functional handguns from each of the Defendants’ parts kits in less than half an hour.

3 In short, the process of converting Defendants’ kits to operable firearms was “fairly or reasonably
4 efficient, quick, and easy”; they are thus “firearms” within the meaning of the GCA.⁸

5 Because Defendants’ parts kits meet the GCA’s statutory definition of “firearm,” the
6 People are likely to succeed in showing that Defendants’ business practices violate the GCA.
7 Once the Court concludes that Defendants’ kits are “firearms” under the GCA, no further analysis
8 is necessary because there is no dispute that Defendants fail to follow the GCA’s point-of-sale
9 requirements, such as requiring potential purchasers to fill out ATF Form 4473, running
10 background checks, and transferring firearms in person along with a safety device.

11 **2. Defendants’ Unfair Conduct**

12 In addition to being unlawful, Defendants’ business practices are “unfair” under the UCL
13 because they “offend [the] established public policy” articulated in the GCA. *Community*
14 *Assisting Recovery*, 92 Cal.App.4th at 894. In enacting the GCA, Congress “sought broadly to
15 keep firearms away from the persons Congress classified as potentially irresponsible and
16 dangerous.” *Barrett v. United States*, (1976) 423 U.S. 212, 218. Congress required serial
17 numbers, established categories of prohibited persons, required retailers to obtain Federal
18 Firearms Licenses, and required such licensees to run background checks on purchasers to
19 prevent dangerous criminals from obtaining firearms. Defendants’ refusal to conduct background
20 checks, or to ensure that the person who receives the weapon is the same person who purchased
21 the weapon, is an effort to evade the federal regulatory regime. In essence, Defendants have
22 granted themselves an exemption from the requirement to conduct background checks on their
23 customers. *See Epic Games, Inc. v. Apple Inc.*, (N.D. Cal. 1997) 559 F.Supp. 3d 898, 1052
24 (finding “unfair” business practice where practice “violate the *policy or spirit*” of underlying

25 ⁸ Defendants may argue that the ATF has opined that their (or similar) products are not firearms
26 in so-called “Determination Letters.” This argument fails because, first, the Final Rule voids such
27 letters, *see* 27 C.F.R. § 478.12(f)(1) (2022), and second, as GS Performance’s own
28 “Determination Letter” makes clear, its opinion applies only to the polymer frame-blank as a
“standalone product” and “*does not apply if the polymer frame-blank is marketed, sold, or*
distributed as part of a kit.” Weaver Decl., Ex. N at 1, 4 (emphasis added).

1 legislation) (quoting *Cel-Tech*, 20 Cal.4th at 187) (emphasis added and alteration omitted).

2 Defendants’ business practices are also unfair because they cause substantial harm to the
3 public and consumers. Californians have been burdened with a steady growth of unserialized and
4 untraceable weapons in this State. This has caused a sharp increase in violent gun crimes
5 involving ghost guns, has cost lives, and has stymied law enforcement who are unable to use
6 serial numbers to trace a firearm’s custody chain. Defendants’ business practices also harm
7 unwitting consumers. Many people prohibited from possessing firearms do not know that they are
8 ineligible; thus, prohibited persons may procure Defendants’ firearms and unknowingly incur
9 federal criminal liability—something that the GCA and the Form 4473 process are designed to
10 prevent. On the other hand, Defendants’ “reasons” for engaging in these business practices—to
11 circumvent federal controls over firearm possession and to profit from sales—do not outweigh
12 these harms. *Gray*, 70 Cal.App.5th at 238.

13 **B. The People are likely to show Defendants engage in unlawful and unfair**
14 **business practices with respect to the Assembly of Firearms Law.**

15 **1. Legislative purpose and effect**

16 The very purpose of the AFL is to close the loophole in the GCA that ghost gun
17 companies and consumers perceive and seek to exploit. The Assemblymember who proposed the
18 bill explained that “[m]any homemade, or personally manufactured, firearms have no serial
19 number; therefore have no record of existence AB 857 will be an important step forward in
20 holding criminals accountable and protecting the property of citizens who make these firearms.”
21 Declaration of Neha Sabharwal (“Sabharwal Decl.”), Ex. A.⁹ The AFL accomplishes this goal by
22 requiring background checks and serial numbers. If the firearm is manufactured from polymer
23 plastic—as Defendants’ handgun products are—a 3.7-ounce piece of stainless steel must be
24 embedded within the plastic. Pen. Code § 29180(b)(2)(B). When the end-user manufactures the
25 firearm, he or she must apply to California with proof of legal age to possess the firearm and pass
26 a background check establishing eligibility to possess a firearm. *Id.* § 29182(b)(2)(A), (4). DOJ

27 _____
28 ⁹ Exhibits A and B to the Declaration of Neha Sabharwal are the subject of Plaintiff’s
concurrently filed Request for Judicial Notice.

1 issues serial numbers upon completion of the background check. *Id.* § 29180(b)(1)-(2)(A). That
2 number must be engraved on the 3.7 ounce piece of stainless steel, and the private manufacturer
3 must notify DOJ that serialization has been completed and provide sufficient information for
4 firearm ownership recording. *Id.* § 29180(b)(2)(B), (b)(3).

5 **2. Defendants’ Unlawful Conduct**

6 Defendants aid and abet their customers in manufacturing handguns that do not comply
7 with the AFL’s serialization and firearm ownership recording requirements. *See* Pen. Code § 31.
8 Aiding and abetting the commission of a crime occurs when the party, acting with “(1)
9 knowledge of the unlawful purpose of the perpetrator, and (2) the intent or purpose of
10 committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids,
11 promotes, encourages or instigates, the commission of the crime.” *People v. Beeman* (1984) 35
12 Cal.3d 547, 561.

13 Defendants know that their customers intend to privately manufacture a firearm—which is
14 the sole purpose of their parts kits—and that the firearms built from their products will violate the
15 AFL. Defendants’ blanks do not contain the required stainless steel (a fact of which they are
16 aware). And, given that the statute requires that the steel “shall be embedded within the plastic”
17 frame, it is not feasible for an average consumer to add the required amount of steel to a firearm
18 built from Defendants’ blanks. Gonzalez Decl. ¶ 32. Nonetheless, Defendants sell complete kits
19 containing all parts necessary to build a firearm.¹⁰ In many instances, Defendants provide
20 explicit instructions on how to complete these products. Weaver Decl., Ex. C (Blackhawk); Cuk
21 Decl., Ex. A (GS Performance). By making available products that serve no purpose other than
22 to be manufactured into firearms, and by doing so knowing that their products cannot meet the
23 AFL’s requirements, Defendants aid and abet AFL violations. *Beeman*, 35 Cal.3d at 561.

24 **3. Defendants’ Unfair Conduct**

25 Defendants’ conduct is also unfair. The AFL’s purpose is to require the serialization of

27 ¹⁰ Weaver Decl., Exs. B (“Everything you need . . .”), J (pointing consumer to “Builders Tool
28 Set,” “Complete Upper,” and “Lower Parts Kit”) & P (parts kit with link to “Compatible”
Polymer80 frame blank); Tejada Decl. ¶ 90.

1 ghost guns and background checks. *See supra*, p. 12. Defendants help their customers evade the
2 AFL’s clear requirements. GS Performance’s product page made no mention of any of the AFL
3 requirements; instead, it claims that “[f]ederal law states that you can build a firearm for personal
4 use.”¹¹ Weaver Decl., Ex. J. Likewise, MDX Arms claims that it “does not sell firearms” and
5 that “will ship directly to you without FFL [i.e., a Federal Firearms License] needed,” but fails to
6 reference the AFL. *Id.*, Ex. Q. And, while MDX Arms lists some eligibility criteria on its
7 website, it leaves it to the individual consumer to self “certify” that the purchaser is eligible to
8 possess a firearm, without collecting that information. *Id.*, Ex. T. This a far cry from submitting
9 to a California DOJ background check, as the AFL requires.

10 Blackhawk touts that its products “do not need to be registered at time of purchase” and
11 that, because there is “no Federal Firearms License” involved in the sale, the customer will enjoy
12 an “easier and smoother purchasing experience.” *Id.*, Ex. D. With a wink and a nod, it states
13 “California law prohibits building an off-roster handgun as well as a homebuilt firearm that does
14 not contain an integral 3.7 oz piece of stainless steel. If you are purchasing a GST-9 that ships to
15 California, you certify that you have a law-enforcement exemption, or intend to build and
16 maintain the product outside of the state.” *Id.*, Ex. B. This statement openly flaunts the law; the
17 implausibility of Californians buying these products only to carry them out of state is self-evident.

18 Defendants’ conduct “offends [California’s] established public policy.” *Community*
19 *Assisting Recovery*, 92 Cal.App.4th at 894; *Epic Games*, 559 F.Supp.3d at 1052. The legislative
20 purpose of the AFL was to combat “untraceable firearms” that “are found in the hands” of
21 “violent criminals.” The legislative purpose was expressly stated: “***this bill will help to close this***
22 ***loophole***” that ghost gun companies like Defendants perceived in the GCA and sought to exploit.
23 Sabharwal Decl., Ex. A. By continuing to tout an “easier and smoother purchasing experience”
24 even after the AFL’s enactment, Defendants pretend that California’s fix never went into effect.
25 This is an unfair business practice.

26 Defendants’ “reasons, justifications and motives” do not warrant the harm caused by their

27
28 ¹¹ While GS Performance notes that a “serial plate” is embedded in the polymer, the plate does
not satisfy the AFL’s stainless steel requirement, a point GS Performance does not disclose.

1 practice of evading the AFL’s clear requirements. There is no social utility to their business
2 practices which openly flaunt the AFL’s efforts to plug the perceived loophole in federal law
3 Defendants seek to exploit. Indeed, Defendants’ business practices allow prohibited persons to
4 easily gain possession of firearms, a “harm” of severe “gravity.” *Gray*, 70 Cal.App.5th at 238.

5 **C. The People are likely to show Defendants’ conduct constitute unlawful and**
6 **unfair business practice with respect to the Unsafe Handgun Act.**

7 **1. Defendants’ Unlawful Conduct**

8 The People are likely to show that Defendants are violating the UHA in two independent
9 ways: (1) through their advertising and sale of frame blanks and handgun parts kits, Defendants
10 “cause[]” their customers “to ... manufacture[]” unsafe handguns proscribed by the UHA, Pen.
11 Code § 32000, subd. (a), and (2) through the same conduct, Defendants aid and abet their
12 customers in manufacturing unsafe handguns in violation of the UHA, Pen. Code § 31. In these
13 ways, Defendants are acting unlawfully.

14 **a. Defendants unlawfully cause their customers to manufacture**
15 **unsafe handguns**

16 Defendants “cause[]” the manufacture of unsafe handguns in several ways. *First*,
17 Defendants sell parts kits that, when assembled, produce handguns that lack required safety
18 features. Under the UHA, to be considered safe, any new make and model of semi-automatic
19 handgun—like the handguns assembled from Defendants’ products—must contain a chamber
20 load indicator and a magazine disconnect mechanism. Pen. Code § 32010(d). None of
21 Defendants’ frame blanks or parts kits are equipped with either a California-compliant chamber
22 load indicator or a magazine disconnect mechanism. Gonzalez Decl., ¶¶ 26-27. Nor are
23 Defendants’ products designed to accommodate these features, and it would be infeasible for a
24 consumer to retrofit Defendants’ products to add them. *Id.*, ¶¶ 28-32.¹² Thus, by definition and as

25 ¹² Generally, a chamber load indicator attaches to the slide, and a magazine disconnect
26 mechanism is a component of the frame. Gonzalez Decl., ¶¶ 12-14. The frame and slide are
27 designed to fit, so a private manufacturer cannot simply replace Defendants’ slides with a model
28 that contains a UHA-compliant chamber load indicator. *Id.* at ¶¶ 29-30; *see, e.g.*, Weaver Decl.,
Ex. J (SS80 handgun blank is “**ONLY** compatible with factory and aftermarket Glock 43 parts”).
The People are not aware of any commercially available parts that could be used with
Defendants’ products to satisfy the UHA requirements. *See* Gonzalez Decl., ¶ 30.

1 a matter of law, handguns built from Defendants’ products are “unsafe.”

2 **Second**, handguns privately manufactured from Defendants’ products have not met the
3 UHA’s requirements for safety testing. To be deemed “not unsafe” under the UHA, a handgun
4 must meet a “firing requirement” and a “drop safety requirement,” Pen. Code § 31910(b)(2)&(3),
5 and the handgun’s manufacturer must submit three exemplars to an independent laboratory
6 certified by California DOJ to conduct these tests. *Id.* § 31905(a). When assembled, however,
7 handguns built from Defendants’ parts kits have not passed these safety tests. Gonzalez Decl. ¶
8 34. Indeed, no privately manufactured handgun—including any handgun built from Defendants’
9 products—has *ever* been approved by California DOJ to be added to the roster of “not unsafe”
10 handguns. *Id.* at ¶¶ 35-36. Nor could handguns built from Defendants’ products be submitted for
11 testing under the UHA because they lack the required chamber load indicator and magazine
12 disconnect mechanism. Pen. Code § 32010(d)(2). Thus, Defendants’ ongoing sale of frame blanks
13 and build kits products has “cause[d]”—and will continue to “cause[.]”—the manufacture of
14 unsafe handguns.

15 **Third**, Defendants “cause[.]” “unsafe handgun[s]” “to be manufactured” by actively
16 encouraging consumers to build handguns from parts kits and by instructing them how to do so.
17 Blackhawk states that its “goal” is for the consumer to receive the product in the mail and “go ...
18 to a competition or defense ready pistol in under 15 minutes.” It provides an instruction manual
19 with step-by-step instructions. Weaver Decl., Exs. B & C. Glockstore posted on YouTube a
20 three-part video detailing how to build a handgun from its SS80 Lower and related products. Cuk
21 Decl., Ex. A. Defendants provide these instructions without disclosing the UHA’s requirements.

22 **b. Defendants unlawfully aid and abet their customers in**
23 **manufacturing unsafe handguns**

24 Defendants’ practices are also unlawful for the independent reason they aid and abet their
25 customers in manufacturing unsafe handguns in violation of the UHA. *See* Pen. Code § 31;
26 *People v. Beeman*, (1984) 35 Cal.3d 547, 561. Defendants are in the business of advertising and
27 selling products that they know have the sole purpose of being assembled by their customers into
28 handguns that run afoul of the UHA. Defendants’ intent to encourage and facilitate their

1 customers' violations of the UHA is evident in their advertising and instructional materials,
2 including statements on their websites that their parts kits contain everything needed to assemble
3 a handgun, the detailed step-by-step instructions in their YouTube videos, and their blog posts
4 about how to use their products to build unsafe handguns. *See supra* p. 29 (citing exhibits).

5 "He who induces another to commit fraud and furnishes the means is equally guilty."
6 *American Philatelic Society v. Claibourne* (1935) 3 Cal.2d 689, 697. In *Claiborne*—a case that
7 arose under the UCL's predecessor statute—the defendant altered postage stamps to resemble
8 rare collectible stamps and offered them for sale to stamp dealers suggesting they could be resold
9 to collectors as genuine. *Id.* at 692, 694-95. The Court found that the defendant's marketing and
10 sale of counterfeit postage stamps to dealers had no purpose other than to deceive and defraud
11 collectors, which constituted unfair competition. *Id.* at 696-97.

12 So too here. Like the *Claibourne* fraudster, Defendants' sole purpose in selling handgun
13 parts kits is to profit from the unlawful assembly of unsafe handguns prohibited by the UHA, and
14 they provide their customers with the means to violate the law. Defendants also induce their
15 customers to violate the law by advertising their products as containing everything necessary to
16 make a handgun and providing detailed assembly instructions, which mirrors the *Claibourne*
17 defendant's suggestion that his customers unlawfully hold the counterfeit stamps out as genuine.
18 Defendants here are therefore "equally guilty" of their customers' UHA violations. *Id.* at 697.

19 **2. Defendants' Unfair Conduct**

20 Defendants' business practices are also unfair. Defendants' conduct offends California's
21 established public policy set out in the UHA, and it is "immoral, unethical . . . unscrupulous" and
22 "substantially injurious to consumers." *Community Assisting Recovery*, 92 Cal.App.4th at 894.
23 The purpose of the UHA is "to ensure that handguns sold and *manufactured* in this state *function*
24 *properly* and come *equipped with lifesaving features* that protect lawful users." Sabharwal Decl.,
25 Ex. B. Defendants undermine these policies by selling frame blanks and parts kits that do not
26 contain the safety features required by the Legislature and thus cannot meet California's
27 minimum design safety standards. What's more, Defendants provide step-by-step instructions to
28 their customers for how to build these unsafe handguns. Each time a customer manufactures a

1 ghost gun from Defendants’ products, the result is a firearm that fails to meet the safety standards
2 set out by the legislature in the UHA. It is difficult to imagine a business practice that more
3 clearly “offends . . . public policy.” *Community Assisting Recovery*, 92 Cal.App.4th at 894

4 Defendants’ conduct also causes substantial harm that outweighs any purported
5 justifications or benefits. The handguns built from Defendants’ products pose an increased risk to
6 consumer and public safety. They fail to meet UHA requirements designed to prevent inadvertent
7 shootings and injury. Sabharwal Decl., Ex. B. Because these handguns are unlawful under the
8 UHA, customers’ purchase and use of Defendants’ products exposes them to criminal liability for
9 the manufacture of unsafe handguns. *See* Pen. Code § 32000(a). Ultimately, because the firearms
10 that Defendants’ frame blanks and parts kits produce are unlawful, there can be no purported
11 utility to Defendants’ conduct, nor can any harms reasonably be avoided by consumers.

12 **D. Defendants’ conduct violates California’s prohibition on fraudulent**
13 **advertising.**

14 Fraudulent advertising is prohibited. Bus. & Prof. Code §§ 17200, 17500. Here, courts
15 assess whether the business practice is “likely to deceive the public.” *McKell v. Washington*
16 *Mut., Inc.*, (2006) 142 Cal.App.4th 1457, 1471. The representation may be untrue, or it “may be
17 accurate on some level, but will nonetheless tend to mislead or deceive. A perfectly true
18 statement couched in such a manner that it is likely to mislead or deceive the consumer, such as
19 by failure to disclose other relevant information, is actionable.” *Id.* (citations omitted).

20 Defendants mislead consumers into believing that their products are categorically legal
21 *when assembled*, which is not the case. Claims such as “these firearms do not need to be
22 registered at time of purchase, since they are not legally ‘firearms’” (Blackhawk), “Federal law
23 states that you can build a firearm for personal use” (GS Performance), and “This is not a firearm
24 and will ship directly to you without FFL needed[.] Please refer to your state and federal laws
25 about 80% kits” (MDX Arms) are insufficient. Weaver Decl., Exs. D, J, Q. These hair-splitting
26 claims “tend to mislead,” *McKell*, 142 Cal.App.4th at 1471, by suggesting that Defendants’ part
27 kits are categorically lawful when used as intended, when in fact the handguns assembled from
28 them are illegal because they lack required safety features and, further, consumers are required to

1 comply with the firearm ownership recording, serialization, testing, and safety requirements of
2 the AFL and UHA.

3 **E. The People have established irreparable harm.**

4 In preliminary injunction cases between private parties, the Court assesses both the
5 likelihood of success on the merits *and* the balance of the plaintiff’s and defendant’s harms. Not
6 so here. Where the People demonstrate a likelihood of success, the plaintiff’s harm is presumed
7 wherever the Legislature has, as here, specifically authorized public officials to seek injunctive
8 relief. *IT Corp.*, 35 Cal.3d at 69, 72. Because the Legislature has already decided that unlawful,
9 unfair, and fraudulent business practices can be enjoined, harm is presumed and injunctive relief
10 is presumed appropriate where there is a likelihood that the People will demonstrate such
11 practices. *Id.* Once the People establish a likelihood of success on the merits, the burden shifts to
12 Defendants to show that they would suffer “grave or irreparable harm” from preliminary relief.

13 While the *IT Corp.* presumption should be the end of the analysis, the irreparable harm
14 flowing from Defendants’ business practices is apparent. Ghost guns are flooding into California.
15 Across the state, the number of ghost guns seized between 2016 and 2021 increased by **7,318%**.
16 Gonzalez Decl., at ¶ 46. In San Francisco alone that number has increased **3,517%** since 2016
17 when SFPD first began tracking ghost gun seizures. Scott Decl. ¶ 11. This increase takes place
18 concurrently with an increase in the homicide and gun-crime rates.

19 Defendants’ sales and this flood of ghost guns cause irreparable harm. Defendants make
20 it easier for felons and other prohibited persons to get firearms. *Id.* at ¶ 7. Defendants deprive law
21 enforcement of a critical investigative tool by selling firearms without serial numbers. *See id.* at ¶
22 9. And Defendants cause the proliferation of handguns that lack important safety features
23 mandated by law. Gonzalez Decl. at ¶ 49. They thus put law enforcement, and their own
24 customers, at risk of injury or death. Wagstaffe Decl. ¶ 12; Scott Decl. ¶ 10.

25 Law enforcement can pinpoint the use of ghost guns in specific crimes. ATF’s Final Rule
26 notes that the tragic Saugus High School (Santa Clarita, Calif.) shooting—which left two dead
27 and three wounded—was committed with a ghost gun possessed by an underaged person. *See*
28 Final Rule, 87 FR 24686 & n.107. The Final Rule lists many similar examples. *Id.* Further,

1 ghost guns are involved in a wide array of crimes, most of which do not make the news, but
2 nevertheless pose a substantial risk to public safety. District Attorney Wagstaffe provides
3 specific illustrations from San Mateo County of, first, a prohibited person who sought out ghost
4 guns after becoming ineligible to possess firearms and having his guns confiscated by the police,
5 and, second, of a convicted gang member running a ghost gun manufacturing mill. Wagstaffe
6 Decl. ¶¶ 7 & 8. Defendants cannot meet their *IT Corp.* burden of showing a countervailing harm.

7 **V. RELIEF REQUESTED**

8 The People request that the Court enter the proposed Preliminary Injunction restraining
9 Defendants from engaging in unlawful and unfair business practices under the UCL by violating
10 the GCA; violating or aiding and abetting the violation of the AFL or the UHA; or by violating
11 the False Advertising Law. The People’s proposed Preliminary Injunction includes, but is not
12 limited to, prohibitions on:

- 13 a. violating the GCA, including by selling in California or to California Consumers any
14 parts kit that is a firearm under federal law, without complying with the GCA’s
15 requirements;
- 16 b. violating, and/or aiding and abetting the violation of the AFL, including by selling, in
17 California or to California Consumers any blanks manufactured or assembled from
18 polymer plastic without 3.7 ounces of stainless steel embedded within the plastic; and
- 19 c. violating and/or aiding and abetting the violation of the UHA, including by selling in
20 California or to California Consumers frame blanks, jigs, and parts kits that when
21 assembled would produce a handgun that lacks a magazine disconnect mechanism or a
22 UHA-compliant chamber load indicator.¹³

23 //

24 //

25 //

26 _____
27 ¹³ At trial, the People intend to seek broader relief, including broader injunctive relief, fines and
28 disgorgement related to Defendants’ sales. 27 C.F.R. § 478.12. The People reserve the right to
argue at trial that Defendants’ frame blanks, jigs, and part kits cannot lawfully be sold consisting
with the UHA and, thus, their manufacture and sale must be enjoined.

1 **VI. CONCLUSION**

2 The Court should enjoin Defendants’ unlawful business practices.

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Respectfully submitted,

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