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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES**

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA,

13 Plaintiff,

14 vs.

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

17 Defendants.

CASE NO.: 21STCV06257

[Assigned for all purposes to the  
Honorable Daniel S. Murphy; Dept. 32]

**PLAINTIFF STATE OF CALIFORNIA'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANTS POLYMER80, INC.,  
DAVID BORGES, AND LORAN  
KELLEY'S DEMURRER**

Hearing Date: June 7, 2021  
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1 **INTRODUCTION**

2 Polymer80 and two of its principals, David Borges and Loran Kelley (collectively,  
3 “Defendants”), have been selling kits and parts used to build untraceable, home-assembled  
4 firearms throughout California. The proliferation of these so-called “ghost guns” is contributing  
5 to the large increase in violent crime in Los Angeles and throughout the state, and poses a lethal  
6 threat to the safety of law enforcement personnel and all other citizens. Plaintiff, the People of the  
7 State of California (the “People”), by and through Los Angeles City Attorney Michael N. Feuer,  
8 bring this action to obtain an injunction and monetary remedies to stem the flow of these  
9 untraceable “ghost guns” manufactured from kits and component parts that Defendants sell and to  
10 obtain monetary recovery in the form of statutory penalties and an abatement fund to remediate  
11 the harms already caused.

12 Defendants’ demurrer to the Complaint relies almost entirely on the argument that the  
13 Complaint fails to adequately allege that Defendants’ products meet the definition of “firearms” or  
14 “handguns” under federal law. This argument is without merit. The Complaint alleges specific  
15 facts that sufficiently explain why Polymer80’s Buy Build Shoot kits, frame kits, and receiver kits  
16 are “firearms” and “handguns” under federal law, making abundantly clear which of Defendants’  
17 products are at issue.<sup>1</sup> The Complaint goes even further, to identify specific products for sale on  
18 Defendants’ website, and to highlight that the ATF has made the determination in support of an  
19 application for a federal search warrant of Polymer80’s headquarters that one Polymer80 product

20 <sup>1</sup> “Frames” and “receivers” are the core building blocks of firearms—for pistols and semi-  
21 automatic rifles, respectively. In a pistol, the frame provides the basic foundation for the slide and  
22 barrel. In a semi-automatic rifle like the AR-15, the receiver houses the trigger parts and  
23 magazine and attaches to other parts. Frames and receivers alone are considered a “firearm” under  
24 the Gun Control Act. 18 U.S.C. § 921(a)(3). Polymer80 attempts to evade this federal law by  
25 selling “unfinished” or so-called “80%” frames and receivers—which may need only to be drilled  
26 out in certain spots to be “finished.” As alleged in the Complaint, Polymer80 sells these  
27 purportedly unfinished frames and receivers as part of a variety of kits that enable customers to  
28 quickly and easily finish the frames and receivers. These products include frame and receiver kits,  
which contain finishing jigs and properly sized drill bits to facilitate quick and easy finishing of  
the frame or receiver, and the more complete “Buy Build Shoot” kits, which, in addition to the  
parts included in the frame and receiver kits, also include a complete slide assembly, pistol parts  
kit with trigger, and a magazine, or as Polymer80 advertises, “all the necessary components to  
build a complete ... pistol.”

1 in particular—its “Buy Build Shoot” kit—meets the federal definition of a firearm. Because these  
2 products meet the federal definitions of “firearm” and “handgun,” and because Defendants have  
3 been selling them without following the requirements of federal law (such as conducting  
4 background checks and ensuring they have a serial number that can be used to trace the weapon if  
5 it ends up being used in crime), the Complaint alleges that Defendants have been violating federal  
6 (and state) laws applicable to the sale of firearms. The Complaint as drafted allows Defendants to  
7 evaluate the claims and respond to them.

8 The People have asserted one claim under the California Unfair Competition Law  
9 (“UCL”), alleging that Defendants’ actions are unlawful, fraudulent, and unfair. Defendants  
10 challenge each theory primarily with the same argument: that the Complaint provides an  
11 insufficient factual basis for establishing that Defendants’ products constitute “firearms” and  
12 “handguns.” As explained below, Defendants are wrong. And for that reason, and others, they  
13 fail to establish that any, let alone all, of the People’s theories fail as a matter of law. Defendants  
14 thus cannot sustain a demurrer as to the People’s UCL claim. Defendants’ argument against the  
15 People’s public nuisance claim fails for the same reason. The Court should overrule the demurrer.

### 16 **LEGAL STANDARD**

17 “A cardinal rule of pleading” is that plaintiffs need allege only “ultimate facts.” *Ludgate*  
18 *Ins. Co., Ltd. v. Lockheed Martin Corp.*, 82 Cal. App. 4th 592, 606 (2000). Thus, “each  
19 evidentiary fact that might eventually form part of the plaintiff’s proof need not be alleged.” *Pich*  
20 *v. Lightbourne*, 221 Cal. App. 4th 480, 495 (2013). The Court must accept as true not only the  
21 Complaint’s factual allegations but also “facts that reasonably can be inferred from those  
22 expressly pleaded.” *Fremont Indemn. Co. v. Fremont Gen. Corp.*, 148 Cal. App. 4th 97, 111  
23 (2007). Thus, if a plaintiff’s allegations on the face of the complaint support a claim “under any  
24 possible legal theory,” the demurrer must be overruled. *Sheehan v. San Francisco 49ers, Ltd.*, 45  
25 Cal. 4th 992, 998 (2009).

26 “[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so  
27 incomprehensible that a defendant cannot reasonably respond.” *Lickiss v. Fin. Indus. Regul.*  
28 *Auth.*, 208 Cal. App. 4th 1125, 1135 (2012); *Mahan v. Charles W. Chan Ins. Agency, Inc.*, 14 Cal.

1 App. 5th 841, 848 n.3 (2017). Courts “strictly construe such demurrers because ambiguities can  
2 reasonably be clarified under modern rules of discovery.” *Lickiss* at 1135; *see also Khoury v.*  
3 *Maly’s of California, Inc.*, 14 Cal. App. 4th 612, 616 (1993) (citing 5 Witkin, Cal. Procedure (3d  
4 ed. 1985) Pleading, § 927, p. 364); *Chen v. Berenjian*, 33 Cal. App. 5th 811, 822 (2019). A  
5 demurrer for uncertainty will not lie where ambiguous facts are presumptively within the  
6 knowledge of the defendant. *Bacon v. Wahrhaftig*, 97 Cal. App. 2d 599, 605 (1950) (“Such a  
7 demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the  
8 pleading, but is directed at the uncertainty existing in the allegations actually made.”).

9 Courts “treat the demurrer as admitting all material facts properly pleaded, but not  
10 contentions, deductions or conclusions of fact or law ... [courts] also consider matters which may  
11 be judicially noticed.” *Serrano v. Priest*, 5 Cal. 3d 584, 591 (1971) (internal citation omitted).  
12 “Further, [courts] give the complaint a reasonable interpretation, reading it as a whole and its parts  
13 in their context.” *Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985).

## 14 ARGUMENT

### 15 **I. PLAINTIFF’S COMPLAINT IS SUFFICIENTLY SPECIFIC**

16 Defendants’ principal argument, which they rely on as the basis for dismissing the UCL  
17 claim on each theory and for dismissing the public nuisance claim, is that the Complaint is “too  
18 uncertain” under Code Civ. Proc. § 430.10(f) because it fails to explain how Polymer80’s products  
19 fit the federal definitions of “firearm” and “handgun.” As Defendants note, federal law defines  
20 “firearm” as “(A) any weapon ... which will or is designed to or may readily be converted to expel  
21 a projectile by the action of an explosive; (B) the frame or receiver of any such weapon.” 18  
22 U.S.C. § 921(a)(3). A “handgun” is defined as “(A) a firearm which has a short stock and is  
23 designed to be held and fired by the use of a single hand; and (B) any combination of parts from  
24 which a firearm described in subparagraph (A) can be assembled.” 18 U.S.C. § 921(a)(29).  
25 Defendants nonetheless argue that the People have failed to “specifically explain its theories for  
26 how Defendants’ products meet these very technical definitions.” Demurrer at 4.

27 Defendants provide no explanation as to why the People’s allegations are insufficient—let  
28 alone “so incomprehensible that a defendant cannot reasonably respond.” *Lickiss*, 208 Cal. App.

1 4th at 1135. Instead, Defendants refer to the federal statutes as providing “very technical  
2 definitions.” The plain language of the federal definitions does not support any heightened  
3 pleading requirement, and Defendants have cited no case law supporting such a standard.  
4 Defendants have no trouble identifying the products named in the Complaint; yet they repeat the  
5 conclusory assertion that they are unequipped to respond to each claim.

6 “To survive a demurrer, the complaint need only allege facts sufficient to state a cause of  
7 action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be  
8 alleged.” *C.A. v. William S. Hart Union High Sch. Dist.*, 53 Cal. 4th 861, 872 (2012). The People  
9 have pled more than “ultimate facts” that are “sufficient to state a cause of action,” *Pich*, 221 Cal.  
10 App. 4th at 495, and which “can reasonably be clarified under modern rules of discovery.” *Lickiss*,  
11 208 Cal. App. 4th at 1135.

12 To begin, the People identify specific products that Polymer80 sells, including Buy Build  
13 Shoot kits, frame kits, and lower receiver kits, *see* Complaint ¶¶ 34, 35, and allege that “by selling  
14 all the component parts together with the means to readily convert the parts into firearms,  
15 [Polymer80] effectively puts firearms in to hands of the consumers and subverts regulations that  
16 apply to the sale of firearms.” *Id.* ¶ 38; *see also id.* ¶¶ 5, 13, 15, 24, 32, 35, 36, 37. That more  
17 than suffices.

18 The People also expressly allege in Paragraph 40 of the Complaint that Polymer80’s Buy  
19 Build Shoot kits are “firearms,” because the kits include “all component parts of a firearm” and  
20 are “‘designed to’ be and ‘may readily be converted’ into an operable weapon.” These allegations  
21 explain precisely why a Buy Build Shoot kit satisfies the definition of “firearm” under 18 U.S.C.  
22 § 921(a)(3). Moreover, in Paragraph 5 of the Complaint, the People allege that Polymer80’s kits  
23 “enable customers to quickly and easily build complete and functional weapons.” Paragraph 33  
24 specifies that Polymer80 itself advertises the Buy Build Shoot kits as “contain[ing] all the  
25 necessary components to build a complete ... pistol,” and Paragraph 37 again states that the  
26 Polymer80 Buy Build Shoot kits “facilitate the manufacture of both pistols and semi-automatic  
27 rifles in a matter of a few hours or less.” If this was not enough – and it is – the Complaint even  
28 cites a federal search warrant application for Polymer80’s headquarters, which over the course of

1 56 pages explains in great detail why the ATF’s Chief Counsel too has concluded that the Buy  
2 Build Shoot Kit is a firearm under federal law. Complaint ¶ 40 & n.27; *id.* n.54.

3 As for “frame and receiver kits containing an unfinished frame or receiver along with the  
4 jigs and drill bits that enable a customer to complete the frame or receiver,” Complaint ¶ 40, the  
5 totality of the People’s allegations make clear that these kits too are “firearms” because they are  
6 “‘designed to’ be and ‘may readily be converted’ into an operable weapon,” and/or are the “frame  
7 or receiver” of a weapon that is “designed to” be or “readily may be converted” into an operable  
8 weapon, all under 18 U.S.C. 921(a)(3)(A) & (B). Paragraph 5 further alleges that Polymer80’s  
9 kits “enable customers to quickly and easily build complete and functional weapons.” Finally, as  
10 to how the Buy Build Shoot kits satisfy the federal definition of “handgun,” the People make clear  
11 in Paragraph 48 that they “constitute a combination of parts from which a firearm can be  
12 assembled, and thus satisfy the definition of a ‘handgun’”—tracking the definition in 18 U.S.C.  
13 921(a)(29) clearly and precisely.

14 In short, the Complaint is more than sufficiently clear as to how the products at issue—  
15 Buy Build Shoot kits and frame and receiver kits—satisfy the definition of “firearm” and  
16 “handgun” under federal law. Defendants have not established that a demurrer should be  
17 sustained on the “disfavored” basis that it is uncertain. *Lickiss*, 208 Cal. App. 4th at 1135.

18 **II. THE COMPLAINT STATES A CLAIM UNDER THE UCL**

19 The People have asserted one UCL cause of action, alleging that Defendants’ practices are  
20 unlawful under all three prongs: unlawful, fraudulent, and unfair. Defendants argue that the  
21 People fail on all three prongs. Because Defendants did not file a motion to strike, to prevail on  
22 their demurrer they must win on all three because a general demurrer may not be sustained as to a  
23 portion of a cause of action. *See Daniels v. Select Portfolio Servicing, Inc.*, 246 Cal. App. 4th  
24 1150, 1167 (2016); *Franklin v. The Monadnock Co.*, 151 Cal. App. 4th 252, 257 (2007).

25 **A. The People Allege Unlawful Acts**

26 Defendants argue that the Complaint does not adequately allege how the sale of their  
27 products violates federal law, because the Complaint “has failed to adequately allege that the  
28 products at issue are ‘firearms’” or “handguns” under federal law. Demurrer at 5. As just



1 explained, the Complaint does not suffer from such a deficiency. It more than adequately—and  
2 specifically—alleges that the sale of Defendants’ products violates two federal statutes: the Gun  
3 Control Act, *see* Complaint ¶¶ 39-42, and the 2005 Child Safety Lock Act. *Id.* ¶¶ 44-49.<sup>2</sup>

4 Defendants also challenge Plaintiff’s aiding and abetting allegations, arguing first that the  
5 Complaint “fails to allege any unlawful act by a third-party . . . that Defendants could aid and  
6 abet” and that could qualify as a business act or practice under the UCL, and second that “the  
7 Complaint fails to allege a sufficient connection between Defendants and any unlawful act.”  
8 Demurrer at 6. As to Defendants’ first argument, “[a] claim made under section 17200 ‘is not  
9 confined to anticompetitive business practices, but is also directed toward the public’s right to  
10 protection from fraud, deceit, and unlawful conduct. Thus, California courts have consistently  
11 interpreted the language of section 17200 broadly.’” *Wilson v. Hynek*, 207 Cal. App. 4th 999,  
12 1007 (2012) (internal citation omitted). “Nonetheless, ‘[w]hether any particular conduct is a  
13 business practice within the meaning of section 17200 is a question of fact dependent on the  
14 circumstances of each case.’” *Isuzu Motors Ltd. v. Consumers Union of U.S., Inc.*, 12 F. Supp. 2d  
15 1035, 1048 (C.D. Cal. 1998) (quoting *People v. E.W.A.P., Inc.*, 106 Cal. App. 3d 315, 322  
16 (1980)). The sale of precursor products to a consumer when the retailer knows and intends that  
17 the consumer will use those products to assemble a firearm in violation of the law constitutes  
18 unlawful activity, and the Complaint alleges that Defendants advertise their products as providing  
19 everything a customer needs to complete a fully functional firearm. Complaint ¶¶ 33, 35. Indeed,  
20 Defendants’ “Buy Build Shoot” kit, through its name alone, clearly conveys to the consumer that

21 \_\_\_\_\_  
22 <sup>2</sup> Defendants also assert that the “ATF has not determined” that the Buy Build Shoot kit is a  
23 “firearm” under federal law. Demurrer at 5. That is misleading, if not outright false. As noted  
24 above, in an affidavit supporting an application for a search warrant for Polymer80’s Nevada  
25 headquarters, and as referenced in paragraph 40 & fn. 54 of the Complaint, the ATF represented to  
26 a federal judge that “ATF Chief Counsel has [] determined that the Buy Build Shoot kits are, as a  
27 matter of law, firearms pursuant to 18 U.S.C. § 921(a)(3).” Affidavit of ATF Special Agent  
28 Tolliver Hart, *In the Matter of the Search of the business and Federal Firearms Licensee known as  
Polymer80, which is located at 134 Lakes Blvd., Dayton, NV 89403*, 3:20-mj-123-WGC, ¶ 65,  
note 6 (D. Nev. Dec. 9, 2020), available at <https://s.wsj.net/public/resources/documents/ghostraid-121420-warrant.pdf>; *see also id.* ¶ 9 (“Despite Polymer80’s sales of items meeting the federal  
definition of a firearm, Polymer80 appears not to abide by the rules and regulations governing the  
sale and disposition of firearms.”).

1 it contains everything necessary to build a fully functional firearm, ready to shoot. Defendants are  
2 clearly in the business of aiding and abetting California consumers in obtaining the parts for and  
3 assembling firearms in violation of federal and state laws.

4 As to the second argument, Defendants assert that that the CUHA does not apply to  
5 Defendants because it applies only to a “person in this state,” and Defendants are not. Demurrer at  
6 6. This misreads the Complaint and the CUHA. The CUHA applies to any “person in this state  
7 who manufactures . . . imports into the state for sale, keeps for sale, offers or exposes for sale,  
8 gives, or lends an unsafe handgun.” Cal. Pen. Code § 32000(a)(1) (emphasis added). The  
9 Complaint does not allege that *Defendants* are the persons inside California. The Complaint  
10 alleges that Defendants are *aiding and abetting* the unlawful manufacture of firearms by persons  
11 in California, through Defendants’ sales to California residents. *See People v. Beeman*, 35 Cal. 3d  
12 547, 561 (1984) (“[A] person aids and abets the commission of a crime when he or she, acting  
13 with (1) knowledge of the unlawful purpose of the perpetrator, and (2) the intent or purpose of  
14 committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids,  
15 promotes, encourages or instigates, the commission of the crime.”).

16 Defendants further argue that “the Complaint is devoid of any allegation that Defendants  
17 intended that Californians violate the CUHA or had any knowledge of any individual violating the  
18 CUHA,” Demurrer at 6, and that the Complaint fails to allege that Defendants provided substantial  
19 assistance or encouragement to anyone violating the CUHA, “as the Complaint must to assert a  
20 proper claim for aiding and abetting.” *Id.* Defendants are wrong again. As to intent, as the  
21 Complaint alleges and common sense suggests, Polymer80 intended that these products would be  
22 used for the purpose for which Defendants were selling them—to be built into and used as a  
23 functioning firearm—and not for some unrelated purpose, e.g., for use as a paperweight. The kits  
24 have everything a consumer would need to build a fully functioning firearm and Defendants  
25 marketed them as such. *See* Complaint ¶ 33 (describing the kits as containing “all the necessary  
26 components”). Again, this is reflected in the very name Polymer80 gave to its product—“Buy  
27 Build Shoot” kit.

28

1 As to “substantial assistance,” read in its entirety, the Complaint alleges that Defendants  
2 provided substantial assistance or encouragement to California consumers who violated the  
3 CUHA. *See Blank*, 39 Cal. 3d at 318 (“[courts] give the complaint a reasonable interpretation,  
4 reading it as a whole and its parts in their context”). Although it does not use the term “substantial  
5 assistance,” the Complaint states that Defendants supplied “all of the component parts, materials,  
6 tools and instructional videos needed to build an unsafe handgun in the state.” Complaint at ¶ 57.  
7 *See People v. Anderson*, 9 Cal. 5th 946, 957 (2020) (“Neither the relevant statutes nor the due  
8 process clause requires rigid code pleading or the incantation of magic words.”).

9 Finally, Defendants claim that, because under Penal Code section 29180 a person shall  
10 apply to the DOJ for a unique serial number before manufacturing a firearm, Defendants did not  
11 aid or abet a violation of the Assembly of Firearms Law, on the theory that California law  
12 “expressly sanction[s] the making of personal firearms from parts that initially lack a serial  
13 number.” Demurrer at 7. But that a consumer can assemble a firearm and later apply for a serial  
14 number under section 29180 does not mean that Defendants’ aiding and abetting the assembling of  
15 a Buy Build Shoot kit into a firearm without affixing a serial number is not a violation of other  
16 provisions of California law, much less prove that such conduct is not a violation of federal law.  
17 Furthermore, the lack of serialization is not the only unlawful attribute of Defendants’ firearms.  
18 As alleged in the Complaint, although Defendants’ products are advertised as containing  
19 everything a California consumer needs to “Buy Build Shoot,” Defendants’ products do not have  
20 the required chamber load indicator, magazine disconnect mechanism, or other attributes  
21 California law mandates. *Id* at ¶ 54.

22 **B. The People Allege Fraudulent Acts**

23 Defendants argue that the People fail to adequately allege fraudulent acts because, yet  
24 again, “the Complaint has failed to adequately explain how [the Polymer80 kits] are firearms.”  
25 Demurrer at 8. The People addressed this argument in Section A. The Complaint also alleges the  
26 misleading aspects of Polymer80’s advertising, including that Polymer80 represents on its website  
27 that the ATF has determined that its unfinished frames and receivers, sold as part of firearm-  
28 building kits, have “not yet reached a stage of manufacture that meets the definition of firearm

1 frame or receiver found in the Gun Control Act of 1968,” Complaint ¶ 71; *see also* ¶¶ 70, 72-75,  
2 88-89, when in fact, ATF had only determined that certain unfinished frames and receivers,  
3 standing on their own, did not meet the definition of firearm under the Gun Control Act, and,  
4 moreover, ATF had specifically told Polymer80 that selling such frames or receivers as part of a  
5 more complete kit may well lead to a different determination. Complaint ¶¶ 72-74.

6 Defendants present no additional basis for demurrer on this prong of the People’s UCL  
7 claim. “[T]he ‘fraud’ contemplated by section 17200’s [fraudulent] prong bears little resemblance  
8 to common law fraud or deception. The test is whether the public is likely to be deceived ....  
9 This means that a section 17200 violation, unlike common law fraud, can be shown even if no one  
10 was actually deceived, relied upon the fraudulent practice, or sustained any damage.” *Prata v.*  
11 *Superior Ct.*, 91 Cal. App. 4th 1128, 1146 (2001).<sup>3</sup> “Likely to be deceived” and “reasonable  
12 person” standards are fact-based inquiries. “The question whether consumers are likely to be  
13 deceived is a question of fact that can be decided on a demurrer only if the facts alleged in the  
14 complaint, and facts judicially noticed, compel the conclusion as a matter of law that consumers  
15 are not likely to be deceived.” *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 226–27 (2013)  
16 (“We also need not decide whether Skype’s use of the word “Unlimited” in this context is  
17 deceptive as a matter of law, but only whether the trier of fact reasonably could conclude that  
18 consumers are likely to be deceived.”).<sup>4</sup>

19  
20  
21 <sup>3</sup> Defendants assert that a business practice is fraudulent if confusion among the public is  
22 “probable.” Demurrer at 7. The *Murray v. Cable* case cited by Defendants holds, without further  
23 analysis or commentary on California law generally or the UCL specifically, that in a case  
24 involving a **trademark infringement** claim, a likelihood of confusion as to the competing marks  
25 must be probable. There is no basis to graft an element from trademark law, for which “likelihood  
26 of confusion” is the touchstone, onto the UCL. California appellate courts have established the  
27 meaning of the “likely to be deceived” standard and this Court need look no further: would a  
28 reasonable person likely be deceived.

26 <sup>4</sup> As Defendants concede, the presence of consumer complaints is not necessary to establish  
27 fraudulent conduct under this prong of section 17200. The case Defendants cited in support of this  
28 proposition, *Consumer Advocates v. Echostar Satellite Corp.*, 113 Cal. App. 4th 1351, 1361  
(2003), involved a decision on summary adjudication, post discovery, not on a demurrer.

1           C.     The People Allege Unfair Acts

2           Defendants’ first basis for attacking the unfair theory is again that the Complaint “fail[s] to  
3 adequately allege any” violation of state or federal law. Demurrer at 8. As explained above, the  
4 People adequately alleged that Defendants’ kits are firearms and handguns and are being sold in  
5 violation of federal and state law.

6           Defendants next argue that, of the three tests that courts have developed to define “unfair”  
7 under the UCL, only one is valid, and that the Complaint fails to satisfy it because the Complaint  
8 does not allege any consumer injury. Although Defendants devote much of their argument to this  
9 point, the People did not plead allegations under this test. See Demurrer at 8-9 (arguing that the  
10 test for “unfair conduct” is that analyzed in *Daugherty v. Am. Honda Motor Co., Inc.*, 144 Cal.  
11 App. 4th 824, 838-39 (2006), targeted at consumer injury).<sup>5</sup>

12           Although a complaint need not identify the legal principles underlying its allegations, to  
13 avoid any confusion on Defendants’ part, the People alleged not only two forms of unfair acts  
14 Defendants committed but also the legal standard or case law to which those allegations are tied.  
15 First, citing the Supreme Court’s decision in *Cel-Tech Communications, Inc. v. Los Angeles*  
16 *Cellular Telephone Co.*, 20 Cal. 4th 163, 187 (1999), the Complaint explains that a business  
17 practice can be “unfair” when the defendant’s conduct “threatens an incipient violation of [a law],  
18 or violates the policy or spirit of [a law] because its effects are comparable to or the same as a  
19 violation of the law, or otherwise significantly threatens or harms competition.” See Complaint at  
20 ¶ 77. In the next paragraph, the Complaint alleges that Defendants’ acts violate this test of an  
21 “unfair” act because “Polymer80’s sales of unserialized firearm kits in violation of state and  
22 federal law constitutes unfair competition to licensed gun dealers in California who abide by the  
23 applicable state and federal laws and regulations.” Complaint at ¶ 78. Defendants’ only argument  
24

25 <sup>5</sup> As to the first test, Defendants argue: “Consumers could easily discover with a simple internet  
26 search how to lawfully make a personal firearm using Defendants’ products. That some failed to  
27 do so does not make Defendants liable.” Demurrer at 9. The key phrase here, though, is “using  
28 Defendants’ products.” The Complaint alleges that consumers could *not* make a *lawful* firearm  
using Defendant’s products because Defendants do not provide products that are on the Safe  
Firearms roster, or include a chamber load indicator, magazine disconnect, or steel plate.

1 as to why this allegation fails is, again, that the Complaint does not adequately allege a violation  
2 of law because it does not adequately allege that Polymer80 kits are firearms. Demurrer at 10.  
3 For the reasons already explained, this argument does not have merit.

4 The Complaint alleges a second recognized form of an “unfair” act, tracking the case law,  
5 in noting that a business practice can be “unfair” when it is “immoral, unethical, oppressive,  
6 unscrupulous or substantially injurious to consumers and requires the court to weight the utility of  
7 the defendant’s conduct against the gravity of the harm to the alleged victim.” Complaint at ¶ 77,  
8 *citing Drum v. San Fernando Valley Bar Ass’n*, 182 Cal. App. 4th 247, 257 (2010). To meet this  
9 standard, the Complaint alleges that the harm caused by the sale of Polymer80’s kits used to make  
10 firearms and handguns “outweighs the utility of these unserialized, untraceable weapons.”  
11 Complaint at ¶ 79. Defendants’ primary argument for rejecting this test is that it is too  
12 “amorphous” and is “applied less regularly than” the other test that Defendants try to highlight.  
13 Demurrer at 9. But Defendants cite no case where a court rejected this standard in an action filed  
14 on behalf of consumers. That’s because, although the California Supreme Court disproved of its  
15 use where one competitor sues another for anticompetitive practices, “the Supreme Court’s  
16 discussion of such language was expressly limited to the competitor context and specifically stated  
17 not to relate to ‘actions by consumers.’” *S. Bay Chevrolet v. Gen. Motors Acceptance Corp.*, 72  
18 Cal. App. 4th 861, 887 n.24 (1999). The Complaint as a whole pleads that Defendants are  
19 engaging in immoral and unethical conduct by selling illegal products that have become the  
20 firearm of choice for those who intend to commit a crime. *Blank*, 39 Cal. 3d at 318 (“we give the  
21 complaint a reasonable interpretation, reading it as a whole and its parts in their context.”).  
22 Finally, as to the *In re Firearm Cases*, the People are not alleging that a manufacturer has engaged  
23 in an unfair practice simply by legally selling a non-defective product. The People allege that  
24 Defendants engaged in an unfair practice by *illegally selling* products that do not comply with  
25 federal and state law.

26 **III. THE COMPLAINT ADEQUATELY STATES A CLAIM FOR PUBLIC NUISANCE**

27 At the end of the demurrer, Defendants make a cursory argument that the public nuisance  
28 claim should fail because, again, “the Complaint has failed to adequately allege that the kits are

1 ‘firearms.’” Demurrer at 10. As discussed above, the Complaint is sufficiently clear in alleging  
2 which products constitute firearms and handguns and why. Defendants add nothing further as to  
3 why, in the context of the nuisance claim, the People’s allegations are deficient.

4 “A public nuisance is one which affects at the same time an entire community or  
5 neighborhood, or any considerable number of persons, although the extent of the annoyance or  
6 damage inflicted upon individuals may be unequal.” Cal. Civ. Code § 3480. A public nuisance is  
7 substantial if it causes significant harm and unreasonable if its social utility is outweighed by the  
8 gravity of the harm inflicted. *People ex rel. Gallo v. Acuna*, 14 Cal. 4th 1090, 1105 (1997). As  
9 alleged, “Defendant Polymer80 created a public nuisance by marketing, selling and distributing  
10 ghost gun kits to California residents without serial numbers, without background checks, and  
11 without appropriate safety features.” Complaint at ¶ 99. These features are required for the lawful  
12 sale of firearms. *See* Complaint at ¶¶ 41, 49, 53, 59. Moreover, the Complaint alleges that  
13 “Defendants’ conduct is unreasonable, and the seriousness of the harm to the public from  
14 Defendants’ sale of unserialized ghost gun kits and components outweighs the social utility of  
15 their actions.” Complaint at ¶ 100. Taking these allegations as a whole, these allegations more  
16 than satisfactorily meet the People’s pleading obligations to state a claim for public nuisance.

17 **CONCLUSION**

18 For the foregoing reasons, the Court should overrule Defendants’ demurrer.


19 DATED: May 24, 2021

Respectfully submitted,

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543.

On May 24, 2021, I served true copies of the following document(s) described as

**PLAINTIFF STATE OF CALIFORNIA’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS POLYMER80, INC., DAVID BORGES, AND LORAN KELLEY’S DEMURRER**

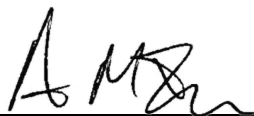
on the parties in this action as follows:

C.D. Michel Sean A. Brady MICHEL & ASSOCIATES, P.C. 180 E. Ocean Blvd., Suite 200 Long Beach, CA 90802 Telephone: (562) 216-4444 Facsimile: (562) 216-4445	<i>Attorneys for Defendants</i>
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**X BY ELECTRONIC TRANSMISSION:** By electronic service transmission via First Legal. The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 24, 2021, at Los Angeles, California.

  
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Andrew M. Brayton