

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

ALVINO CRAWFORD, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1916-CV17245
)	
JIMENEZ ARMS, INC., et al.,)	Division 10
)	
Defendants.)	

**DEFENDANT JIMENEZ ARMS, INC.’S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM FOR PUBLIC NUISANCE,
AND SUGGESTIONS IN SUPPORT**

Defendant Jimenez Arms, Inc. (Jimenez), pursuant to Mo. R. Civ. P. 55.27(a)(6), should be dismissed as the Missouri Legislature has abolished the common law tort of public nuisance as it relates to gun manufacture and sale. Jimenez submits the following Suggestions in Support:

SUGGESTIONS IN SUPPORT

The Missouri Legislature abolished the common law tort of public nuisance for the manufacture and sale of fire arms:

4. The lawful design, marketing, manufacture, distribution, or sale of firearms or ammunition to the public is not an abnormally dangerous activity and **does not constitute a public or private nuisance.**

5. No county, city, town, village or any other political subdivision nor the state shall bring suit or have any right to recover against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, distribution, or sale of firearms or ammunition to the public. This subsection shall apply to any suit pending as of October 12, 2003, as well as any suit which may be brought in the future. Provided, however, that nothing in this section shall restrict the rights of individual

citizens to recover for injury or death caused by the negligent or defective design or manufacture of firearms or ammunition.

R.S.Mo. §21.750.4-.5 (2003)¹ (emphasis added). “[T]he enactment of this statute seems to be in response to suits like this one, which attempt to apply theories of tort liability to the significantly regulated industry of manufacturers, distributors, and dealers of firearms.” *City of St. Louis v. Cernicek*, 145 S.W.3d 37, 43 (Mo.App. E.D. 2004).

As Count I of their Petition, Plaintiffs have filed a claim for public nuisance against Jimenez only. (¶¶70-76). The Legislature, through enactment of §21.750.4, has directly abrogated the claim set forth in Count I of Plaintiffs’ Petition.

Thus, the Court should dismiss Count I with prejudice.

Respectfully submitted,

**FOLAND, WICKENS, ROPER,
HOFFER & CRAWFORD, P.C.**

/s/ Joseph J. Roper

Joseph J. Roper MO # 36995

Michael L. Belancio MO # 50115

One Kansas City Place

1200 Main Street, Suite 2200

Kansas City, MO 64105

816-472-7474; Facsimile: 816-472-6262

jroper@fwpclaw.com

mbelancio@fwpclaw.com

**ATTORNEYS FOR DEFENDANT
JIMENEZ ARMS, INC.**

¹ The statute has been amended since in both 2007 and 2014, and the Legislature did not amend the relevant portion of the statute.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of October 2019, the foregoing document was filed with the Clerk of the Court using the Court's E-Filing system which electronically sends notice to all counsel of record.

/s/ Joseph J. Roper _____
Attorney for Defendant