

JUN 07 2021

Superior Court of California

County of Los Angeles

Department 32

Sherri R. Carter, Executive Officer/Clerk
By Shantal Luciferno, Deputy

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

POLMYER80, INC., a Nevada corporation;
DAVID BORGES, an individual; LORAN
KELLEY, an individual,
Defendants.

Case No.: 21STCV06257

Hearing Date: June 7, 2021

~~TENTATIVE~~ ORDER RE:

DEMURRER TO COMPLAINT

Background

The People of the State of California ("Plaintiff") commenced this action against Polmyer80, Loran L. Kelley ("Kelley"), and David L. Borges ("Borges") (collectively, Defendants) on February 17, 2021. Plaintiffs allege these Defendants sell into California the vast majority of the kits and parts used to assemble the Polymer90 firearms. The operative pleading is the Complaint ("Complaint"). The Complaint asserts causes of action for (1) Violation of Unfair Competition Law, and (2) Public Nuisance.

Legal Standard

A demurrer for sufficiency tests whether the complaint states a cause of action. (*Hahn v. Mirda* (2007) 147 Cal. App. 4th 740, 747.) When considering demurrers, courts read the allegations liberally and in context. (*Taylor v. City of Los Angeles Dept. of Water and Power* (2006) 144 Cal. App. 4th 1216, 1228.) In a demurrer proceeding, the defects must be apparent on

06/09/2021

1 the face of the pleading or by proper judicial notice. (CCP § 430.30(a).) A demurrer tests the
2 pleadings alone and not the evidence or other extrinsic matters. (*SKF Farms v. Superior Court*
3 (1984) 153 Cal. App. 3d 902, 905.) Therefore, it lies only where the defects appear on the face of
4 the pleading or are judicially noticed. (*Id.*) The only issue involved in a demurrer hearing is
5 whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action.
6 (*Hahn*, 147 Cal.App.4th at 747.)

7 Request for Judicial Notice

8 Plaintiff's request for judicial notice is granted.

9 Discussion

10 Defendants Polymer80, Inc., David Borges, and Loran Kelley demur to each of the
11 Complaint's causes of action.

12 **A. Meet and Confer Requirement**

13 Before filing a demurrer or a motion to strike, the demurring or moving party is required
14 to meet and confer with the party who filed the pleading demurred to or the pleading that is subject
15 to the motion to strike for the purposes of determining whether an agreement can be reached
16 through a filing of an amended pleading that would resolve the objections to be raised in the
17 demurrer. (CCP §§ 430.41 and 435.5.) The Court notes that the Moving Party has complied with
18 the meet and confer requirement.
19

20 **B. First Cause of Action: Violation of Unfair Competition Law (Defendants** 21 **collectively)**

22 Defendants assert that Plaintiff's first cause of action for violations of the Business and
23 Professions Code section 17200 fails because Plaintiff has insufficiently plead facts to show a
24 cause of action against Defendants. Defendants note that the Complaint alleges that "because these
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06/09/2021

1 products are in fact 'firearms' under federal law, Polymer80's business practice of selling them
2 without serial numbers, without conducting background checks, and to purchasers residing in a
3 different state is illegal." (Complaint ¶ 13.) Defendants argue that the Complaint fails to adequately
4 allege that Defendants' products are "firearms" or "handguns" under the GCA. Further,
5 Defendants argue that there is no UCL violation for selling the products under the "unlawful"
6 prong of section 17200 as Plaintiffs have not adequately alleged that the products at issue are
7 "firearms" under federal law.

8 Defendants next argue that the Complaint is inaccurate in alleging that Defendants
9 "knowingly engaged in fraudulent deceptive acts and practices by falsely advertising to consumers,
10 either expressly or by implication, that its kit products were legal to purchase and possess."
11 ((Complaint ¶ 88-89.)

12 Plaintiffs argue that they have identified that specific products that Polymer80 sells,
13 including Buy Build Shoot kits, frame kits, and lower receiver kits. Plaintiffs further argue that
14 "by selling all the component parts together with the means to readily convert the parts into
15 firearms, [Polymer80] effectively puts firearms into hands of the consumers and subverts
16 regulations that apply to the sale of firearms." (Complaint ¶ 38.) Plaintiffs also allege in Paragraph
17 40 of the Complaint that Polymer80's Buy Build Shoot kits are "firearms," because the kits include
18 "all component parts of a firearm" and are "designed to be and 'may readily be converted' into an
19 operable weapon."
20

21 Plaintiffs further argue that the sale of Defendants' products violates two federal statutes:
22 the Gun Control Act (Complaint ¶ 39-42) and the 2005 Child Safety Lock Act. (Complaint ¶ 44-
23 49.) Plaintiffs argue that the sale of precursors products to a consumer when the retailer knows
24 and intends that the consumer will use those products to assemble a firearm in violation of the law
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06/09/2021

1 constitutes unlawful activity. The Complaint alleges that Defendants advertise their products as
2 providing everything a customer needs to complete a fully functional firearm. Plaintiffs argue that
3 the element of fraud has been met as a “reasonable person” standard is a fact-based inquiry. The
4 Complaint allege that Polymer80’s advertising was misleading. Plaintiffs allege that the
5 advertising on Polymer80’s website stated that the ATF had determined that its unfinished frames
6 and receivers, sold as part of fire-arm building kits, had “not yet reached a stage of manufacture
7 that meets the definition of firearm frame or receiver found in the Gun Control Act of 1968.”
8 (Complaint ¶ 71) Plaintiffs argue that ATF’s determination only applied to certain unfinished
9 frames and receivers, overgeneralizing their claim.

10 Plaintiffs additionally allege that Defendants’ acts violate the “unfair” act because
11 “Polymer80’s sales of unserialized firearm kits in violation of state and federal law constitutes
12 unfair competition to licensed gun dealers in California who abide by the applicable state and
13 federal laws and regulations.” (Complaint ¶ 78)

14 The Business and Professions Code section 17200 states: “unfair competition shall mean
15 and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
16 or misleading advertising...”

17 The Court finds that Plaintiffs have alleged sufficient facts to state a cause of action for
18 Violation of Unfair Competition Law.

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21 **C. Second Cause of Action: Public Nuisance (Defendant Polymer80)**

22 Polymer80 contends that Plaintiff’s second causes of action for public nuisance fails
23 because Plaintiff has insufficiently pled facts to constitute a cause of action against Defendant.

24 Polymer80 notes that the Complaint alleges that Polymer80 “created a public nuisance by
25 marketing, selling and distributing ghost gun kits to California residents without serial numbers.

06/09/2021

1 without background checks, and without appropriate safety features.” (Complaint ¶ 81.)
2 Polymer80 argues that the Complaint fails to adequately allege that the kits are “firearms” and
3 therefore, fails to properly allege that Polymer80 has a duty to serialize or include “safety features”
4 on the parts in their kits or require background checks for their purchase.

5 Plaintiffs argue that Polymer80 is creating a public nuisance by selling “Ghost Gun kits,
6 frames, and receivers to California consumers” that are not in compliance with state and federal
7 laws.” In response to the Defendant’s demurrer, Plaintiffs argue that they have been clear in
8 alleging which products constitute firearms and handguns and their reasons for classifying them
9 as such. Plaintiffs argue that since Polymer80 is selling ghost guns kits without serial numbers,
10 background checks and appropriate safety features, they have created a public nuisance.
11 (Complaint ¶ 99.) Plaintiffs argue that Defendants’ sale of ghost gun kits and components without
12 serial numbers outweighs the social utility of their actions (Complaint ¶ 100.)

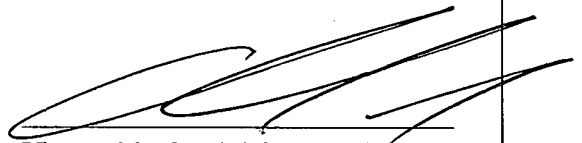
13 In *People ex. rel. Busch v. Projection Room Theatre*, the Supreme Court of California
14 stated, “A public nuisance is one which affects at the same time an entire community or
15 neighborhood, or any considerable number of persons; although the extent of the annoyance or
16 damage inflicted upon individuals may be unequal.” Cal. Civ. Code § 3480. (*People ex. rel. Busch*
17 *v. Projection Room Theatre*, (1976) 17 Cal.3d. 42)

18 The Court finds that Plaintiffs have alleged sufficient facts to state a cause of action for
19 Public Nuisance.

20 **Conclusion**

21 Defendants’ demurrer to the Complaint is OVERRULED.

22
23 DATED: June 7, 2020

24 
25 Honorable Daniel S. Murphy
Judge, Los Angeles Superior Court

06/09/2021