

MATTHEW J. PLATKIN, Attorney General of
the STATE OF NEW JERSEY,

Plaintiff,

v.

FSS ARMORY, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION – MORRIS
COUNTY

DOCKET NO.: _____

Civil Action

COMPLAINT

The New Jersey Attorney General (the “Attorney General”), by and through his undersigned counsel, hereby alleges as follows against Defendant FSS Armory, Inc. (“FSS Armory” or “FSS”):

INTRODUCTION

1. FSS Armory, a state-licensed gun dealer, stored stacks of guns within easy reach of a ground-floor window adjacent to its sales floor and glass-doored entrance. It did not secure either the window or the guns. FSS Armory showcased these unlawful and reckless practices, posting images of the unsecured weapons and window to the homepage of its website and to the store’s Google Maps business listing. *See* Screenshots A and B below.

Screenshot A: Entrance doorway, ground floor window, loose guns, and gun boxes



Screenshot B: Close-up view of window, guns, and gun boxes



2. After searching for “gun stores in nj” on their cell phone, a group of individuals found FSS Armory, drove there, broke the glass window, reached through, and stole twenty guns. The burglars promptly trafficked the guns. Some have since been since recovered in criminal investigations. Others have been used in crimes or recovered at active crime scenes. Most remain unaccounted for.

3. The pictures, which still appear on FSS Armory’s website, broadcast the vulnerable condition of the store to anyone who accessed that website or viewed the store’s business listing on Google Maps—the same listing that appeared as a search result for the burglars who looked up “gun stores in nj.”

4. FSS Armory’s substandard storage and security practices violated New Jersey law. The New Jersey Code of Criminal Justice grants a gun dealer license “subject to the . . . condition[]” that “[n]o firearm or imitation thereof shall be placed in any window or in any other part of the premises where it can be readily seen from the outside.” N.J.S.A. 2C:58-2(a)(3). The Code also directs the State Police to “prescribe standards and qualifications for retail dealers of firearms and their employees for the protection of the public safety, health and welfare.” N.J.S.A. 2C:58-2. The implementing regulations require that “[e]ach retail dealer shall install a system for the prevention and detection of the theft of firearms or ammunition from the business premises,” N.J.A.C. 13:54-3.11, and specify what that system must contain, N.J.A.C. 13:54-6.

5. Gun industry members like FSS Armory that flout these laws allow guns to flow from their storefronts to criminals. Guns in the wrong hands are dangerous, and in the hands of bad actors, black market guns threaten the safety and peace of every New Jersey resident. Indeed, it has long been New Jersey law that a licensed gun dealer that fails to safeguard its

inventory bears responsibility,¹ which extends to civil liability when those guns are taken and harm the public.²

6. The consequences of FSS Armory's violations of law were foreseeable. In the middle of the night in January 2023, burglars in a stolen car smashed the store window, reached through the broken pane, and stole twenty guns.

7. No alarm sounded, at least not loudly enough to generate a response. No silent alarm notified the store owner, any of the store's employees, or law enforcement.

8. The next morning, Ross Osias, the owner and operator of FSS Armory, discovered the burglary and reported it to law enforcement. By that time, the stolen FSS Armory guns were well on their way to criminal use, generating multi-agency police responses and large-scale investigations spanning this State and others.

9. Effective July 5, 2022, the New Jersey Legislature empowered the Attorney General to bring a civil case against any gun industry member whose misconduct creates, maintains, or contributes to a public nuisance within the state. See N.J.S.A. 2C:58-35(a)(1). The Attorney General may also sue gun industry members who fail to implement and enforce reasonable safeguards and business practices to, in particular, prevent loss or theft of products and ensure compliance with New Jersey law. See N.J.S.A. 2C:58-35(a)(2).

10. Guns acquired through theft and burglary directly contribute to the public nuisance of gun crime and gun violence. Between 2001 and 2021, firearms killed over 9,400

¹ See N.J.S.A. 2C:39-10(a)(1).

² See Gallara v. Koskovich, 364 N.J. Super. 418, 435–37 (Law. Div. 2003) (citing Palmisano v. Ehrig, 171 N.J. Super. 310, 408 (App. Div. 1979)).

people in New Jersey.³ Gun crime harms New Jerseyans’ health, safety, peace, comfort, and convenience in manifold other ways, too.

11. By failing to safeguard its guns as required by law, and by advertising that failure on the internet, FSS Armory facilitated criminals’ theft of twenty of those guns. FSS Armory thereby contributed to and perpetuated the public nuisance of illegal guns plaguing the State of New Jersey. Until all of those guns are recovered, the State must bear the cost of fielding multi-agency police responses and large-scale investigations—sometimes in collaboration with other jurisdictions—to identify perpetrators and locate missing gun inventory.

12. The Attorney General brings this suit to remedy FSS Armory’s endangerment of the people of New Jersey and imposition of costs on their government.

THE PARTIES

13. Plaintiff is the Attorney General of the State of New Jersey. The Attorney General is authorized and charged with the responsibility to enforce N.J.S.A. 2C:58-35. The Attorney General brings the Section 58-35 claims in this action by and through the Statewide Affirmative Firearms Enforcement Office (“SAFE”). SAFE was created within the Office of the Attorney General by Attorney General Administrative Executive Directive No. 2022-08, which also delegated to SAFE the Attorney General’s statutory authority.

14. The Attorney General also asserts in this case the State’s proprietary interest and, under the Attorney General’s *parens patriae* authority, New Jersey’s “quasi-sovereign” interests in protecting the safety, health, and welfare of its residents.

³ WISQARS Fatal and Nonfatal Injury Reports, Ctrs. for Disease Control & Prevention, <https://wisqars.cdc.gov/reports/?o=MORT&y1=2001&y2=2021&t=0&d=&i=0&m=20890&g=34&me=0&s=0&r=0&ry=0&e=0&yp=65&a=ALL&g1=0&g2=199&a1=0&a2=199&r1=INTENT&r2=NONE&r3=NONE&r4=NONE> (last visited Dec. 11, 2023).

15. Defendant FSS Armory is a licensed retail firearms dealer incorporated as of October 15, 2019, as a domestic for-profit corporation under the laws of the State of New Jersey. FSS Armory received its New Jersey firearms retail license, 4300 FSS, on December 9, 2019. FSS Armory operates a store under the name “FSS Armory,” located at 36 U.S. 46 West, in Pine Brook, New Jersey 07058 (“FSS Armory’s Store” or the “Store”). At that retail location, FSS Armory sells guns, ammunition, gun accessories, and other gun-related products.

JURISDICTION AND VENUE

16. Jurisdiction over FSS Armory is proper because it is a business incorporated, licensed to do business, and operating in New Jersey, the state in which FSS Armory’s unlawful conduct took place.

17. Pursuant to R. 4:3-2(a)(2) of the New Jersey Court Rules, venue is proper in this Court because the cause of action arose in Morris County, where FSS Armory’s Store is located, and where FSS Armory engaged in the illegal and tortious conduct at issue in this case.

FACTS

A. FSS Armory’s Background

18. FSS Armory’s Store opened in approximately December 2019. The Store sells handguns, rifles, shotguns, ammunition, gun parts and accessories, and knives. FSS Armory also operates a publicly accessible website at “www.fssarmory.com,” where it advertises its services and inventory, and posts customer reviews.

19. Ross Osias is the owner and manager of FSS Armory. Osias runs FSS Armory’s day-to-day business and is responsible for its compliance with applicable gun dealer licensing laws. Osias completed and signed FSS Armory’s New Jersey firearms license application, and has publicly promoted the store through public appearances on television and other means.

As owner of FSS Armory, Osias has completed the New Jersey firearms retail licensing process for himself, his business, and his employees. This process informed him of New Jersey's firearm dealer licensing conditions, including the applicable rules regarding the safeguarding of firearms.

20. During FSS Armory's initial mandatory inspection by the New Jersey State Police in 2019, Osias signed a report stating that he was familiar with the licensing process and acknowledging that he was informed of current gun laws and dealer procedures.

21. Osias has been a gun industry member in New Jersey since at least 2014. Prior to FSS Armory, Osias was affiliated with Firearms Support and Storage LLC, which operated a retail store in Whippany, New Jersey. Osias was a member of that LLC, and registered with the State Police as one of the store's employees authorized to handle firearms.

B. FSS Armory's Deficient Storage and Security Practices

22. Beginning no later than July 2022, FSS Armory stored loose rifles and stacks of handguns and gun boxes in an open room directly in front of a ground-floor window of the Store, adjacent to a glass-doored entrance from the Store's parking lot.

23. The stacks of loose guns and gun boxes were visible from outside the Store through the ground-floor window, and were close enough to that window that they could be accessed by anyone standing outside who reached in through the window, without actually entering the Store.

24. The ground-floor window had minimal safeguards against access or entry. The interior side was protected only by two or three narrow metal bars running from top to bottom, with gaps between them wide enough for an adult to reach through.

25. On information and belief, the window had only a battery-operated alarm affixed to its pane, which was designed to trigger an alert if the window was opened, but not if the glass was shattered.

26. The loose guns and gun boxes would also have been obvious to anyone inside the Store. The guns and gun boxes were located in an area that was open to the Store floor, mere steps away from the rest of the Store's inventory.

27. In approximately July 2022, FSS Armory worked with a third-party vendor to capture images of the interior of the Store in the interactive style of Google's Street View. The vendor posted those images to Google Maps, where they were associated with the business listing of FSS Armory's Store. FSS Armory updated the homepage of its website to include the same content. Anyone visiting either Google Maps or FSS Armory's website could then navigate their way through FSS Armory's Store, as if the internet visitor were inside and walking and looking around.

28. These images display the Store's reckless practices. They show at least one loose handgun, one loose rifle, and numerous loose gun cases stacked in front of the ground-floor window. They also show the lack of security on the window itself.

29. FSS Armory's posting of the images to prominent internet locations also meant that FSS Armory publicly broadcasted its shoddy storage and security conditions, further increasing the risk. The images allowed any member of the public, just by browsing online, to see that the loose guns inside the Store were easily accessible from outside through the window.

30. These unlawful and irresponsible storage practices and general lack of safeguards persisted until at least January 2023.

31. In or about November 2022, four months after FSS Armory publicized the images of the Store, Osias twice appeared on national television on behalf of FSS Armory. He professed knowledge and sophistication about the requirements for New Jersey gun dealers. Appearing on the Fox Business channel's "Varney & Co." as part of a panel discussing crime, Osias referred to

New Jersey as one of the “top three most stringent states in the country to own a gun,” and explained the “lengthy process” one must follow to purchase a gun. He repeatedly said that the demand for guns was rapidly rising, and he identified his Store and its location.

C. The Burglary of FSS Armory and Theft of Its Guns

32. Two months later, on Friday, January 6, 2023, between 1:40 a.m. and 2:00 a.m., burglars outside FSS Armory’s Store smashed its poorly secured ground-floor window, and stole twenty guns that were sitting within arm’s reach.

33. Surveillance video captured the burglars as they arrived in a car, broke the Store’s ground-floor window, and then methodically loaded FSS Armory’s guns into the car. There is no indication that any alarm was triggered or that there was real-time notification to law enforcement.

34. The car used in the burglary had been reported stolen three days earlier from the driveway of a private residence in a nearby town.

35. Subsequent police investigation revealed that, shortly before the burglary, one of the burglars had searched for “gun stores in nj” on his cell phone, and that FSS Armory was on the list of search results.⁴ Looking at the Store on Google Maps or on FSS Armory’s website would have revealed all of the security vulnerabilities exploited by the burglars, making the Store an attractive target for a burglar seeking to commit a profitable crime with low risk of detection.

⁴ See Affidavit of Probable Cause at 4, New Jersey v. Martinez, Indictment/Accusation No. 23-10-00900-A (N.J. Sup. Ct. July 27, 2023); see also Affidavit of Probable Cause at 4-5, New Jersey v. Acevedo, Complaint No. W-2023-000106-1421 (N.J. Sup. Ct. Sep. 21, 2023).

36. Several hours after the burglary, individuals matching the description of the burglars and driving the same stolen car as the burglars robbed a jewelry store at gunpoint in Passaic County, apparently using the guns they stole from FSS Armory.

37. Osias did not discover the burglary until later in the morning, at 9:20 a.m. He reported the theft to the Montville Police Department at 9:22 a.m., and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) was notified at 11:00 a.m. The ATF loss report described the way in which the firearms were stolen as: “2 windows broken and **items removed within arms [sic] reach**” (emphasis added). Osias signed the report, attesting to its accuracy.

38. In total, the burglars stole eight pistols, six shotguns, five rifles, and one revolver. The specific guns that that were stolen are as follows:

<u>Manufacturer</u>	<u>Model</u>	<u>Type</u>	<u>Serial Number</u>
Mossberg	Maverick 88	Shotgun	MV0668784
Remington	Sportsman 48	Shotgun	3066131
Remington	11-48	Shotgun	5105604
Wards Western Field	Mauser	Rifle	4144
Mauser	K98	Rifle	8504
Remington	700	Rifle	300008
Colt	Police Positive	Revolver	81859
Para Ordinance	LDA C-6	Pistol	P120062
Beretta	92X	Pistol	BST36007
CZ	75B	Pistol	F185441
Winchester	12	Shotgun	1155602
Ruger	AR 556	Rifle	1852-27859
Pedersoli	Muzzle LDR	Rifle	BB14743
Smith & Wesson	M&P9 Shield	Pistol	JRP6216
Taurus	G2C	Pistol	ADL860793
T Barker	--	Shotgun	--
Heckler & Koch	P30	Pistol	129-113197
Sears	101.100	Shotgun	--
Glock	43X	Pistol	BYXR622
Sig Sauer	1911 Max Michel	Pistol	54B013573

D. Use and Trafficking of FSS's Stolen Guns

39. Within weeks of the burglary, the guns stolen from FSS Armory were in the hands of gun traffickers. The guns passed from the burglars to others who have been formally charged with the selling of guns and narcotics. Over the course of the next three months, the stolen guns were trafficked through multiple counties in New Jersey and in New York, and likely beyond.

40. On January 17, 2023, trafficking suspects sold the stolen FSS Armory Ruger rifle in Queens, New York, during a controlled-buy operation.

41. In the months that followed, the Office of the Special Narcotics Prosecutor for the City of New York and the New York Police Department initiated an investigation into guns and fentanyl sales coming into New York from New Jersey. The investigation identified three suspects, all from New Jersey, who sold four additional stolen FSS Armory shotguns and one stolen FSS Armory pistol over the course of the next few months.⁵

42. On or about January 28, 2023, the Paterson Police Department recovered the stolen FSS Armory Taurus pistol during a sweep of an illegal nightclub after a patron likely discarded it on the floor in response to police arrival.

E. The Harm and Costs of Trafficked Illegal Guns

43. When traffickers disseminate once-lawful firearms into the illegal gun market, they set off a cascading set of harms and costs to the New Jersey public.

⁵ The three suspects have all been charged by the Office of the Special Narcotics Prosecutor for the City of New York for offenses related to illegal firearms sales, illegal firearms possession, and selling controlled substances. See Indictment, New York v. Duarte et al, Indictment No. IND-73848-23 (N.Y. Sup. Ct. Sep. 21, 2023) (referencing the sale of stolen FSS Armory firearms).

44. Illegal guns not only make crime and violence more likely, but more deadly. In particular, the trade in illegal guns enables persons prohibited in New Jersey from obtaining a lawful firearm—such as convicted felons or domestic abusers—to more readily acquire one. This subversion of New Jersey’s strong public safety laws threatens and injures public safety and the public peace, and obligates law enforcement to expend resources to protect the public, through interdiction, deterrence, investigation, and prosecution.

45. Gun crime exacts a heavy personal and economic toll on the people of New Jersey. The direct impact of gun crime on victims is profound. Crime fueled by guns creates pervasive public fear. And the costs to the State to abate those impacts can be high.

46. Gun thefts from licensed gun dealers are a key source of trafficked illegal guns. In 2022, approximately 5,500 firearms were stolen from licensed gun dealers in the United States, an increase from approximately 4,000 in 2021.⁶ And gun crime and gun violence disproportionately result from stolen guns such as those taken from FSS. For example, the majority of 23,000 stolen firearms recovered by law enforcement nationally between 2010 and 2016 were connected with crimes, including more than 1,500 violent acts.⁷

47. The harms of gun violence are especially stark. In 2021, there were 276 gun-related homicides in New Jersey. That same year, the number of non-fatal criminal shooting victims was several times greater. Even people who are not shot or killed, but are present for gun violence, face mental health risks. As for cost, in 2022, the National Institute for Criminal Justice

⁶ ATF, Federal Firearms Licensee Theft/Loss Report – 2022 (last updated July 14, 2023), <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2022>; ATF, Federal Firearms Licensee Theft/Loss Report – 2021 (last updated July 14, 2023), <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2021>.

⁷ Brian Freskos, Missing Pieces, The Trace, Nov. 20, 2017, <https://www.thetrace.org/2017/11/stolen-guns-violent-crime-america>.

Reform (“NICJR”) set out to measure the taxpayer cost alone of gun violence, specifically in the City of Newark. NICJR took into account six categories of costs: crime scene response, hospital and rehabilitation, criminal justice, incarceration, victim support (such as burial expenses) through the New Jersey Victim of Crime Compensation Office, and lost tax revenue. In total, NICJR estimated that each homicide shooting costs taxpayers \$2,188,700, and each non-fatal shooting costs taxpayers \$1,007,077. And taxpayer costs are only part of the story.

F. Arrest of the Burglars

48. In July 2023, six months after the FSS Armory burglary, law enforcement apprehended one of the suspected burglars, and the Morris County Prosecutor’s Office charged him with burglary and firearm offenses.⁸

49. A search of that burglar’s cell phone browsing history revealed the web search for “gun stores in nj” prior to the burglary and the appearance of FSS Armory’s in the search result list, as described above. See ¶ 35, supra.

50. In approximately September 2023, law enforcement apprehended and charged a second suspected burglar.⁹ She gave a statement that revealed, in substance and in part, that the burglars planned their burglary in advance and insinuated that they had monitored FSS Armory as a possible target in the days immediately prior to the burglary.

⁸ See Municipal Complaint at 1-26, New Jersey v. Martinez, Indictment/Accusation No. 23-10-00900-A (N.J. Sup. Ct. July 25, 2023) (charging nine counts of Unlawful Possession of a Handgun (N.J.S.A. 2C:39-5(b)), eleven counts of Unlawful Possession of a Rifle/Shotgun (N.J.S.A. 2C:39-5(c)), and related burglary offenses).

⁹ See Municipal Complaint at 1-25, New Jersey v. Acevedo, Complaint No. W-2023-000106-1421 (N.J. Sup. Ct. Sep. 14, 2023) (likewise charging nine counts of Unlawful Possession of a Handgun (N.J.S.A. 2C:39-5(b)), eleven counts of Unlawful Possession of a Rifle/Shotgun (N.J.S.A. 2C:39-5(c)), and related burglary offenses).

51. By the time the burglars and traffickers were apprehended and charged, only seven of the twenty stolen FSS Armory guns had been reported as recovered. Every gun recovered thus far has been found at a crime scene or in the hands of a criminal, including persons trafficking FSS Armory's guns into the black market. Guns stolen from FSS Armory, and recovered to date, have been used against business owners in Passaic, found loaded at an underground nightclub crowded with patrons in Paterson, and have moved around the streets, highways, and towns of New Jersey on their way to criminal misuse.

52. FSS Armory's cavalier firearms storage and lax security practices not only violated FSS Armory's express statutory and regulatory duties, but were contrary to reason and common sense, and recklessly disregarded obvious and extraordinary public safety risks. FSS Armory compounded its failures by publicly broadcasting them on its website and Google Maps. FSS Armory thereby contributed to the ongoing public nuisance of gun crime and gun violence in New Jersey.

CAUSES OF ACTION

Count One

(Contribution to Public Nuisance by Conduct Unlawful in Itself) (Public Law 2022, c. 56, N.J.S.A. 2C:58-35(a)(1))

53. The Attorney General repeats and realleges the foregoing allegations as if set forth in their entirety herein.

54. The Attorney General brings this count pursuant to N.J.S.A. 2C:58-35.

55. Under Section 58-35(a)(1), "[a] gun industry member shall not, by conduct [] unlawful in itself . . . , knowingly or recklessly create, maintain, or contribute to a public nuisance in this State through the sale, manufacturing, distribution, importing, or marketing of a gun-related product."

56. A “[g]un industry member’ means a person engaged in the sale, manufacturing, distribution, importing, or marketing of a gun-related product, and any officer, agent, employee, or other person authorized to act on behalf of that person or who acts in active concert or participation with one or more such persons.” N.J.S.A. 2C:58-34. A “[p]erson’ means any natural person, firm, corporation, company, partnership, society, joint stock company, or any other entity or association.” Id.

57. Defendant FSS Armory—a retailer engaged in the sale, distribution, and/or marketing of gun-related products—is a gun-industry member within the meaning of Sections 58-34 and 58-35.

58. A “[g]un-related product’ means any firearm, ammunition, ammunition magazine, firearm component or part including, but not limited to, a firearm frame and a firearm receiver, or firearm accessory . . . which product was possessed in this State and as to which it was reasonably foreseeable that the product would be possessed or used in this State.” N.J.S.A. 2C:58-34.

59. Each of the twenty guns stolen from FSS Armory is a “gun-related product” within the meaning of Sections 58-34 and 58-35.

60. FSS Armory stored the guns that were later taken by the burglars as part of its business as a licensed New Jersey gun dealer engaged in the sale, distribution, and/or marketing of firearms.

61. FSS Armory’s conduct has been “unlawful in itself.” FSS Armory stored guns in front of a transparent window; the window was not properly secured; the guns were accessible from the street level to anyone reaching through the window; and the guns were not properly safeguarded during non-business hours. FSS Armory’s conduct therefore violated New Jersey

statutory provisions governing licensed gun dealers, see N.J.S.A. 2C:58-2(a), and implementing regulations, including as follows:

- FSS Armory unlawfully stored firearms in front of a ground-floor window where they could be readily seen from the outside, in violation of N.J.S.A. 2C:58-2(a)(3) and N.J.A.C. 13:54-3.9(a)(3);
- FSS Armory unlawfully failed to prevent firearms from being accessible to or handled by anyone unless directly supervised by a licensed dealer or licensed employee, in violation of N.J.A.C. 13:54-6.5(a)(1); and
- FSS Armory unlawfully failed to provide internal security methods for the safeguarding of firearms during non-business hours, in violation of N.J.A.C. 13:54-6.5(b).

62. FSS Armory's unlawful conduct has knowingly or recklessly created and/or contributed to a public nuisance. A public nuisance is "any condition which injures, endangers, or threatens to injure or endanger or contributes to the injury or endangerment of the health, safety, peace, comfort, or convenience of others or which otherwise constitutes a public nuisance under common law." See N.J.S.A. 2C:58-34. FSS Armory's ill-secured and prominently displayed firearms endangered and threatened to injure the public from the outset, and thus constituted a public nuisance that FSS Armory knowingly or recklessly created. Upon being taken from the store, the twenty burglarized guns constituted a public nuisance that FSS Armory's unlawful conduct knowingly or recklessly created. Gun crime and/or gun violence constitute a public nuisance to which FSS Armory's unlawful conduct knowingly or recklessly contributed. Defendant's conduct proximately caused the ensuing harms to the State and the public.

63. FSS Armory's unlawful conduct consists of knowing acts or omissions that constitute a knowing violation of N.J.S.A. 2C:58-35(a)(1), and of N.J.S.A. 2C:58-2(a)(3), N.J.A.C. 13:54-3.9(a)(3), N.J.A.C. 13:54-6.5(a)(1), and N.J.A.C. 13:54-6.5(b).

64. FSS Armory’s unlawful actions and/or omissions were undertaken with actual malice or accompanied by wanton and willful disregard of persons who foreseeably might be harmed by those actions or omissions, within the meaning of the Punitive Damages Act, N.J.S.A. 2A:15-5.12. FSS Armory is therefore liable for punitive damages.

65. Defendant’s violation of Section 58-35(a) entitles the Attorney General to “an injunction prohibiting [Defendants] from continuing that conduct or engaging therein or doing any acts in furtherance thereof.” N.J.S.A. 2C:58-35(b). Such injunctive relief is necessary here to prevent further, continuing, irreparable injury.

Count Two

(Contribution to Public Nuisance by Conduct Unreasonable Under the Circumstances) (Public Law 2022, c. 56, N.J.S.A. 2C:58-35(a)(1))

66. The Attorney General repeats and realleges the foregoing allegations as if set forth in their entirety herein.

67. The Attorney General brings this count pursuant to N.J.S.A. 2C:58-35.

68. Under Section 58-35(a)(1), “[a] gun industry member shall not, by conduct . . . unreasonable under all the circumstances, knowingly or recklessly create, maintain, or contribute to a public nuisance in this State through the sale, manufacturing, distribution, importing, or marketing of a gun-related product.”

69. As a gun industry member subject to all the regulations applicable to licensed firearms retailers in New Jersey, FSS Armory was aware of the unique and extraordinary risks that accompany operating a gun store, including that the inventory of guns and gun-related products are particularly attractive targets for theft. FSS Armory was aware that gun industry members have a duty to take all reasonable steps to safeguard their products from theft.

70. FSS Armory's conduct leading up to the burglary on January 6, 2023 was unreasonable under all the circumstances, and knowingly or recklessly created or contributed to a public nuisance. Specifically, and among other things:

- FSS Armory unreasonably and recklessly stored guns, knowingly leaving a pile of loose guns and gun boxes within reach of a minimally secured, transparent ground-floor window.
- FSS Armory unreasonably and recklessly broadcasted to the public its security vulnerabilities by uploading images on its website of the poorly safeguarded guns.

71. Through these knowing acts and omissions, FSS Armory foreseeably increased the risk that their guns would be stolen.

72. FSS Armory's unreasonable conduct constitutes a knowing violation of N.J.S.A. 2C:58-35(a)(1), and of N.J.S.A. 2C:58-2(a)(3), N.J.A.C. 13:54-3.9(a)(3), N.J.A.C. 13:54-6.5(a)(1), and N.J.A.C. 13:54-6.5(b).

73. FSS Armory's unlawful actions and/or omissions were undertaken with actual malice or accompanied by wanton and willful disregard of persons who foreseeably might be harmed by those actions or omissions, within the meaning of the Punitive Damages Act, N.J.S.A. 2A:15-5.12. FSS Armory is therefore liable for punitive damages.

74. Defendant's violation of Section 58-35(a) entitles the Attorney General to "an injunction prohibiting [Defendants] from continuing that conduct or engaging therein or doing any acts in furtherance thereof." N.J.S.A. 2C:58-35(b). Such injunctive relief is necessary here to prevent further, continuing, irreparable injury.

Count Three

**(Failure to Establish, Implement, and Enforce Reasonable Controls)
(Public Law 2022, c. 56, N.J.S.A. 2C:58-35(a)(2))**

75. The Attorney General repeats and realleges the foregoing allegations as if set forth in their entirety herein.

76. The Attorney General brings this count pursuant to N.J.S.A. 2C:58-35.

77. Under Section 58-35(a)(2), “a gun industry member shall establish, implement, and enforce reasonable controls regarding its manufacture, sale, distribution, importing, and marketing of gun-related products.”

78. “Reasonable controls” means “reasonable procedures, safeguards, and business practices that are designed to:

(1) prevent the sale or distribution of a gun-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under State or federal law, or a person who the gun industry member has reasonable cause to believe is at substantial risk of using a gun-related product to harm themselves or unlawfully harm another or of unlawfully possessing or using a gun-related product;

(2) prevent the loss of a gun-related product or theft of a gun-related product from a gun industry member;

...

(4) ensure that the gun industry member does not engage in an act or practice in violation of any of the regulatory provisions governing firearms set forth in chapters 39 and 58 of Title 2C of the New Jersey Statutes or engage in conduct that constitutes a violation of P.L. 1960 c.39 (C.56:8-2) or any regulations promulgated thereunder.

N.J.S.A. 2C:58-34.

79. FSS Armory stored unsecured guns in front of a poorly secured ground-floor window, fully visible within the Store, or to anyone looking through the window from street level, and readily accessible to anyone in the Store or reaching through the window. FSS Armory

did not maintain an adequate alarm system, if any alarm system at all, or other security measures that would alert it or the police in real time to a burglary that involved breaking the window. These actions made FSS Armory's Store an obvious and attractive target for anyone looking to steal guns, and in fact made it easy for burglars to steal guns.

80. FSS Armory's building security and firearms storage was inadequate and in violation of New Jersey gun dealer regulatory requirements, including, at minimum: N.J.S.A. 2C:58-2(a)(3), N.J.A.C. 13:54-3.9(a)(3), and N.J.A.C. 13:54-6.5(a) and (b). FSS Armory's marketing program posted images of these security vulnerabilities to prominent internet locations, including the publicly available page for its Store on Google Maps and the homepage of its website.

81. By these knowing acts and omissions, FSS Armory failed to establish, implement, and enforce reasonable safeguards and business practices designed (1) to prevent the distribution of guns to prohibited possessors or firearms traffickers, (2) to prevent the loss or theft of guns, . . . or (4) to ensure that FSS Armory did not engage in an act or practice in violation of any of the regulatory provisions governing firearms. N.J.S.A. 2C:58-34.

82. FSS Armory's control failures constitute a knowing violation of N.J.S.A. 2C:58-35(a)(2), and are in further knowing violation of N.J.S.A. 2C:58-2(a)(3), N.J.A.C. 13:54-3.9(a)(3), N.J.A.C. 13:54-6.5(a)(1), and N.J.A.C. 13:54-6.5(b).

83. FSS Armory's unlawful actions and/or omissions were undertaken with actual malice or accompanied by wanton and willful disregard of persons who foreseeably might be harmed by those actions or omissions, within the meaning of the Punitive Damages Act, N.J.S.A. 2A:15-5.12. FSS Armory is therefore liable for punitive damages.

84. Defendant's violation of Section 58-35(a) entitles the Attorney General to "an injunction prohibiting [Defendants] from continuing that conduct or engaging therein or doing any acts in furtherance thereof." N.J.S.A. 2C:58-35(b). Such injunctive relief is necessary here to prevent further, continuing, irreparable injury.

Count Four

(Negligence)

85. The Attorney General repeats and realleges the foregoing allegations as if set forth in their entirety herein.

86. Under New Jersey common law, a Defendant is liable for negligence if: (1) Defendant owed plaintiff a duty of care, (2) Defendant breached that duty of care, and (3) that breach of duty was the proximate cause of (4) actual damages.

87. Firearms are inherently dangerous instrumentalities. In conducting business as a gun dealer, FSS Armory owed a legal duty to the public to abide by laws and regulations relating to store security and safeguarding inventory, and to otherwise exercise due care to prevent firearms from falling into the wrong hands and being used for harmful or criminal purposes.

88. FSS Armory failed to appropriately safeguard its store and the guns within, and advertised its weak security for anyone to see on the internet. In doing so, FSS Armory breached its duty of care. FSS's conduct wantonly and willfully disregarded the safety, health, and welfare of persons who could foreseeably be harmed.

89. FSS's breach foreseeably caused the theft of twenty guns and the ensuing criminal use and distribution of many of these stolen firearms. This has injured the public and continues to injure and threaten the public.

90. As a result of FSS Armory's negligence, the State of New Jersey and other public entities have expended significant resources mitigating and investigating crimes already

committed with, or threatened by, the twenty guns taken by burglars from FSS Armory. Specifically, and among other things, New Jersey has incurred and is likely to continue to incur damages in the form of costs of deterring, responding to, investigating, and prosecuting crimes committed with these guns, costs of attempting to recover the stolen guns, and other costs.

91. The Attorney General seeks appropriate remedies on behalf of the State and in the Attorney General's *parens patriae* capacity for the benefit of the general public and as are necessary to protect the safety, health, and welfare of New Jersey's residents.

92. FSS Armory's negligence consists of knowing acts and omissions that also constitute knowing violations of N.J.S.A. 2C:58-35(a), N.J.S.A. 2C:58-2(a)(3), N.J.A.C. 13:54-3.9(a)(3), N.J.A.C. 13:54-6.5(a)(1), and N.J.A.C. 13:54-6.5(b).

93. FSS Armory's unlawful actions and/or omissions were undertaken with actual malice or accompanied by wanton and willful disregard of persons who foreseeably might be harmed by those actions or omissions, within the meaning of the Punitive Damages Act, N.J.S.A. 2A:15-5.12. FSS Armory is therefore liable for punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General requests judgment in his favor and against Defendant FSS Armory, Inc. as follows:

- A. Ordering injunctive relief as is necessary to prevent continuing harm;
- B. Pursuant to N.J.S.A. 2C:58-35(b), ordering Defendant to pay accrued and future costs that the State of New Jersey and any other person or entity incurs in abating the public nuisance caused by the twenty guns stolen from FSS Armory;
- C. Pursuant to N.J.S.A. 2C:58-35(b) and N.J.S.A. 2A:15-5.12, awarding the Attorney General monetary damages and punitive damages in an amount to be determined at trial, including interest thereon;
- D. Pursuant to N.J.S.A. 2C:58-35(b), awarding the Attorney General the costs and expenses incurred in connection with this action, including attorneys' fees;

- E. Pursuant to the common law of the State of New Jersey, awarding the Attorney General monetary damages and punitive damages in an amount to be determined at trial, including interest thereon;
- F. Awarding the Attorney General such other and further relief as the Court deems just and proper.

Dated: December 12, 2023
Newark, New Jersey

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: /s/ David Leit

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CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: /s/ David Leit
David Leit
Assistant Attorney General

Dated: December 12, 2023
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Assistant Attorney General David Leit is hereby designated as trial counsel on behalf of the Plaintiff.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: /s/ David Leit
David Leit
Assistant Attorney General

Dated: December 12, 2023
Newark, New Jersey