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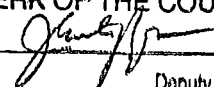
# **EXHIBIT A**

**to the Plaintiff City of Chicago's Opposition to the Motions to  
Dismiss of Defendants (1) Glock, Inc., (2) Eagle Gun Club LLC,  
Range Plus LLC, and 5900 LLC, and (3) Midwest Sporting Goods**

**FILED**  
San Francisco County Superior Court

MAY 02 2023

CLERK OF THE COURT

BY:   
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 306

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

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

Defendants.

Case No. CGC-21-594577

(TRANSACTION # 69940726)

ORDER DENYING DEFENDANT  
BLACKHAWK MANUFACTURING  
GROUP, INC.'S MOTION FOR JUDGMENT  
ON THE PLEADINGS

Defendant Blackhawk Manufacturing Group, Inc.'s ("Blackhawk") Motion for Judgment on the Pleadings came on regularly for hearing on February 8, 2023. Counsel for the parties were present. The appearances are as stated in the record. The matter was reported. On March 3, 2023, Plaintiff People of the State of California (the "People") and Blackhawk filed supplemental briefing and the matter was deemed submitted. Having considered the arguments and written submissions of all parties, Defendant Blackhawk's Motion for Judgment on the Pleadings is denied.<sup>1</sup>

<sup>1</sup> Blackhawk's Request for Judicial Notice is granted pursuant to Evidence Code § 452(b). The People's Request for Judicial Notice is granted as to Exhibits A, B, and C pursuant to Evidence Code § 452(d). The People's Request for Judicial Notice is denied as to Exhibit D as it is not necessary to the Court's determination of the issues raised in this motion. (*Flores v. City of San Diego* (2022) 83 Cal.App.5th 360, 371, n. 6.) Blackhawk's Supplemental Request for Judicial Notice is denied. (See *Scott v. JP Morgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 760 ["the mere fact that a statement appears on a web page does not mean that it is not reasonably subject to dispute. [Citations.] And if the information on the Web site is reasonably disputed by the parties, it is not subject to judicial notice."]; *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 193 ["Nor may we take judicial notice of the truth of the contents of [] Web sites and blogs."]; *Huitt v. Southern California Gas Co.* (2010) 188 Cal.App.4th 1586,

## BACKGROUND

On August 18, 2021, the People filed this action against Defendants Blackhawk, GS Performance, LLC (“GS Performance”), and MDX Corporation (“MDX”). On October 13, 2021, the People filed a First Amended Complaint (“FAC”) alleging violations of the Unfair Competition Law (“UCL”) and False Advertising Law (“FAL”). (FAC ¶ 27.) The People seek “to enjoin Defendants from engaging in prospective unlawful, unfair, and fraudulent business practices and to recover penalties and restitution for Defendants’ past UCL and FAL violations.” (*Id.*) Defendants are manufacturers and/or sellers. (*Id.* ¶¶ 32-34.) The People allege as follows.

Ghost guns are functional firearms that do not have serial numbers, and are thus, untraceable. (*Id.* ¶ 1.) Consumers can purchase “Build Kits” from Defendants, which include frame blanks or receiver blanks that consumers can use, along with other parts, to assemble a fully functioning firearm. (*Id.* ¶¶ 1, 8, 76 [“Defendants artificially split out those components, usually along with any specialty tools, into two or more distinct ‘items’ such that the consumer needs to add different ‘items’ into his or her online shopping cart to obtain all of the needed components.”].) A frame blank or receiver blank does not have a serial number and “needs additional modification (usually drilling holes and filing away some material) before it can be used as a part of a fully functioning weapon.” (*Id.* ¶¶ 8, fn. 2, 9.) A frame or receiver is a finished product, with a serial number, that can be used as part of a fully functioning firearm without any modification. (*Id.*) Companies who sell parts and kits, such as Defendants, violate and/or circumvent firearm sales laws by: (1) selling frame and receiver blanks without serial numbers; (2) allowing consumers who are otherwise prohibited from purchasing or possessing firearms to purchase a kit; (3) failing to comply with statutory laws regulating firearm ownership, registration, and safety; and (4) selling semiautomatic handguns. (*Id.* ¶¶ 1-4, 9-11, 13-14, 22, 26, 46-49, 51, 53-61, 88-89, 94, 98-99, 107, 109, 111, 116-117, 120, 124-125, 127-131, 143-145, 148-151.)<sup>2</sup>

Defendants deceive consumers by representing that their products are legal. (*Id.* ¶¶ 3, 12, 14, 25,

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1605, n. 10 [“Simply because information is on the Internet does not mean it is not reasonably subject to dispute.”].) Although the People’s allegations refer to Blackhawk’s website, the People do not incorporate Blackhawk’s webpages by reference.

<sup>2</sup> Gun Control Act (18 U.S.C. §§ 921-931), California Assembly of Firearms Law (Penal Code §§ 29180-29184), California Unsafe Handgun Act (Penal Code §§ 31900-32110), and California Manufacture of Firearms Law (Penal Code §§ 29010-29150). (FAC ¶ 4.)

1 96, 124, 126, 132-141, 146, 151.) “Defendants’ marketing makes clear to the consumer what ‘items’ are  
2 needed to assemble the full working weapon. In some cases, Defendants even automatically add the  
3 necessary items to the consumer’s online shopping cart.” (*Id.* ¶ 76; see also *id.* ¶¶ 94, 97, 106, 116.)  
4 Defendants fail to provide disclosures regarding responsibilities and potential liabilities of assembling a  
5 ghost gun. (*Id.* ¶¶ 3, 12, 14.)

6 Defendants aid and abet the manufacture and sale of non-compliant firearms in violation of the  
7 Unsafe Handgun Act (“UHA”) and Assembly of Firearms Law (“AFL”). (*Id.* ¶¶ 16, 51, 151.)  
8 Defendants Blackhawk and GS Performance violate the California Manufacture of Firearms Law  
9 (“MFL”) by failing to obtain a California firearm manufacturing license as they manufacture at least fifty  
10 firearms per year in California and fail to include serial numbers on frame and receiver blanks. (*Id.* ¶¶ 15,  
11 155-161.)

12 The above violations serve as the predicates for the first cause of action for violation of the UCL.  
13 (*Id.* ¶¶ 80, 165.) Defendants’ violations of the AFL and UHA serve as the predicates for the second cause  
14 of action for violation of the FAL. (*Id.* ¶¶ 87, 121-123, 170-171.)

15 On June 3, 2022, the Court overruled Defendants’ Demurrer to the FAC and denied Defendants’  
16 Motion to Strike the FAC in the alternative. (See June 3, 2022 Order.) On August 31, 2022, the Court  
17 denied the People’s Motion for Preliminary Injunction without prejudice finding the People’s motion was  
18 moot because Defendants ceased business in or directed at California. (Aug. 31, 2022 Order, 8.)

19 Blackhawk now moves for judgment on the pleadings on two primary grounds. (Opening Brief,  
20 8.) First, Blackhawk asserts the People’s UCL cause of action is barred by the Protection of Lawful  
21 Commerce in Arms Act (“PLCAA”), 15 U.S.C. § 7901 *et seq.* (Opening Brief, 8.) Second, Blackhawk  
22 contends the People failed to plead “any actual violation of federal or state law” and that even if properly  
23 pled, their application to Blackhawk is unconstitutional under the First and Second Amendments of the  
24 United States Constitution. (*Id.*) The People oppose Blackhawk’s motion.

### 25 LEGAL STANDARD

26 A defendant may move for judgment on the pleadings to the entire complaint or as to any cause of  
27 action stated in the complaint on the ground that “[t]he complaint does not state facts sufficient to  
28

1 constitute a cause of action against that defendant.” (Code Civ. Proc., §§ 438(c)(1)(B)(ii), 438(c)(2)(A).)  
 2 The grounds for a motion for judgment on the pleadings “shall appear on the face of the challenged  
 3 pleading or from any matter of which the court is required to take judicial notice.” (Code Civ. Proc., §  
 4 438(d).) “Like a demurrer, a motion for judgment on the pleadings attacks defects disclosed on the face  
 5 of the pleadings or by matters that may be judicially noticed.” (*Alameda County Waste Management*  
 6 *Authority v. Waste Connections US, Inc.* (2021) 67 Cal.App.5th 1162, 1174.) Similarly, “[i]n evaluating  
 7 the sufficiency of the challenged pleading, we accept all material facts pleaded and those that arise by  
 8 reasonable implication, but not conclusions of fact or law.” (*Id.*)

### 9 DISCUSSION

#### 10 **I. The People’s UCL Claim Is Not Barred By The PLCAA.**

11 “The PLCAA was enacted in 2005 in part to prevent lawsuits against manufacturers and  
 12 distributors of firearms and ammunition products ‘for the harm solely caused by the criminal or unlawful  
 13 misuse of firearm products or ammunition products by others when the product functioned as designed  
 14 and intended.’” (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1316, quoting 15 U.S.C. §  
 15 7901(b)(1); see *Ileto v. Glock, Inc.* (9th Cir. 2009) 565 F.3d 1126, 1135.)

16 The PLCAA mandates that “courts ‘immediately dismiss[]’ a ‘qualified civil liability action.’”  
 17 (*Ileto*, 565 F.3d at 1131, quoting 15 U.S.C. § 7902(b).) To determine whether the PLCAA applies, courts  
 18 engage in a two-step analysis. (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1316.) First,  
 19 “whether the lawsuit in question is a ‘qualified civil liability action’ and second an analysis whether, if it  
 20 is, ‘any of the PLCAA’s six exceptions to [a qualified civil liability action] apply.’” (*Id.* at 1316-1317,  
 21 quoting *Ryan v. Hughes-Ortiz* (2012) 959 N.E.2d 1000, 1007.)

22 The PLCAA defines a “qualified civil liability action” as:

23 a civil action or proceeding or an administrative proceeding brought by any person against a  
 24 manufacturer or seller of a qualified product, or a trade association, for damages, punitive  
 25 damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief,  
 26 resulting from the criminal or unlawful misuse of a qualified product by the person or a third  
 27 party.

28 (15 U.S.C. § 7903(5)(A).) A “qualified product” is “a firearm (as defined in subparagraph (A) or (B) of  
 section 921(a)(3) of Title 18 [of the United States Code]), including . . . a component part of a firearm or

1 ammunition, that has been shipped or transported in interstate or foreign commerce.” (15 U.S.C. §  
2 7903(4).) “[U]nlawful misuse” is defined as “conduct that violates a statute, ordinance, or regulation as it  
3 relates to the use of a qualified product.” (15 U.S.C. § 7903(9).)

4 Blackhawk asserts the People’s UCL claim is barred by the PLCAA. (Opening Brief, 8, 12-18;  
5 Reply, 6-8.) In particular, Blackhawk asserts it is federally licensed to sell parts and parts kits as well as  
6 that its “parts and parts kits are ‘components of a firearm,’” therefore, they constitute a “qualified  
7 product” under the PLCAA. (Opening Brief, 14.) Blackhawk also asserts that the term “the person”  
8 includes manufacturers and sellers. (BH Suppl. Brief, 7.) Blackhawk further argues the People “seek[] to  
9 hold Blackhawk liable for harm caused by third parties.” (Opening Brief, 15.)

10 The People oppose on the ground that this is not a qualified civil liability action because the  
11 People “seek to hold Blackhawk liable for its direct violations of California and federal law – not for harm  
12 ‘solely caused’ by the criminal ‘misuse’ of its products by the parties.” (Opposition, 15; see *id.* at 10, 16;  
13 People’s Suppl. Brief, 7-9, 12-14.) During oral argument, the People raised a secondary ground in  
14 opposition to Blackhawk’s motion, which the People addressed in their supplemental brief. In particular,  
15 the People argue the term “the person” as used in the definition of a qualified civil liability action refers to  
16 the plaintiff (i.e., the People). (People’s Suppl. Brief, 11.) The premise of the People’s opposition is that  
17 PLCAA “protects manufacturers and sellers from liability involving *lawful* commerce in arms,” not civil  
18 actions for violations of state and federal firearms sales laws. (People’s Suppl. Brief, 9-10; see, e.g., *id.* at  
19 9 [“in the typical PLCAA case, a plaintiff sues a firearms manufacturer or seller *who has complied with*  
20 *firearms laws* for injuries caused by a third-party shooter.”] (emphasis in original); Opposition, 15.)

21 The People’s opposition raises a question of statutory interpretation. “As in any case involving  
22 statutory interpretation, our fundamental task here is to determine the Legislature’s intent so as to  
23 effectuate the law’s purpose. We begin by examining the statute’s words, giving them a plain and  
24 commonsense meaning.” (*People v. Lewis* (2021) 11 Cal.5th 952, 961 (cleaned up); see *Poole v. Orange*  
25 *County Fire Authority* (2015) 61 Cal.4th 1378, 1385 [“In interpreting a statutory provision, our task it to  
26 select the construction that comports most closely with the Legislature’s apparent intent, with a view to  
27 promoting rather than defeating the statute’s general purpose, and to avoid a construction that would lead  
28

1 to unreasonable, impractical, or arbitrary results.”] (cleaned up).) “The plain meaning controls if there is  
 2 no ambiguity in the statutory language.” (*Poole*, 61 Cal.4th at 1385 (cleaned up).) “It is not the role of  
 3 the courts to add statutory provisions the Legislature could have provided, but did not.” (*Artus v.*  
 4 *Gramercy Towers Condominium Assn.* (2018) 19 Cal.App.5th 923, 945.)

5 A plain and commonsense reading of the definition of a “qualified civil liability action” indicates  
 6 that the phrase “any person” derives from the definition of “person.” Thus, “any individual, corporation,  
 7 company, association, firm, partnership, society, joint stock company, or any other entity, including any  
 8 governmental entity” may bring “a civil action or proceeding or an administrative proceeding . . . against  
 9 a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages,  
 10 injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief.” (15 U.S.C. §§  
 11 7903(3), 7903(5)(A).) But, the action will be subject to dismissal under PLCAA “if it result[s] from the  
 12 criminal or unlawful misuse of a qualified product by the person or a third party.” (15 U.S.C. §  
 13 7903(5)(A).) “[T]he person” being the particular “person” who filed the action. (See, e.g., *Sambrano v.*  
 14 *Savage Arms, Inc.* (2014) 338 P.3d 103, 104 [“As relevant to the case, such an action is generally brought  
 15 against a manufacturer or seller of a ‘qualified product’ for damages resulting from criminal or unlawful  
 16 misuse of the product by the plaintiff or a third party.”]; *Gustafson v. Springfield, Inc.* (2022) 282 A.3d  
 17 739, 742 [the court modified the “person” with “plaintiff” when quoting the definition of a qualified civil  
 18 liability action].)<sup>3</sup> The PLCAA also includes definitions for “manufacturer” and “seller.” (15 U.S.C. §§  
 19 7903(2), 7903(6).)<sup>4</sup> However, “person” does not expressly include a manufacturer or seller. Moreover,  
 20 “unlawful misuse” is defined as “conduct that violates a statute, ordinance, or regulation as it relates to the  
 21 use of a qualified product.” (15 U.S.C. § 7903(9) (emphasis added).) The People’s allegations are  
 22

23 <sup>3</sup> Blackhawk’s analysis focuses on the term “person” rather than “the person.” (BH Suppl. Brief, 6-7.)  
 24 The difference between the two terms is critical as “person” is broad and “the person” is specific.

25 <sup>4</sup> A “manufacturer” is defined, “with respect to a qualified product, [as] a person who is engaged in the  
 26 business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in  
 27 business as such a manufacturer under chapter 44 of Title 18.” (15 U.S.C. § 7903(2).) A “seller” is  
 28 defined, “with respect to a qualified product [as]--(A) an importer . . . who is engaged in the business as  
 such an importer in interstate or foreign commerce and who is licensed to engage in business as such an  
 importer under chapter 44 of Title 18; (B) a dealer . . . who is engaged in the business as such a dealer in  
 interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter  
 44 of Title 18; or (C) a person engaged in the business of selling ammunition . . . in interstate or foreign  
 commerce at the wholesale or retail level.” (15 U.S.C. § 7903(6).)

1 focused on sales, manufacture, safety, and advertising rather than use.

2 This interpretation of “the person” is consistent with the PLCAA’s findings and purposes.

3 Congress enacted the PLCAA in response to “[l]awsuits ... commenced against manufacturers,  
4 distributors, dealers, and importers of firearms that operate as designed and intended, which seek  
5 money damages and other relief for the harm caused by the misuse of firearms by third parties,  
6 including criminals.” 15 U.S.C. § 7901(a)(3). Congress found that manufacturers and sellers of  
7 firearms “are not, and should not, be liable for the harm caused by those who criminally or  
8 unlawfully misuse firearm products or ammunition products that function as designed and  
9 intended.” *Id.* § 7901(a)(5). Congress found egregious “[t]he possibility of imposing liability on  
10 an entire industry for harm that is solely caused by others.” *Id.* § 7901(a)(6). Congress reasoned  
11 that “[l]iability actions ... are based on theories without foundation in hundreds of years of the  
12 common law and jurisprudence of the United States and do not represent a bona fide expansion of  
13 the common law.” *Id.* § 7901(a)(7).

14 (*Ileto v. Glock, Inc.* (9th Cir. 2009) 565 F.3d 1126, 1135.) Two purposes of the PLCAA, as relevant here,  
15 are: (1) “[t]o prohibit causes of action against manufacturers, distributors, dealers, and importers of  
16 firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal  
17 or unlawful misuse of firearm products or ammunition products by others when the product functioned as  
18 designed and intended”; and (2) “[t]o prevent the use of such lawsuits to impose unreasonable burdens on  
19 interstate and foreign commerce.” (15 U.S.C. § 7901(b)(1), (b)(4); see *Ileto v. Glock, Inc.* (C.D. Cal. Mar.  
20 14, 2006) 421 F.Supp.2d 1274, 1289 [“Here, the clear purpose of the PLCAA was to shield firearms  
21 manufacturers and dealers from liability for injuries caused by third parties using non-defective, legally  
22 obtained firearms. [Citation.] Congress also believed that lawsuits seeking to hold firearms  
23 manufacturers liable for a third party’s misuse of a firearm imposed an undue burden on interstate  
24 commerce.”].)

25 Here, the crux of the People’s action is to hold Blackhawk liable for alleged violations of firearm  
26 sales and manufacturing laws as well as deceptive advertising. Based on the PLCAA’s purposes, the  
27 Court would be hard-pressed to find Congress intended to preempt public enforcement actions to enforce  
28 existing laws rather than circumventing the Legislature or interfering with separation of powers. (See  
e.g., 15 U.S.C. § 7901(a)(7)-(8); *Ileto v. Glock, Inc.* (C.D. Cal. Mar. 14, 2006) 421 F.Supp.2d 1274, 1290  
[“Congress believed that groups were using ‘liability actions’ as an end-run around the legislature to  
establish *de facto* stricter regulations on the firearms industry.”].)

Furthermore, the application of “the person” to a plaintiff, is not inconsistent with the exceptions



1 to a qualified civil liability action. “The PLCAA designates specific common law actions still allowed  
 2 under the act.” (*Travieso v. Glock Incorporated* (D. Ariz. 2021) 526 F.Supp.3d 533, 542, citing 15 U.S.C.  
 3 §§ 7903(5)(A)(i)-(vi).) Therefore, a plaintiff can maintain a civil action against a manufacturer for claims  
 4 such as negligent entrustment or negligence per se and design or manufacturing defects. (15 U.S.C. §  
 5 7903(A).) A plaintiff can also maintain an action under the predicate exception to the PLCAA, which  
 6 includes actions “in which a manufacturer or seller of a qualified product knowingly violated a State or  
 7 Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause  
 8 of the harm for which relief is sought.” (15 U.S.C. § 7903(5)(a)(iii).)

9 Accordingly, the Court finds this is not a qualified civil liability action under the PLCAA as the  
 10 relief sought here does not result from the criminal or unlawful misuse of a qualified product by the  
 11 People or a third party. (See People’s Suppl. Brief, 7 [the People do not seek penalties and injunctive  
 12 relief for third party conduct], 12; Opposition, 15-16.)

## 13 **II. The People Sufficiently Plead Actual Violations Of State Law.**

### 14 **A. The UCL**

15 Unfair competition “include[s] any unlawful, unfair or fraudulent business act or practice and  
 16 unfair, deceptive, untrue or misleading advertising.” (Bus. & Prof. Code § 17200.) Each prong,  
 17 unlawful, unfair, or fraudulent, has “its own independent ground for liability” under the UCL. (*Shaeffer*  
 18 *v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1135.) The People’s first cause of action for violation  
 19 of the UCL encompasses all three prongs. (See FAC ¶¶ 165-168.)

#### 20 **1. Unlawful**

21 Blackhawk contends the People do not plausibly allege Blackhawk violated the Gun Control Act  
 22 “GCA”), UHA, AFL, and MFL as predicates for a UCL claim. (Opening Brief, 18; Reply, 6, 11-16.)

23 The UCL includes “anything that can be properly be called a business practice and that at the same  
 24 time is forbidden by law.” (*Abbott Laboratories v. Superior Court of Orange County* (2020) 9 Cal.5th  
 25 642, 651, quoting *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 113 .) “Virtually any statute  
 26 or regulation (federal or state) can serve as a predicate for a UCL unlawful practice cause of action.”  
 27 (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1265.) The unlawful  
 28

1 prong of the UCL allows litigants to “borrow[] violations of other laws and treat them as unlawful  
2 practices that the [UCL] makes independently actionable,” even when a particular statute does not provide  
3 a private right of action. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999)  
4 20 Cal.4th 163, 180, quoting *State Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th  
5 1093, 1103 (internal quotations omitted).)

6 **i. GCA**

7 Blackhawk asserts the People’s allegations regarding the GCA are dependent “entirely on an  
8 improper retroactive application of the ATF’s New Rule, which amended the previous rule that  
9 exclud[ed] firearms parts kits and unfinished frames or receivers from the GCA’s definition of ‘firearm.’”  
10 (Opening Brief, 18; see Reply, 11.) Blackhawk contends that at the time the People filed this action  
11 “none of Blackhawk’s products met the GCA’s definition of a ‘firearm.’” (Opening Brief, 19; see Reply,  
12 11.) The People oppose on the ground that “the ATF Rulemaking did not amend or change the definition  
13 of a ‘firearm’ under the GCA. Rather, the ATF clarified that Section 921(a)(3)’s *existing* ‘firearm’  
14 definition included ‘weapon parts kits.’” (Opposition, 19 (emphasis in original).) The Court agrees.

15 At the time of filing suit, a “firearm” under the GCA was defined as: “Any weapon, including a  
16 starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of  
17 an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any  
18 destructive device; but the term shall not include an antique firearm.” (27 CFR 478.11 (eff. March 26,  
19 2019).) After the People filed this action, the ATF proposed rulemaking regarding the definition of  
20 “firearm” under the GCA. The ATF sought to clarify regulations to prevent courts from narrowly  
21 interpreting regulations, which would undermine the legislative intent. (86 FR 27720-01, 27722; see *id.*  
22 at 27726 [“Therefore, to reflect existing case law, this proposed rule would add a sentence at the end of  
23 the definition of ‘firearm’ in 27 CFR 478.11 providing that ‘[t]he term shall include a weapon parts kit  
24 that is designed to or may readily be assembled, completed, converted, or restored to expel a projectile by  
25 the action of an explosive.’”]; *id.* at 27727 [“ATF proposes to replace the respective regulatory definitions  
26 of ‘firearm frame or receiver’ and ‘frame or receiver’ in 27 CFR 478.11 and 479.11 because they too  
27 narrowly limit the definition of receiver with respect to most current firearms and have led to erroneous  
28

1 court decisions.”].)

2 Overall, the NPRM (Notice of Proposed Rulemaking) proposed amending ATF’s regulations *to*  
 3 *clarify* the definition of ‘firearm’ and to provide a more comprehensive definition of ‘frame or  
 4 receiver’ so that these terms more accurately reflect how most modern-day firearms are produced  
 5 and function, and so that *the courts*, the firearms industry, and the public at large would no longer  
 misinterpret the term to mean that most firearms in circulation have no parts identifiable as a  
 frame or receiver.

6 (87 FR 24661 [emphases added]; see *id.* at 24653 [“Consistent with the [Gun Control Act], and to ensure  
 7 proper licensing, marking, recordkeeping, and background checks with respect to certain weapon parts  
 8 kits, the final rule adopts the proposed clarification of the term ‘firearm’ to include weapon (e.g., pistol,  
 9 revolver, rifle, or shotgun) parts kits that are designed to or may readily be completed, assembled,  
 10 restored, or otherwise converted to expel a projectile by the action of an explosive.”].) In the Court’s June  
 11 3, 2022 Order overruling Defendants’ Demurrer, the Court found “that the ATF’s Final Rule provides the  
 12 Court with further guidance when analyzing the definition of a firearm under 18 U.S.C. § 921(a)(3).”  
 13 (June 3, 2022 Order, 9.)

14 The Federal Register later published the ATF’s Final Rule, effective August 24, 2022. (87 FR  
 15 24652-01.) The current definition of a “firearm” under the GCA is:

16 Any weapon, including a starter gun, which will or is designed to or may readily be converted to  
 17 expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any  
 18 firearm muffler or firearm silencer; or any destructive device; but the term shall not include an  
 19 antique firearm. In the case of a licensed collector, the term shall mean only curios and relics.  
 20 The term shall include a weapon parts kit that is designed to or may readily be completed,  
 assembled, restored, or otherwise converted to expel a projectile by the action of an explosive.  
 The term shall not include a weapon, including a weapon parts kit, in which the frame or receiver  
 of such a weapon is destroyed as described in the definition of “frame or receiver”.

21 (27 CFR 478.11 (eff. Jan. 31, 2023).)<sup>5</sup>

22 <sup>5</sup> Blackhawk asserts the ATF maintains that an unfinished AR-type receiver does not qualify as a  
 23 “firearm” under the New Rule citing to a September 27, 2022 ATF Open Letter. (Reply, 12 & n. 4.)  
 24 However, the ATF cautioned that its analysis regarding unfinished AR-type receivers “only applies to  
 25 partially complete, disassembled, or nonfunctional frames or receivers without any associated templates,  
 26 jigs, molds, equipment, tools, instructions, guides, or marketing materials. Pursuant to Final Rule 2021R-  
 27 05F, partially complete, disassembled, or nonfunctional frames or receivers that are sold, distributed,  
 28 possessed with such items (or made available by the seller or distributor to the same person) may change  
 the analysis, including those distributed as frame or receiver parts kits.” (Sept. 27, 2022 ATF OPEN  
 LETTER TO ALL FEDERAL FIREARMS LICENSEES, Impact of Final Rule 2021-05F on Partially  
 Complete AR-15/M-16 Type Receivers, [https://atf.gov/firearms/docs/open-letter/all-fpls-september-2022-  
 impact-final-rule-2021-05f-partially-complete-ar/download](https://atf.gov/firearms/docs/open-letter/all-fpls-september-2022-impact-final-rule-2021-05f-partially-complete-ar/download) (last visited May 1, 2023).) Blackhawk did  
 not request judicial notice of the September 27, 2022 ATF Open Letter. Even if the Court took judicial  
 notice of the letter, it does not change the Court’s analysis here.

1 Although the prior definition of “firearm” did not expressly mention “parts” or “parts kits,” the  
 2 phrase “may readily be converted to expel a projectile by the action of an explosive” implies that weapons  
 3 parts kits may constitute a “firearm” under the GCA. (See, e.g., 86 FR 27720-01, 27726 n. 40 [the  
 4 proposed rulemaking noted that courts have found parts and parts kits constitute a “firearm” under the  
 5 GCA].) The People allege Blackhawk’s GST-9 Build Kit, AR-10 Build Kit, and AR-15 Build Kits are  
 6 firearms as defined under the GCA. (FAC ¶¶ 102, 104.) The People allege Blackhawk represents its  
 7 GST-9 Build Kit can be readily converted into a fully functioning “pistol in under 15 minutes.” (*Id.* ¶ 93;  
 8 see *id.* ¶ 96 [“completes within minutes.”].) Additionally, the People allege that a law enforcement  
 9 officer employed by the San Francisco District Attorney’s Office, operating in an undercover capacity,  
 10 purchased an AR-15 build kit from Blackhawk and was able to assemble the AR-15 into a fully functional  
 11 firearm in approximately two hours. (*Id.* ¶¶ 98, 103.) The People further allege Blackhawk violates the  
 12 GCA by failing to comply with federal serialization and point-of-sale requirements such as failing to:  
 13 ensure firearms bear unique serial numbers; run background checks on prospective customers; require  
 14 purchasers complete Form 4473; meet purchasers to transfer the firearm in person; maintain records of  
 15 sales; and include safety devices or locks. (*Id.* ¶¶ 88, 92, 98-100.)

16 The Court finds the People sufficiently allege Blackhawk violated the GCA to state a claim under  
 17 the unlawful prong of the UCL.<sup>6</sup> Therefore, the Court need not address whether the People sufficiently  
 18 allege violations of the AFL, UHA, and MFL.

## 19 2. Unfair

20 “The UCL does not define the term unfair. It is frequently stated that a business practice is unfair  
 21 within the meaning of the UCL if it violates established public policy or if it is immoral, unethical,  
 22 oppressive or unscrupulous and causes injury to consumers which outweighs its benefits.” (*Gray v.*  
 23 *Dignity Health* (2021) 70 Cal.App.5th 225, 238 (cleaned up).) But, the UCL “has a broad[] scope for a  
 24 reason . . . It would be impossible to draft in advance detailed plans and specifications of all acts and  
 25

26 <sup>6</sup> Blackhawk is a party to pending litigation in the Northern District of Texas, where that court issued a  
 27 preliminary injunction on November 3, 2022, enjoining the implementation and enforcement of the Final  
 28 Rule against Blackhawk because the court preliminarily determined the Final Rule is unlawful.  
 (*VanDerStok v. BlackHawk Manufacturing Group Inc.* (N.D. Tex. Nov. 3, 2022) \_\_\_ F.Supp.3d \_\_\_,  
 2022 WL 16680915, \*5; see Reply, 12.) Whether the Final Rule is unlawful is not at issue here.

1 conduct to be prohibited, since unfair or fraudulent business practices may run the gamut of human  
 2 ingenuity and chicanery.” (*Cel-Tech*, 20 Cal.4th at 181, quoting *People ex rel. Mosk v. National Research*  
 3 *Co. of Cal.* (1962) 201 Cal.App.2d 765, 772 (cleaned up).)

4 Although the unfair competition law’s scope is sweeping, it is not unlimited. Courts may not  
 5 simply impose their own notions of the day as to what is fair or unfair. Specific legislation may  
 6 limit the judiciary’s power to declare conduct unfair. If the Legislature has permitted certain  
 7 conduct or considered a situation and concluded no action should lie, courts may not override that  
 8 determination.

9 (*Cel-Tech*, 20 Cal.4th at 182; see *id.* at 183 [“The unfair competition law is less specific, because the  
 10 Legislature cannot anticipate all possible forms in which unfairness might occur.”].)

11 Blackhawk asserts the People fail to allege any unfair business practice because the People allege  
 12 Blackhawk violated public policy rather than any harm to competition. (Opening Brief, 25; see also  
 13 Reply, 6, 16.) Blackhawk relies on *Cel-Tech*. However, “[t]he court in *Cel-Tech* explicitly noted that the  
 14 case before it involved ‘an action by a competitor alleging anticompetitive practices’ and emphasized that  
 15 the specific test adopted in that decision was limited to that context.” (*Nationwide Biweekly*  
 16 *Administration, Inc. v. Superior Court of Alameda County* (2020) 9 Cal.5th 279, 303.) Post-*Cel-Tech*,  
 17 appellate courts have adopted “three different tests for determining unfairness in the consumer context.”  
 18 (*Id.*; see *id.* 303, n. 10 [First District Court of Appeal adopted the “tethering” test]; see e.g., *Gregory v.*  
 19 *Albertson’s, Inc.* (2002) 104 Cal.App.4th 845, 854 [“where a claim of an unfair act or practice is  
 20 predicated on public policy, we read *Cel-Tech* to require that the public policy which is a predicate to the  
 21 action must be ‘tethered’ to specific constitutional, statutory or regulatory provisions.”]; *In re Firearm*  
 22 *Cases* (2005) 126 Cal.App.4th 959, 986.)

23 The Court need not address whether the People sufficiently plead unfair business practices as the  
 24 People sufficiently allege unlawful business practices to state a claim under the UCL. However, even if  
 25 the People’s claim was solely premised on the unfair prong, Blackhawk fails to demonstrate the *Cel-Tech*  
 26 test applies here.

## 27 **B. Advertising**

28 As to the fraud prong of the UCL, the definition of unfair competition “include[s] any unlawful,  
 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.”

1 (Bus. & Prof. Code § 17200.) The fraud prong of the UCL “requires a showing that members of the  
2 public are likely to be deceived” and “may be proved even if there is no evidence that anyone was  
3 actually deceived, relied upon the fraudulent practice, or sustained any damage.” (*People ex rel. Harris v.*  
4 *Aguayo* (2017) 11 Cal.App.5th 1150, 1160, quoting *Saunders v. Superior Court* (1994) 27 Cal.App.4th  
5 832, 839; *Prata v. Superior Court* (2001) 91 Cal.App.4th 1128, 1146 (internal quotations omitted).)  
6 Similarly, the FAL prohibits false or misleading advertising. (*People v. Johnson & Johnson* (2022) 77  
7 Cal.App.5th 295, 317.) “Thus, to state a claim under either the UCL or the [FAL], based on false  
8 advertising or promotional practices, it is necessary only to show that members of the public are likely to  
9 be deceived.” (*Id.* at 318, quoting *Nationwide*, 9 Cal.5th at 308 (internal quotations omitted).)

10 Blackhawk argues the People fail to allege any fraudulent conduct under the UCL and FAL.  
11 (Opening Brief, 25-26; Reply, 6, 16-17.) Blackhawk asserts that it “never engaged in the manufacture  
12 and sale of ‘firearms’ as then defined by the GCA.” (*Id.* at 26.) Rather, Blackhawk contends that “until  
13 August 24, 2022, Blackhawk’s statements that its unassembled parts were legal to purchase and did not  
14 need to be registered *at the time of purchase* was completely accurate” and not likely to deceive.  
15 (Opening Brief, 25-26 (emphasis in original); Reply, 16.) The Court disagrees.

16 Blackhawk focuses on an allegation that a June 2, 2020 blog post on its website stated, “these  
17 *firearms* do not need to be registered at time of purchase” (FAC ¶ 127) by arguing that until August 24,  
18 2022, its unassembled parts were legal under the GCA, therefore, this was a true statement. (Opening  
19 Brief, 26; see Reply, 16.) However, Blackhawk does not reconcile the People’s other allegations of  
20 misleading advertisements.

21 The People allege Blackhawk misleads consumers regarding “the legality of frame and receiver  
22 blanks and kit products when used for their sole, intended purpose,” a fully functioning firearm, and fail  
23 to make disclosures to consumers under the AFL and UHA. (*Id.* ¶¶ 167-168.) In particular, the People  
24 allege Blackhawk touts its products as “100% Legal” and “California Compliant” despite the fact that “a  
25 finished frame or receiver triggers a consumer’s obligations under the” AFL and UHA. (*Id.* ¶¶ 12, 96,  
26 124, 126; see *id.* ¶¶ 25 [“It is deceptive to tell consumers that a product is legal when possession of the  
27 product for its sole intended use is illegal, either per se or unless the consumer takes specific regulatory  
28

1 steps that ghost gun companies fail to disclose.”], 87 [“advertising and other communications lull  
 2 reasonable consumers into believing that Defendants’ Build Kits can be used, in compliance with the law,  
 3 as sold and without the consumer needing to take further steps to comply with the law.”], 122 [same],  
 4 132, 153-154; see e.g., ¶¶ 93 [“Our goal is for you to be able to go from opening the mail, to a  
 5 competition or defense ready pistol in under 15 minutes.”], 96 [“Congratulations, you’ve just made a gun.  
 6 And this is now legally a firearm and should be treated as such.”], 127-128 [blog post].)

7 The People allege Blackhawk has a video on its YouTube page titled, “How To: Finish GST-9  
 8 Frame.” (*Id.* ¶ 96.) The video “shows the viewer how to convert the frame blank into a firearm; indeed,  
 9 the video concludes with the narrator stating ‘Congratulations, you’ve just made a gun. And this is now  
 10 legally a firearm and should be treated as such.’” (*Id.*) The People allege Blackhawk has another video  
 11 on its YouTube page titled, “Build Your Own Gun in 1 Hour. 100% Legal.” (*Id.* ¶ 124.) The People  
 12 allege “[t]he video makes clear that Blackhawk’s purpose for manufacturing and selling frame and  
 13 receiver blanks is to stop the government from ‘tracking your gun purchases and putting you on a list’ and  
 14 to avoid ‘more and more paperwork’ that comes with purchasing firearms.” (*Id.* ¶ 124<sup>7</sup>; see *id.* ¶¶ 125-  
 15 126.) The People further allege “Blackhawk specifically touts that building a gun is ‘completely legal and  
 16 does not require any sort of serial number or registration.’ It also touts that there are ‘no background  
 17 checks’ involved in the process.” (*Id.*)

18 The People’s allegations focus on Blackhawk’s representations that, once assembled, a firearm is  
 19 legal despite the statutory requirements under the AFL and UHA. Although there may be no affirmative  
 20 disclosure requirement, the People’s allegations demonstrate that such statements are misleading because  
 21 they imply the consumer does not need to take any further action. This is sufficient to allege a FAL claim  
 22 and UCL violation based on fraudulent conduct.

23 **III. The People’s FAL Claim And UCL Claim Based On Fraudulent Business Practices Do Not**  
 24 **Violate The First Amendment.**

25 Blackhawk argues the People’s FAL claim and UCL claim based on fraudulent business practices  
 26 seek to regulate Blackhawk’s protected commercial speech and “impose a ‘strict liability’ standard on

27 \_\_\_\_\_  
 28 <sup>7</sup> The People note that although Blackhawk posted the video prior to the enactment of the AFL, the video  
 remains on Blackhawk’s YouTube channel. (FAC ¶ 124, n. 57.)

1 First Amendment speech concerning lawful Second Amendment activity.” (Opening Brief, 27-28; see  
2 Reply, 6, 18-19.)

3 Blackhawk does not dispute that it engaged in commercial speech. “Under the First Amendment,  
4 commercial speech is entitled to less protection from governmental regulation than other forms of  
5 expression.” (*People ex rel. Gascon v. HomeAdvisor, Inc.* (2020) 49 Cal.App.5th 1073, 1085.) However,  
6 “commercial speech that is false or misleading is not entitled to First Amendment protection and ‘may be  
7 prohibited entirely.’” (*Kasky*, 27 Cal.4th at 953, quoting *In re R.M.J.* (1982) 455 U.S. 191, 203; see  
8 *Serova v. Sony Music Entertainment* (2022) 13 Cal.5th 859, 873 [parties agreed the UCL “can  
9 constitutionally restrict speech properly classified as commercial.”]). As this Court has found, the People  
10 sufficiently allege Blackhawk engaged in misleading advertising.

11 With regard to misleading commercial speech, the United States Supreme Court has drawn a  
12 distinction between, on the one hand, speech that is actually or inherently misleading, and, on the  
13 other hand, speech that is only potentially misleading. Actually or inherently misleading  
commercial speech is treated the same as false commercial speech, which the state may prohibit  
entirely.

14 (*Kasky*, 27 Cal.4th at 954.)

15 Blackhawk argues the People only allege its “speech *might* be misleading.” (Opening Brief, 29  
16 (emphasis in original).) However, the People sufficiently allege Blackhawk’s speech was actually  
17 misleading. For instance, the People allege Blackhawk has a video on its YouTube page titled, “How To:  
18 Finish GST-9 Frame.” (FAC ¶ 96.) The video “shows the viewer how to convert the frame blank into a  
19 firearm; indeed, the video concludes with the narrator stating ‘Congratulations, you’ve just made a gun.  
20 And this is now legally a firearm and should be treated as such.’” (*Id.*) The People allege the requisite  
21 actions a person must complete prior to manufacturing or assembling a firearm under the AFL and UHA.  
22 (See *id.* ¶¶ 50-56.) Therefore, a video instructing a viewer on how to assemble a firearm and then  
23 representing that the firearm is legal upon completion without any mention of the AFL and UHA’s  
24 requirements is actually misleading.

25 “Sometimes speech will have commercial and noncommercial components. If a legal command or  
26 law of nature makes it impossible to separate the commercial components from the noncommercial, the  
27 two are inextricably intertwined and we bestow noncommercial status on both components.” (*Serova*, 13  
28



1 Cal.5th at 880-881, quoting *Board of Trustees, State Univ. of N.Y. v. Fox* (1989) 492 U.S. 469, 474  
2 (internal quotations omitted.) Blackhawk contends its “advertising concerns the core Second  
3 Amendment right of law-abiding citizens to self-manufacture firearms.” (Opening Brief, 28.) However,  
4 the People are not alleging that consumers cannot self-manufacture firearms or that Blackhawk’s  
5 advertising is infringing on any right to self-manufacture firearms.<sup>8</sup> Rather, the People’s allegations  
6 establish Blackhawk’s advertisements concern misleading statements regarding the legality of its products  
7 when assembled. Therefore, the legality of Blackhawk’s products is not inextricably intertwined with any  
8 Second Amendment activity. Moreover, the legality of its finished products specifically relates to  
9 regulations on firearms such as background checks, serialization, and safety, not a constitutional right.

10 Accordingly, Blackhawk’s motion is denied on this ground.

11 **IV. Blackhawk’s Constitutional Challenges To The Unlawful And Unfair Prongs Of The**  
12 **People’s UCL Claim Are Improper.**

13 Blackhawk contends the UCL is unconstitutionally vague as applied to Blackhawk if the People’s  
14 theories of unlawfulness and unfairness “are somehow correct.” (Opening Brief, 26; see Reply, 17.)  
15 Blackhawk argues “[n]othing in the UCL—or any of the other statutes on which Plaintiff relies—gave  
16 Blackhawk ‘fair notice’ that its lawful conduct was ‘unlawful’ or ‘unfair’ under the UCL.” (*Id.* at 27.)  
17 Blackhawk further contends that “[a]s applied, Plaintiff’s ‘unlawful’ UCL theory violates the Second  
18 Amendment.” (*Id.* at 29; see *id.* at 30-31; see Reply, 6, 19-20.)

19 Blackhawk’s constitutional challenges to portions of the People’s UCL claim are improper as they  
20 would not dispose of the People’s entire UCL cause of action, which encompasses all three prongs of the

21 <sup>8</sup> The Second Amendment states: “A well regulated Militia, being necessary to the security of a free  
22 State, the right of the people to keep and bear Arms, shall not be infringed.” (*District of Columbia v.*  
23 *Heller* (2008) 554 U.S. 570, 576; see *New York State Rifle & Pistol Association, Inc. v. Bruen* (2022) 142  
24 S.Ct. 2111, 2125 [“the Second and Fourteenth Amendments protect an individual right to keep and bear  
25 arms for self-defense.”].) “Like most rights, the right secured by the Second Amendment is not  
26 unlimited.” (*Heller*, 554 U.S. at 626.) The People’s allegations do not attempt to implicate or restrict  
27 Blackhawk’s sales or self-manufacture of firearms. Instead, the People seek to hold Blackhawk liable for  
28 misleading statements regarding the statutory requisites of selling a firearm such as serialization,  
background checks, and safety standards. The Supreme Court expressly stated in *Heller* that “nothing in  
[its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by  
felons and the mentally ill, or . . . laws imposing conditions and qualifications on the commercial sale of  
arms.” (*Id.* at 626-627.) Moreover, “you will not find a discussion of [self-manufacture of firearms] in  
the ‘plain text’ of the Second Amendment.” (*Defense Distributed v. Bonta* (C.D. Cal. Oct. 21, 2022)  
2022 WL 15524977, \*4.)

1 UCL. (See *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167 [“Ordinarily, a  
2 general demurrer may not be sustained, nor a motion for judgment on the pleadings granted, as to a  
3 portion of a cause of action.”], disapproved on other grounds in *Sheen v. Wells Fargo Bank, N.A.* (2022)  
4 12 Cal.5th 905.) Therefore, Blackhawk’s motion is denied on this ground.

5 **CONCLUSION AND ORDER**

6 Based on the foregoing reasons, Blackhawk’s motion is denied.

7 IT IS SO ORDERED.

8  
9 Dated: May 2, 2023



10 Anne-Christine Massullo  
11 Judge of the Superior Court

PEOPLE OF THE STATE OF CALIFORNIA  
VS. BLACKHAWK MANUFACTURING  
GROUP INC., et al.

Case No: CGC-21-594577

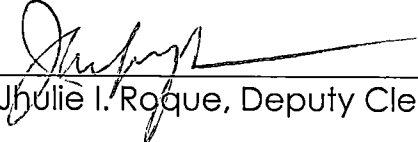
**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP §1010.6 & CRC §2.251)

I, Jhulie I. Roque, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am over the age of 18 years, employed in the City and County of San Francisco, California and am not a party to the within action.

On May 2, 2023, I electronically served the attached **ORDER DENYING DEFENDANT BLACKHAWK MANUFACTURING GROUP, INC.'S MOTION FOR JUDGMENT ON THE PLEADINGS** via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: May 2, 2023

Mark Culkins, Interim Clerk

By:   
Jhulie I. Roque, Deputy Clerk