No. 22-CV-703

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

POLYMER80, INC.,
APPELLANT,

V.

DISTRICT OF COLUMBIA,
APPELLEE.

ON APPEAL FROM A JUDGMENT OF
THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

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INTRODUCTION

Untraceable firearms have plagued the District of Columbia in recent years. Though just as deadly as guns sold by licensed dealers, untraceable firearms pose an even greater threat to public safety and law enforcement, because they are sold without background checks or waiting periods and they contain no identifying serial numbers. Crimes committed with untraceable firearms often go unsolved as a result.

Polymer80, Inc., is a leading purveyor of untraceable firearms. For several years, it marketed and sold unserialized, untraceable firearms to District consumers without legally required background checks or waiting periods, all while representing its products as lawful. In Polymer80's view, by selling firearm kits, frames, and receivers in a nominally "unfinished" state, it had cleverly circumvented federal gun laws, which (according to Polymer80) defined "firearm" to include only kits, frames, and receivers that are *more* fully finished.

But under District law, Polymer80's representations were false and its sales illegal. As the Superior Court correctly held, the Firearms Control Regulations Act of 1975 ("FCRA"), D.C. Code § 7-2501.01 *et seq*., defines "firearm" broadly to include not only finished, operable guns, but also the "frame or receiver of any such device" that can be readily converted to a functional firearm, *id.* § 7-2501.01(9). Polymer80's kits, frames, and receivers satisfy that definition as a matter of law because they can be converted to functioning guns in as little as 90 minutes, and

Polymer80's own advertisements adopted customer testimonials declaring that Polymer80 products require "less than two hours" to complete.

In falsely representing that its firearms were lawful, and in selling such firearms to District consumers, Polymer80 committed numerous violations of the Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901 *et seq.* The CPPA prohibits any "unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby." *Id.* § 28-3904. And it subjects violators to civil penalties of up to $5,000 for each violation, in addition to permanent injunctive relief. *Id.* § 28-3909.

Here, the Superior Court correctly held that Polymer80 violated the CPPA each day its website falsely represented the legality of its firearms, and each time it sold such firearms to District consumers in violation of the FCRA—i.e., without a dealer's license, registration, background checks, serial numbers, or a waiting period. The court also correctly held that, to remedy these violations and deter future ones, Polymer80 must pay $4.038 million in civil penalties and permanently stop selling or misrepresenting its products in the District, whether directly through its own website or indirectly through dealers and distributors.

The Superior Court's decision should be affirmed. Polymer80's products are not expensive paperweights. They have one purpose and one purpose only: to provide functional, unserialized guns that police cannot trace and that criminals can

use to evade justice. Nothing in the CPPA or FCRA requires this Court to ignore that reality, and nothing in the record requires a jury trial to decide it.

STATEMENT OF THE ISSUES

1. Whether the Superior Court correctly held that Polymer80 violated the CPPA by, among other things, making false statements in advertising and selling frames, receivers, and gun-parts kits as lawful, when those products are "firearms" under the FCRA, and when the record reveals no triable issue of material fact about whether such products can be readily converted into functioning guns.

2. Whether the Superior Court correctly held that Polymer80's CPPA violations warranted a $4.038 million civil penalty.

3. Whether the Superior Court soundly exercised its discretion in permanently enjoining Polymer80 from repeating its CPPA violations.

STATEMENT OF THE CASE

The District sued Polymer80 on June 24, 2020, alleging violations of Sections 28-3904(a), (b), (e), (e-1), and (f) of the CPPA. Joint Appendix ("JA") 7-18. Polymer80 moved to dismiss. JA 19. The Superior Court denied Polymer80's motion on June 22, 2021, JA 19-24, and denied reconsideration on September 29, 2021, JA 25-27. Polymer80 filed its answer on March 17, 2022. JA 28-35. The District moved for summary judgment on March 21, 2022. JA 37.

The Superior Court granted the District's motion in part on August 10, 2022. The court granted summary judgment on the Section 28-3904(a), (b), and (e-1) claims, it denied summary judgment on the Section 28-3904(e) and (f) claims, and it ordered a civil penalty and entered a permanent injunction. JA 357-69. On September 9, 2022, Polymer80 filed a notice of appeal. JA 6. The District voluntarily dismissed its remaining claims on September 22, 2022. JA 386-87. On January 11, 2023, the Superior Court denied Polymer80's motion to stay enforcement of the civil penalty but allowed it to post a bond pending appeal.

STATEMENT OF FACTS

1. Legal Background.

A. The Consumer Protection Procedures Act.

The CPPA "establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia." D.C. Code § 28-3901(c). As its text makes clear, the CPPA "shall be construed and applied liberally to promote its purpose[s]." *Id.* These "purposes" include, among other things, to "assure that a just mechanism exists to remedy all improper trade practices and deter the continuing use of such practices," and to "promote, through effective enforcement, fair business practices throughout the community." *Id.* § 28-3901(b).

It is a "violation" of the CPPA "to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged." *Id.*

§ 28-3904. A "'trade practice'" is "any act which does or would create," "make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services." *Id.* § 28-3901(a)(6). It is accordingly a "violation" of the CPPA to create, make available, or provide false information about (1) a product's "source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities," *id.* § 28-3904(a); (2) a merchant's "sponsorship, approval, status, affiliation, certification, or connection," *id.* § 28-3904(b); or (3) the "rights, remedies, or obligations" that "a transaction confers or involves," *id.* § 28-3904(e-1). The same is true of conduct that violates other District laws aside from the CPPA. *See Dist. Cablevision Ltd. P'ship v. Bassin*, 82 A.2d 714, 723 (D.C. 2003).

The CPPA provides a variety of remedies. As relevant here, it authorizes courts to impose a civil monetary penalty "for each violation." D.C. Code. § 28-3909(b)(1). Before July 17, 2018, the maximum civil penalty for a first-time CPPA violator was $1,000 per violation. JA 366-67 & n.6. Since July 17, 2018, the maximum penalty has been $5,000 per violation. JA 366-67 & n.6; *see* D.C. Code § 28-3909(b)(1). The CPPA also provides that, "[n]otwithstanding any provision of law to the contrary, if the Attorney General for the District of Columbia has reason to believe that any person is using or intends to use any method, act, or practice in violation of" the CPPA, "and if it is in the public interest," courts may enter a

"permanent injunction prohibiting the use of the method, act, or practice and requiring the violator to take affirmative action." D.C. Code § 28-3909(a).

B. The Firearms Control Regulations Act of 1975.

i. Origins and development of the FCRA.

The District of Columbia has independently regulated guns for more than a century. *See Maryland & D.C. Rifle & Pistol Ass'n, Inc. v. Washington*, 442 F.2d 123, 125-28 (D.C. Cir. 1971). In 1968, it adopted Police Regulations to control the possession, registration, and sale of firearms in the District. *McIntosh v. Washington*, 395 A.2d 744, 752 (D.C. 1978). As relevant here, the 1968 Police Regulations defined "'Firearm'" as:

> [A]ny pistol, rifle or shotgun which will or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; or the frame or receiver of any such pistol, rifle, or shotgun; but does not include a firearm that is not designed or redesigned to use rim fire or center fire fixed ammunition or manufactured in or before 1898.

D.C. Police Reg. Art. 50 § 1(d) (adopted July 19, 1968).

In promulgating this regulation, the District did not adopt verbatim the federal definition of "firearm" in the Gun Control Act of 1968 ("GCA"), Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1214. Then, as now, the GCA defines "firearm" in pertinent part as "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or

(D) any destructive device." 18 U.S.C. § 921(a)(3). Nor did the District adopt the definition of "firearm" in the National Firearms Act of 1934 ("NFA"), which at that time included "a shotgun having a barrel or barrels of less than 18 inches in length," "a machine gun," or "a muffler or silencer for any firearm." 26 U.S.C. § 5848(1) (1964 ed.) (recodified as amended by the GCA at 26 U.S.C. § 5845(a)).

In 1976, the District replaced the 1968 Police Regulations with the FCRA to better "promote the health, safety and welfare of the people of the District." D.C. Law 1-85, § 2, 23 D.C. Reg. 1091, 1091 (Aug. 10, 1976). The FCRA "evolved from a series of 'gun control' bills" that the D.C. Council considered in the early 1970s following "extensive public hearings." D.C. Council, Report on Bill 1-164 at 1 (Apr. 21, 1976), *reprinted in* H.R. Con. Res. 694, 94th Cong. at 24 (1976), https://tinyurl.com/45sxkewy. As this Court has noted, the FCRA is "a comprehensive regulatory scheme" that "advances important and uniquely local interests" regarding "the use and sale of firearms in the District." *McIntosh*, 395 A.2d at 753-54 & n.20. In contrast to preexisting criminal laws, the FCRA goes "beyond" simply prohibiting "the carrying of weapons that are in fact dangerous." *Townsend v. United States*, 559 A.2d 1319, 1321 (D.C. 1989).

To address those uniquely local concerns, the FCRA expanded the 1968 Police Regulations by defining "firearm" to mean:

> [A]ny weapon which will, or is designed or redesigned, made or remade, readily converted or restored, and intended to, expel a

> projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer: Provided, That such term shall not include—
>
> (A) antique firearms; and/or
>
> (B) destructive devices;
>
> (C) any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or
>
> (D) any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

D.C. Law 1-85, § 101(9), 23 D.C. Reg. 1091, 1095 (Aug. 10, 1976).

Subsequent amendments broadened this definition. For example, although this Court had long held that the FCRA was "not limited to firearms that are operable," *Townsend*, 559 A.2d at 1320, the Council nonetheless added the phrase "regardless of operability" in the Firearms Registration Amendment Act of 2008, D.C. Law 17-372, § 3(a)(3), 56 D.C. Reg. 1365, 1370 (Feb. 13, 2009). Hence, during the period relevant to this case, the FCRA defined "firearm" to mean:

> [A]ny weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer; provided, that such term shall not include:
>
> (A) Antique firearms; or
>
> (B) Destructive devices;
>
> (C) Any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or
>
> (D) Any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

D.C. Code § 7-2501.01(9).

ii. Recent clarifying amendments to the FCRA.

Between 2020 and 2022, the Council enacted another series of amendments to the FCRA. *See, e.g.*, Omnibus Public Safety and Justice Amendment Act of 2020, D.C. Law 23-274, § 201, 68 D.C. Reg. 4792, 4792 (May 7, 2021); 68 D.C. Reg. 1034, 1046-47 (Jan. 22, 2021). One such amendment clarified that the FCRA's definition of "firearm" includes "guns that are undetectable, untraceable, or both," sometimes called "ghost guns." JA199. As amended, the FCRA defines "[g]host gun" to include, among other things, "an unfinished frame or receiver." D.C. Code §§ 7-2501.01(9B), (17B). These amendments were intended "to clarify that District law prohibits the manufacture, sale, and possession of untraceable or undetectable firearms." Ghost Guns Prohibition Emergency Declaration Resolution of 2020, No. 23-377, § 2(g), 67 D.C. Reg. 2740, 2741 (Mar. 13, 2020).

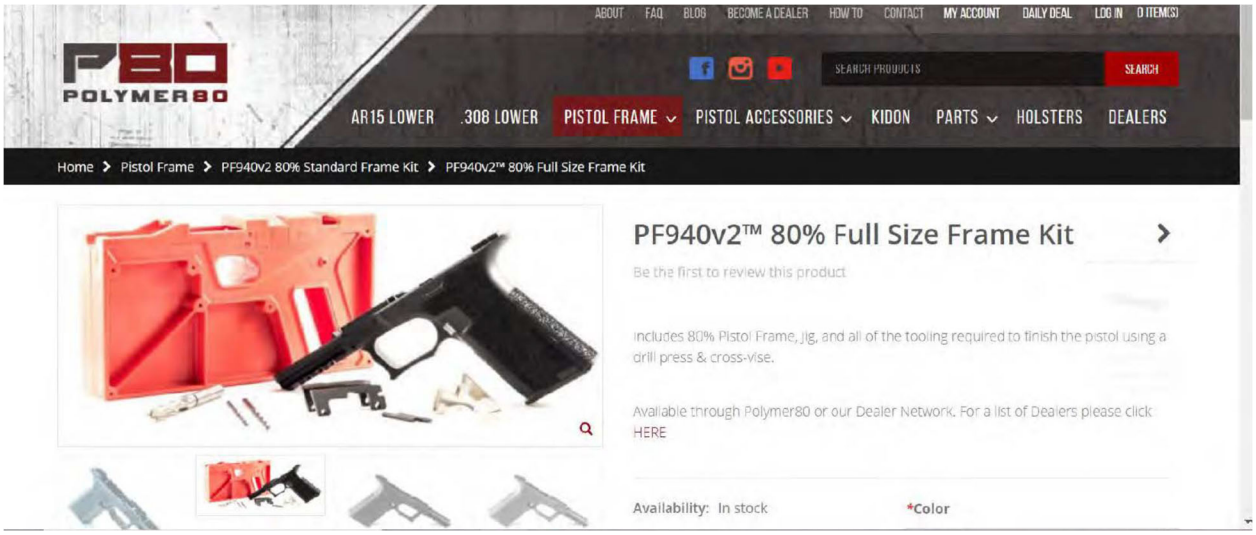
2. Factual Background.

A. Polymer80 manufactures, advertises, and sells gun-parts kits and unserialized frames and receivers.

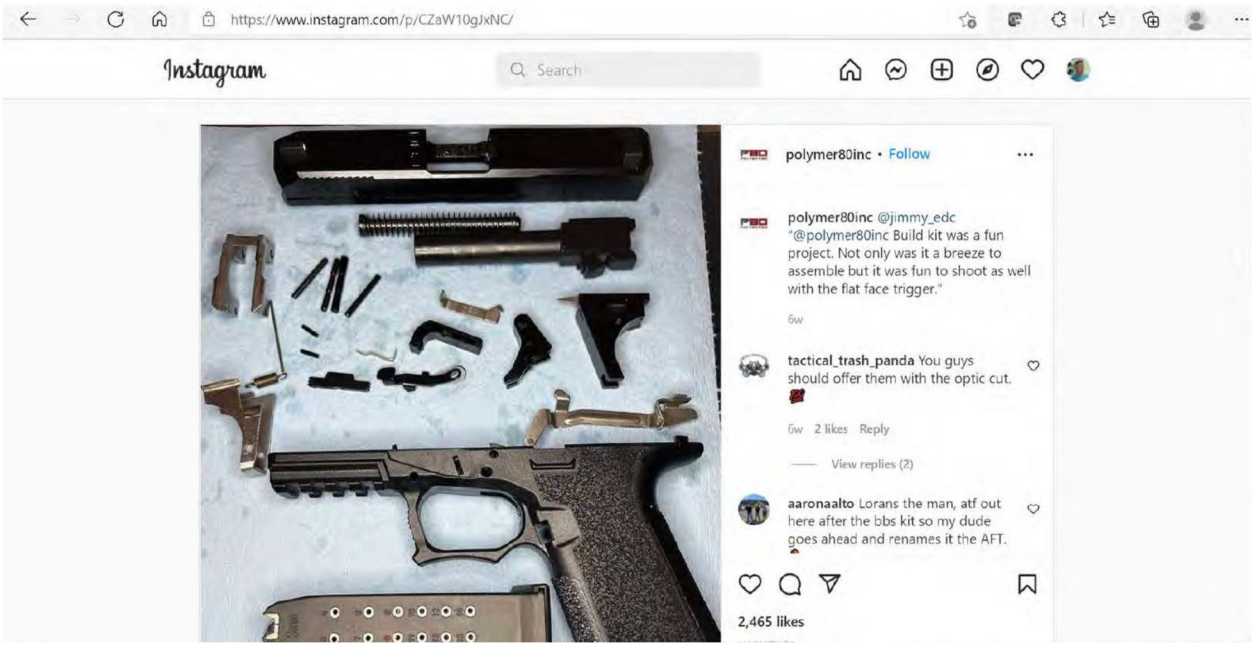
Through its website and its network of dealers and distributors, Polymer80 advertises and sells nearly complete firearms designed for consumers to finish at home. JA 42, 86, 124, 126. This includes "Buy, Build, Shoot" kits, as well as the "receivers" and "frames" that provide the basic structure for AR-15 assault weapons and Glock-style pistols. JA 37-42, 88, 103, 110. As Polymer80 itself advertised, its

Buy, Build, Shoot kits are a single package "contain[ing] all the necessary components to build a complete" firearm, including a "complete slide assembly" and "10 round magazine." JA 105; *see* JA 51, 182.

On its website, Polymer80's kits were displayed in the following manner:



JA 138. And Polymer80 advertised such kits on social media as follows:



JA 144.

Unlike other firearms, Polymer80's products are untraceable. JA 65. They lack serial numbers and other identifying information, and Polymer80 sells them without background checks or waiting periods. JA 7-8, 10-11, 13, 17, 38, 57, 65-66. As a result, law-enforcement agencies cannot trace Polymer80's firearms back to the point of sale, JA 41, which makes them "uniquely suited for criminal activity" and "uniquely attractive" to "individuals who would normally be prohibited from purchasing a firearm due to criminal records," JA 66.

Polymer80's products are designed to be converted into functioning guns with relatively limited time and effort. *See, e.g.*, JA 52-54, 134-36, 150-54. As Polymer80's own advertisements noted, customers have praised its products as "a breeze to assemble," JA 144, and "extremely easy" to complete, JA 146; *see* JA 156 ("Everything was easy."). One reported in particular that the "milling and parts assembly" for a Polymer80 kit was "simple" and "took less than two hours." JA 142; *see* JA 140. And another remarked that a Polymer80 frame "was very easy to finish with only a Dremel. It could easily be done without power tools." JA160.

B. Polymer80 advertises and sells its kits, frames, and receivers in the District of Columbia for several years.

During the years Polymer80 advertised and sold its products to District consumers, the prevalence of unserialized, untraceable firearms grew dramatically. JA 14, 184. Before 2016, the D.C. Metropolitan Police Department ("MPD") had never recovered such a firearm. JA 14. Yet it recovered three in 2017; 25 in 2018;

116 in 2019; and 106 by May 2020 alone. JA 14. Between 2019 and 2021, in fact, nearly 20% of the 1,987 firearms recovered by MPD were unserialized. JA 65.

Most of these firearms were made by Polymer80. JA 65. Of the 250 unserialized firearms recovered in the District between 2017 and May 2020, for example, at least 208 (or 83.2%) originated with Polymer80. JA 14. MPD recovered these firearms "in connection with a wide range of serious criminal activity," including "homicides, shootings, armed robberies, and domestic violence offenses." JA 65. But because "Polymer80's weapons are unserialized, they consistently thwarted" and "hindered" MPD's "ability to investigate." JA 65-66.

Polymer80's revenues grew commensurately with this proliferation of untraceable firearms. JA 38-39. In 2018, Polymer80 generated $11.759 million. JA 169. In 2019, its revenue grew to $13.035 million. JA 169. And in 2020, Polymer80's earnings more than quadrupled to $57.225 million. JA 168-69. Nearly 97% of these revenues came from sales to dealers and distributors. JA 170-71.

Despite the untraceable nature of its firearms and lack of background checks, Polymer80 nevertheless touted the lawfulness of its products. JA 88-101. On its website next to some of its products, Polymer80 represented:

> **Is it legal?**
> YES! The Polymer80 G150 unit is well within the defined parameters of a "receiver blank" defined by the ATF and therefore has not yet

> reached a stage of manufacture that meets the definition of firearm frame or receiver found in the Gun Control Act of 1968 (GCA).

JA 88, 90, 92; *see* JA 128, 130 (same for Polymer80 "308 unit" product).

Two other statements in the Frequently Asked Questions ("FAQ") section of Polymer80's website reinforce the point. The first of these stated:

> **Q: May I lawfully make a firearm for my own personal use, provided it is not being made for resale?**
>
> **A:** (From the ATF Website): "Firearms may be lawfully made by persons who do not hold a manufacturer's license under the GCA provided they are not for sale or distribution and the maker is not prohibited from receiving or possessing firearms."

JA 95, 97, 100. And the second communication appeared as:

> **Q: Is it legal to assemble a firearm from commercially available parts kits that can be purchased via internet or shotgun news? (From the ATF website: http://www.atf.gov/firearms/faq/firearms-technology.html)**
>
> **A:** "For your information, per provisions of the Gun Control Act (GCA) of 1968, 18 U.S.C. Chapter 44, an unlicensed individual may make a firearm as defined in the GCA for his own personal use, but not for sale or distribution." For further information on rulings and classifications go to the ATF Firearms website.

JA 94, 98, 101.

3. Procedural Background.

A. The District sues Polymer80 for violating the CPPA.

In June 2020, the District sued Polymer80 under the CPPA for false representations and for selling firearms in violation of District law. JA 14-17. The District alleged that Polymer80 advertised and sold gun-parts kits, frames, and

receivers that are "firearms" under the FCRA because they "can be readily made into fully operational firearms." JA 10. In doing so, Polymer80 expressly and impliedly represented that such firearms "are legal in the District," when in fact they are not. JA 16. The District also alleged that Polymer80 violated the CPPA each time it sold a firearm to District consumers, whether directly or through a dealer, because it did so unlawfully without a dealer's license, without a waiting period, and without identifying information or serial numbers on the firearms. JA 17.

B. The District moves for summary judgment after discovery confirms that Polymer80's products can be readily converted into functional guns.

In moving for summary judgment, the District showed that Polymer80's products are "firearms" under the FCRA, and thus no genuine issue of material fact remained as to Polymer80's CPPA liability. JA 42. As noted, the FCRA defines "firearm" as "any weapon"—or "the frame or receiver of any such device"—that can be "readily converted" to expel a projectile by the action of an explosive. D.C. Code § 7-2501.01(9). Polymer80's products satisfied this definition as a matter of law because, as MPD Commander John Haines attested, "they can be converted to a functioning, unserialized firearm with minimal time and effort." JA 66.

The readily convertible nature of these products was confirmed by Polymer80's own advertisements, JA 140-46, and the sworn affidavit of a consumer with firsthand experience converting a Polymer80 kit, Justin McFarlin, JA 56-62.

McFarlin purchased a Polymer80 "Buy, Build, Shoot Kit" for a "glock-style pistol" with no "background check, waiting period or any other verification measure." JA 57. Although he "had never attempted to build a firearm using an '80%' frame," McFarlin built "a complete pistol from the Polymer80 handgun kit in 86 minutes"—including the "drilling and sanding" and "parts installation"—without "industry-specific or professional construction tools." JA 57-58, 61. McFarlin attested that several other similar Polymer80 products could also "be converted into a functioning firearm with a similarly limited expenditure of time and resources." JA 61-62.

Polymer80 opposed the District's motion. It pointed to three letters from the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"), which noted that certain Polymer80 products did not satisfy the ATF's interpretation of "firearm" under the federal GCA. JA 215-29. Polymer80 also cited the remarks of a former District employee, Richard McCraw, who speculated at his deposition that Polymer80's products may not be "firearms" under the GCA if that term is defined as a frame or receiver that is more than "80 percent" complete. JA 231-92.

C. The Superior Court grants summary judgment to the District, imposes a civil penalty, and enters an injunction.

The trial court granted the District's motion in part. It held that Polymer80's "unfinished receivers, frames, and Buy, Build, Shoot kits" were "firearms under District law," as those "products are (and were) readily converted into firearms," which "Polymer80 itself demonstrates" in the easy-to-follow instructions on its

website. JA 355-57. In so holding, the court rejected Polymer80's reliance on ATF documents applying the GCA, and further rejected Polymer80's speculation about recent FCRA amendments since they "did not change the FCRA's language that defined firearms as weapons that are readily converted." JA 357 & nn.1-2, 359.

Because Polymer80's products are "firearms" as a matter of law under the FCRA, the court held that Polymer80 had made false representations about those products. JA 358-60. For example, the statement "Is it legal? YES!" falsely "represented that the Polymer80 G150 firearm had approval in the District of Columbia when it did not"; that Polymer80 had "approval or certification to sell the firearm to District consumers when it did not"; and that "District consumers would have gained the right to possess the firearm if they purchased the firearm on Polymer80's website." JA 358-59. Similarly, Polymer80's FAQ statements falsely represented that "firearms sold by Polymer80 were approved by the District when they were not"; that "Polymer80 had approval to sell firearms to District consumers, when it did not"; that "if a consumer made a purchase on Polymer80's website they would have the right to possess the firearm in the District, which they did not"; and that "unlicensed District consumers could make and possess Polymer80's firearms for their own personal use, which they could not." JA 359-60.

The Superior Court also held that Polymer80's repeated sales of its illegal and unregistered firearms constituted separate and independent CPPA violations.

JA 363-64; *see* JA 364 n.4. As the court explained, "Polymer80 violated District law by selling firearms to District consumers without the requisite licenses"; by "failing to comply with the series of restrictions and requirements the District imposes on licensees"; and by selling firearms that "were not registered and failed to have an identification number or serial number." JA 364. Accordingly, "no genuine issue of material fact" remained in this case. JA 364.

The court then imposed a civil monetary penalty. JA 365-68. It found that Polymer80 "engaged in unfair and deceptive trade practices" for at least 1,198 days between March 2017 and June 2020, in addition to selling at least 19 firearms directly to District consumers from its website. JA 366-67. "Considering these factors as a whole," the Superior Court assessed a penalty for "[e]ach day that Polymer80 violated the CPPA," which resulted in a $4.038 million judgment. JA 367-69. Specifically, $488,000 of this amount covered the 488 days between March 17, 2017 and July 16, 2018 (when $1,000 was the maximum penalty), and the remaining $3.55 million covered the 710 days between July 17, 2018 and June 24, 2020 (when $5,000 was the maximum penalty). JA 366-67 & n.6.

The court also entered a permanent injunction. The order bars Polymer80 from misrepresenting "the legality of its firearms in the District," and from selling such firearms "to District consumers both directly and indirectly through its dealers and distributors." JA 368. It also requires Polymer80 (1) to notify its dealers and

distributors that it is illegal to sell Polymer80 firearms to District residents; (2) to prominently notify website visitors, on each product page, that Polymer80 firearms are illegal to purchase or possess in the District; and (3) to prominently notify website visitors on its dealers-and-distributors page that Polymer80 firearms are illegal in the District and cannot be sold to District residents. JA 368-69.

STANDARD OF REVIEW

Summary judgment is reviewed de novo. *Linen v. Lanford*, 945 A.2d 1173, 1179 (D.C. 2008). Civil monetary penalties and injunctive relief are reviewed for abuse of discretion. *See District of Columbia v. Miss Dallas Trucking, LLC*, 240 A.3d 355, 360-61 (D.C. 2020); *District of Columbia v. Eastern Trans-Waste of Md., Inc.*, 758 A.2d 1, 14 (D.C. 2000).

SUMMARY OF ARGUMENT

The Superior Court's decision should be affirmed in all respects.

1. The court correctly held that Polymer80 repeatedly violated the CPPA for more than three years by falsely advertising and illegally selling products to District consumers that constitute "firearms" under the FCRA. Those products include gun-parts kits that contain all of the parts necessary to build a functioning gun, as well as nominally unfinished frames and receivers. Because the only competent evidence in the record establishes as a matter of law that each of those products can be "readily converted" to an operable rifle or handgun, each of those products

constitutes a "firearm" for purposes of the FCRA. No genuine issue of material fact thus remains as to Polymer80's CPPA liability.

A. The FCRA broadly defines "firearm" as "any weapon, regardless of operability," that can be "readily converted" "to expel a projectile or projectiles by the action of an explosive," or "the frame or receiver of any such device." D.C. Code. § 7-2501.01(9). Polymer80's Build, Buy, Shoot kits are plainly firearms under this definition, and the same is true of its unfinished frames and receivers, This is because, rather than requiring such items to be "fully complete," the FCRA covers "the frame or receiver *of any such device*"—meaning that a "frame or receiver," "regardless of operability," is a "firearm" if it can be "readily converted" to a functional gun. *See id.* (emphasis added). This reading of the statute is both textually sound as well as consistent with this Court's precedents, which have declined to impute unwritten limitations into District gun laws.

The same cannot be said for Polymer80's position, which largely ignores the FCRA's text, structure, and history, and which completely ignores this Court's decisions construing the FCRA and related District laws. *See* Br. 27-30. In devoting the majority of its argument to federal law (Br. 21-27), which the trial court rightly deemed irrelevant, Polymer80 asks this Court to adapt the FCRA to fit the ATF's past constructions of the GCA and NFA. But federal law provides Polymer80 no refuge: this Court is the final expositor of District law, and the ATF and many federal

courts have construed federal definitions of "firearm" to include gun-parts kits like Polymer80's, even if they contain unfinished frames and receivers. Equally unsound is Polymer80's conjecture about recent FCRA amendments, which did little more than clarify that District law has always barred unserialized, unregistered firearms.

B. Nor has Polymer80 raised a triable issue of material fact as to whether its products satisfy the FCRA's "readily converted" element. The only competent evidence in the record shows that Polymer80's products can be converted to functioning guns in as little as "86 minutes," JA 57-58, or, as Polymer80 itself has advertised, in "less than two hours," JA 140-42. No issue of material fact exists under Polymer80's proposed standards, either. *First*, even the ATF has disavowed the so-called "80 percent" test (which is a marketing term, not a legal rule), and Polymer80 cannot raise a material issue of fact with the inadmissible speculation of a lay witness (McCraw). *Second*, a critical-stage-of-manufacture test has no basis in the FCRA, and the ATF documents Polymer80 cites appear to suggest that Polymer80's products *have* reached this critical stage of manufacture.

2. The Superior Court correctly calculated an appropriate civil penalty in requiring Polymer80 to pay $4.038 million based on its multiyear spree of daily CPPA violations. As the statutory text makes clear, a CPPA "violation" does not require an "actual purchase" or "affirmative act," Br. 40, 44. It requires only an unlawful "trade practice," which includes "*any act*" that does or would "make

available" or "provide" false "information" about "goods or services." D.C. Code § 28-3901(a) (emphasis added). Because even the supposedly "passive" act of not removing false statements from a website each day "make[s] available" and "provide[s]" false "information" to consumers, merchants "engage in an unfair or deceptive trade practice" each day—and thus a CPPA "violation" each day—they leave such statements on their website. This analysis is consistent, moreover, with how this Court and others have assessed fines and penalties in related contexts.

Polymer80's approach, by contrast, would upend the CPPA's structure and disserve its purposes. Because CPPA liability does not require proof of consumer harm, CPPA "violations" cannot be limited to "actual purchases." Likewise, because the CPPA's prohibition on unlawful trade practices covers *any act* that even makes available false information about goods or services, CPPA "violations" cannot be limited to "*affirmative* acts" that do more than simply make such information available. Moreover, because only significant monetary fines can deter the wrongful (but lucrative) enterprise of false advertising, the CPPA's deterrent purposes would be fatally undercut by limiting civil penalties to amounts that well-heeled merchants can simply write off as a cost of doing illicit business. Polymer80 offers no sound argument to the contrary, and it cites no governing or even relevant authority calling for a different conclusion.

3. The permanent injunction reflects a sound exercise of the Superior Court's broad discretion to fashion equitable relief under the CPPA. The injunction on its face binds only Polymer80. It prohibits Polymer80 from taking certain acts, and it requires Polymer80 to take other acts, as the CPPA expressly allows. It does not bind nonparties or otherwise hold Polymer80 liable for the actions of nonparties. To the contrary, in prohibiting Polymer80 from advertising or selling firearms in the District through its dealers and distributors, the trial court simply preserved the integrity of its injunction by closing an obvious loophole.

ARGUMENT

I. The Superior Court Correctly Held That Polymer80 Repeatedly Violated The CPPA By Falsely Advertising And Illegally Selling Products That Are Firearms Under The FCRA.

Polymer80 violated the CPPA by falsely advertising and illegally selling FCRA "firearms" in the District of Columbia. D.C. Code § 28-3904(a), (b), (e-1). The FCRA defines "firearm" as "any weapon, regardless of operability, which will," or can be "readily converted," "to expel a projectile or projectiles by the action of an explosive," or "the frame or receiver of any such device." *Id.* § 7-2501.01(9). The Polymer80 products at issue are (1) "Buy Build Shoot" kits that contain all parts necessary to finalize an operable gun, and (2) nearly complete frames or receivers

for a variety of weapons. The Superior Court correctly held that both types of products constitute "firearms" as a matter of law under the FCRA.[1]

A. Unfinished gun-part kits, frames, and receivers are "firearms" as a matter of law under the FCRA when, as here, they can be "readily converted" to functional use.

1. The FCRA's definition of "firearm" encompasses kits and unfinished frames and receivers.

Text, precedent, and common sense all confirm that nearly complete gun-parts kits, frames, and receivers are "firearms" under the FCRA, when, as here, they can be "readily converted" to functional guns. Polymer80's contrary assertions are an improper effort to engraft an unwritten "fully finished" limitation onto the FCRA that the Council could have adopted but did not.

As this Court has held, the FCRA "gives the term 'firearm' a broad meaning." *Townsend*, 559 A.2d at 1320. It goes "beyond" simply prohibiting "the carrying of weapons that are in fact dangerous," *id.* at 1321, and instead "clearly includes in its definition of a 'firearm' inoperable weapons that may be redesigned, remade, or readily converted or restored to operability," *id.* at 1320; *see id.* at 1319 (holding that "an inoperable gun" with no "firing pin and spring mechanisms" was "a firearm").

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[1] Despite Polymer80's efforts to litigate this suit under the federal GCA and NFA (*see* Br. 2, 4, 7, 18, 20-27), this case turns solely on the meaning of "firearm" under the FCRA. That is the predicate for the District's CPPA claim, and it was the only firearms law applied by the Superior Court. JA 357 & n.1. In an effort to address all of Polymer80's assertions, this brief assumes arguendo that Polymer80's arguments about the GCA and NFA also apply to the FCRA.

Absent an express limitation, therefore, the FCRA's definition of "firearm" covers both the complete and incomplete forms of its constituent terms. *See id.* at 1319-21; *accord In re D.F.*, 70 A.3d 240, 245 (D.C. 2013) (emphasizing the Council's "cautionary note" against "reading into any weapons-possession provision" a limitation or "requirement that the plain language does not specify").

Polymer80 thus gets the analysis backwards in asserting that "*unfinished* frames, receivers, and parts kits" cannot be "firearms" because the "definition facially does not include an 'unfinished frame or receiver' or 'kits." Br. 23-24. Under this Court's precedents, the statutory definition of "firearm" would need to facially *exclude* kits and unfinished frames and receivers for those items to fall outside its comprehensive scope. *See, e.g.*, *D.F.*, 70 A.3d at 244-46; *Townsend*, 559 A.2d at 1319-21. But the FCRA does nothing of the sort.

Instead, the FCRA makes clear that just as an incomplete or inoperable gun is a "firearm," so too is "the frame or receiver *of any such device*." D.C. Code § 7-2501.01(9) (emphasis added). This language refers back to "any weapon, regardless of operability," that can be "readily converted" to "expel a projectile or projectiles by the action of an explosive." *Id.*; *see Culbertson v. Berryhill*, 139 S. Ct. 517, 522 (2019) ("[T]he adjective 'such' means of the kind or degree already described or implied." (cleaned up)). Read as a whole, then, the FCRA's definition of "firearm" includes "any weapon [*or its frame or receiver*], regardless of

operability," that can be "readily converted" to "expel a projectile or projectiles by the action of an explosive." D.C. Code § 7-2501.01(9).

This is why, contrary to Polymer80's assertions (Br. 21-25, 27-28), the "readily converted" language modifies "frame or receiver." While "the scope of a subpart" is often "limited to that subpart," the term "such" necessarily "refers to something elsewhere in the text." *Lary v. Trinity Physician Fin. & Ins. Servs.*, 780 F.3d 1101, 1105-06 (11th Cir. 2015) (holding that "each such violation" in one subpart referred to preceding subpart's phrase "a violation of this subsection"). Here, the phrase "of any such device" necessarily refers to, and carries over, the term "any weapon" and the modifying phrase "readily converted." D.C. Code § 7-2501.01(9). Polymer80's fragmented parsing of each clause in isolation, by contrast, would render "of any such device" surplusage, contrary to the most basic tenets of statutory interpretation, *see* Antonin Scalia & Bryan A. Garner, *Reading Law* 156-60 (2012) (noting that the "scope-of-subparts" maxim can be overcome by other "canons of interpretation," including the "surplusage canon").

Along the same lines, Polymer80's position overlooks the FCRA's other textual clues indicating that weapons, frames, and receivers need not be fully finished to constitute "firearms." *Webb v. D.C. Dep't of Emp. Servs.*, 204 A.3d 843, 849 (D.C. 2019) ("Statutory construction generally demands reading a statute in its entirety, and a statute should be interpreted as a harmonious whole."). In addition

to covering weapons "regardless of operability," the statute encompasses items "designed *or* . . . intended to expel a projectile or projectiles by the action of an explosive." D.C. Code § 7-2501.01(9) (emphasis added). In other words, if something is designed or intended to function as a gun, it is a "firearm" under the FCRA, even if the item is not presently "operab[le]" as such. *See id.* That precisely describes gun-parts kits and nominally unfinished frames and receivers like Polymer80's—which undeniably are designed, marketed, sold, and bought for the purpose of creating functional firearms with minimal time and labor.

Polymer80's atextual assertions to the contrary defy common sense. Countless items require additional work before use. Furniture must be assembled. Suits must be tailored. Food must be cooked. Yet no one seriously questions that IKEA sells "furniture"; that Armani sells "suits"; or that Safeway sells "food." The FCRA's broad definition of "firearm" should be understood in the same commonsense manner, just as innumerable other statutory terms have been read to include both their finished and unfinished forms. *See, e.g.*, *16 Casa Duse, LLC v. Merkin*, 791 F.3d 247, 259-60 (2d Cir. 2015) (holding that an "unfinished" movie is a "motion picture" under 17 U.S.C. § 101); *Mass. Museum Of Contemp. Art Found., Inc. v. Buchel*, 593 F.3d 38, 50-52 (1st Cir. 2010) (similar, "unfinished" sculpture is a "work of visual art" under 17 U.S.C. § 106A); *United States v. Mousli*, 511 F.3d 7, 14 (1st Cir. 2007) (similar, "unfinished" counterfeit dollars are "counterfeited"

currency under 18 U.S.C. § 472); *Hine v. United States*, 113 F. Supp. 340, 340, 342-43 (Ct. Cl. 1953) (similar, "so-called Fishing Rod Kits," containing the parts needed to build a fishing pole, are "'fishing rods'" under 26 U.S.C. § 3406(a)).

2. Polymer80's contrary arguments lack merit.

Ultimately, Polymer80 concedes (Br. 27) that *some* "unfinished" frames and receivers are indeed "firearms." Yet it tries to limit this concession based on assorted ATF documents involving federal law. Br. 26-27 (citing JA 307 & n.3). As the Superior Court and others have recognized, JA 357 n.1, however, the ATF's views about "what is and what is not a firearm" under federal law are "irrelevant" and not "even persuasive" in construing state and local laws. *Morris v. Commonwealth*, 607 S.E.2d 110, 112-14 & n.6 (Va. 2005) (rejecting ATF's conclusion that a "flare gun" is not a "firearm"); Statement of Pennsylvania Att'y Gen., 2019 WL 8198294, at *4 (Dec. 16, 2019) (reasoning that "[a] receiver is a firearm under" similar state-law definitions if it "'may readily be converted' to expel a projectile").

But even were the Court to "consider federal authority," Br. 28, Polymer80 still loses. The only "federal authority" it offers are its own beliefs about the GCA (which are irrelevant); one passage from an ATF trial-court filing (which recognizes that "Polymer80's 'gun building kits' are firearms" as they are "'readily convertible' to expel a projectile," JA 312-13); and a district court order (which also recognizes that "[a]n incomplete receiver may still be a receiver within the meaning of the

[GCA]," *VanDerStok v. Garland*, No. 22-cv-691, 2022 WL 4009048, at *5 (N.D. Tex. Sept. 2, 2022)). None of that "federal authority" helps Polymer80, especially given that other federal courts have squarely rejected the theory it espouses. *See, e.g.*, *United States v. Wick*, No. 15-cr-30, 2016 WL 10637098, at *1 (D. Mont. July 1, 2016) ("[A] plain reading of § 921(a)(3) indicates that if the receiver of a weapon can be readily converted to expel a projectile, then that receiver can be considered a 'firearm.'"), *aff'd on other grounds*, 697 F. App'x 507 (9th Cir. 2017).

Indeed, courts have long followed "a common sense approach to interpreting" the term "firearm" under federal law to preserve its "flexibility" and to prevent "evasion of congressional intent." *United States v. Drasen*, 845 F.2d 731, 735-36 (7th Cir. 1988) (construing "firearm" to include "unassembled" rifle parts as "the statute did not expressly apply only to assembled firearms"). Under this approach, courts have recognized that an unassembled silencer is still a "silencer," *United States v. Endicott*, 803 F.2d 506, 508-09 (9th Cir. 1986), and that an unassembled set of parts necessary to build a firearm may likewise be a "firearm," *see United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 510-17 & nn.5-6 (1992) (plurality op.) (concluding that a "firearm" may be "made" for taxation purposes even before "the moment of final assembly"). As these courts have reasoned, a statute need "not expressly define" a firearm or firearm accessories "to include component parts" for

that "common sense interpretation" to prevail. *United States v. Luce*, 726 F.2d 47, 48-49 (1st Cir. 1984) (holding that unassembled silencers are firearms).

Courts have applied the same logic in concluding that gun kits with unfinished frames or receivers are "firearms" under federal law. *See United States v. Stewart*, 451 F.3d 1071, 1072-73 & n.2 (9th Cir. 2006) (recognizing that kits with receivers that "had not yet been completely machined" may be "firearms"), *overruled on other grounds by District of Columbia v. Heller*, 554 U.S. 570 (2008). As one court put it, such kits "fit squarely within the GCA's 'firearm' definition." *Morehouse Enters., LLC v. ATF*, No. 22-cv-116, 2022 WL 3597299, at *5-6 (D.N.D. Aug. 23, 2022). This is because even "parts kits" containing "'de-milled' receivers" (i.e., "receivers cut into pieces") still provide "all the necessary components to assemble a fully functioning firearm with relative ease," thus satisfying the "definition of a firearm." *Wick*, 697 F. App'x at 508; *see Stewart*, 451 F.3d at 1073 n.2 (affirming probable cause finding where defendant's "parts kits could 'readily be converted'"). Hence, just as "a firearm may be 'made' even where not fully 'put together,'" *Thompson/Ctr. Arms*, 504 U.S. at 514, so too a gun-parts kit, frame, or receiver need not be fully finished to constitute a "firearm."

Instead of addressing this body of federal precedent, Polymer80 speculates that recent amendments regarding "unfinished" frames and receivers mean that the FCRA did not previously cover Polymer80's firearms. Br. 28-30. But as this Court

has held, "earlier [legislative] intent will not be inferred from a later amendment." *District of Columbia v. Wash. Home Ownership Council, Inc.*, 415 A.2d 1349, 1358 (D.C. 1980) (en banc); *see Needle v. Hoyte*, 644 A.2d 1369, 1372-73 (D.C. 1994) (same). Because statutes are often amended "purely to make what was intended all along even more unmistakably clear," changes "in statutory language need not *ipso facto* constitute a change in meaning or effect." *Baptist Mem'l Hosp.-Golden Triangle v. Sebelius*, 566 F.3d 226, 229 (D.C. Cir. 2009) (internal quotation marks omitted). This is particularly so in the FCRA context, *see McIntosh*, 395 A.2d at 750 n.12, where the Council has previously amended the definition of "firearm" to reaffirm, rather than alter, existing law, *see, e.g.*, D.C. Law 17-372, § 3(a)(3), 56 D.C. Reg. 1365, 1370 (Feb. 13, 2019) (adding "regardless of operability").

So too here. Unlike cases where the legislature "excise[d]" an express limitation or "forcefully declare[d]" its intention to "modify" existing law, *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 182-84 (D.C. 2021), the recent FCRA amendments removed nothing from the definition of "firearm" and were intended "to *clarify* that District law prohibits the manufacture, sale, and possession of untraceable or undetectable firearms," Resolution 23-377, § 2(g), 67 D.C. Reg. 2740, 2741 (Mar. 13, 2022) (emphasis added). There is accordingly no sound reason to assume that "the unamended [FCRA] meant the opposite of the language contained in the amendment." *See Baptist Mem'l*, 566 F.3d at 229.

Also without merit is Polymer80's assertion that the "*expressio unius*" maxim yields the "inexorable conclusion" that no unfinished kit, frame, or receiver is a "firearm" since the FCRA does not expressly use the terms "unfinished" or "kits." Br. 23-24, 27-28. As Polymer80's own cases recognize, *expressio unius* is "[a]t best" "only a guide," *United States v. Vonn*, 535 U.S. 55, 65-66 (2002), and in this case, it "must yield to clear contrary evidence of legislative intent," *Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 458 (1974). The FCRA "gives the term 'firearm' a broad meaning" to advance local interests beyond merely criminalizing "weapons that are in fact dangerous." *Townsend*, 559 A.2d at 1320-21. It follows that, because this Court generally will not "imply a requirement" or "read" a limitation "into any weapons-possession provision" that "the plain language does not specify," the absence of terms like "unfinished" cannot support Polymer80's effort to read a contrary limitation into the FCRA. *See D.F.*, 70 A.3d at 243-45 (holding that "an inoperable BB gun" was a "BB gun" despite "the Council's failure to" state "expressly that operability is not required").

Polymer80 tries to rescue its theory with a footnote citing three federal laws that "explicitly" mention "firearm component parts." Br. 22-23 n.1. Yet those provisions—two of which were enacted decades *after* the FCRA—"establish no more than that Congress chose in some cases to make assurance doubly sure." *United States v. Hansen*, 772 F.2d 940, 947 (D.C. Cir. 1985) (Scalia, J.). They

suggest nothing, however, about the meaning of "firearm" under District law and provide no support whatsoever for Polymer80's crabbed reading of the FCRA. *See Roeder v. Islamic Republic of Iran*, 646 F.3d 56, 62 (D.C. Cir. 2011) (rejecting similar argument where "relevant subsections were added at different times"); *United States v. Councilman*, 418 F.3d 67, 74 (1st Cir. 2005) (en banc) (same).

If anything, the *expressio unius* canon supports the District. The FCRA expressly excludes a variety of items from the definition of "firearm" (e.g., antique guns, destructive devices), yet it does not exclude unfinished frames, receivers, or kits. D.C. Code § 7-2501.01(9). The conspicuous absence of those terms from the statute's list of exemptions strongly suggests that they do not categorically fall outside the definition of "firearm." And Polymer80 concedes as much in noting that "a frame or receiver (*even if not entirely finished*)" may still be a "firearm" under certain conditions. Br. 27 (quoting JA 307 & n.3 (emphasis added)). To the extent *expressio unius* applies here at all, then, it cuts against Polymer80.

B. Polymer80 has not raised a genuine issue of material fact about whether its products can be "readily converted" to functioning firearms under the FCRA.

1. Uncontroverted evidence—including Polymer80's own admissions—shows that Polymer80 products can be "readily converted" to functional guns.

As the trial court correctly held, the record leaves no doubt that Polymer80's kits, frames, and receivers can be "readily converted" into functioning guns as a

matter of law. JA 356. The term "readily" means "without much difficulty" or "in a ready manner." *Webster's New Collegiate Dictionary* 961 (1976); *see Black's Law Dictionary* 1430 (4th ed. 1968) (defining "ready" as "equipped or supplied with what is needed for some act or event"). In related contexts, courts have held that an action can be "readily" completed as a matter of law even if it takes two, four, or six hours of skilled labor. *See, e.g.*, *United States v. One TRW, Model M14, 7.62 Caliber Rifle*, 441 F.3d 416, 421-23 (6th Cir. 2006) (affirming summary judgment that a machinegun is "readily restorable" where it "could be converted to fire automatically in four to six hours"); *United States v. TRW Rifle 7.62x51mm Caliber*, 447 F.3d 686, 692-93 (9th Cir. 2006) (same, "about two hours").

Here, the only competent evidence in the record supports the Superior Court's conclusion that Polymer80's "products are (and were) readily converted into firearms." JA 356. As Justin McFarlin attested, even without "industry-specific or professional construction tools," a Polymer80 "handgun kit" can be converted into "a complete pistol" using "commonly available" tools "in 86 minutes"—including the "drilling and sanding" and "parts installation." JA 57-58, 61. McFarlin did this himself in his first try "using an '80%' frame," and he attested that other Polymer80 products could likewise "be converted into a functioning firearm with a similarly limited expenditure of time and resources." JA 57-58, 62.

Polymer80's own admissions confirm as much. Using customer testimonials, Polymer80 advertised its products as "extremely easy" to complete, JA 146, and as needing "less than two hours" of "milling and parts assembly," JA 140-42; *see Alvord-Polk, Inc. v. F. Schumacher & Co.*, 37 F.3d 996, 1005 n.6 (3d Cir. 1994) (treating statements published by a party opponent as adopted admissions). It also boasted that its "Buy, Build, Shoot" kits provide consumers "all the necessary components to build a complete" firearm, including a "10 round magazine," JA 105, as well as a "jig" and "all of the tooling required to finish the" firearm, JA 138. And to further accelerate this process, Polymer80's webpage linked to "how to" guides, JA 135, and videos for different "learning styles," JA 134.

Rather than explain these admissions, or offer admissible evidence contradicting the District's proof, *see infra*, Polymer80 tries to discredit McFarlin and obscure his testimony. These efforts fail. McFarlin need not be an "average" or "normal consumer" (Br. 33) for his testimony to establish as a matter of law that Polymer80's products can be readily converted to functional guns. *See TRW Rifle*, 447 F.3d at 688-93 (affirming summary judgment based on ATF agent's report). And even if McFarlin spent additional time watching instruction videos or test-firing the firearm (Br. 33-35), Polymer80 still has not explained how his testimony fails to prove the "readily converted" element. *See One TRW*, 441 F.3d at 421-23 (treating "four to six hours" as "readily restorable"). At bottom, Polymer80 cannot overturn

summary judgment on the mere hope that jurors might ignore its past admissions or perceive the District's witnesses as having too much "expertise in firearms," Br. 35. *See Jenkins v. District of Columbia*, 223 A.3d 884, 895 n.10 (D.C. 2020) (holding that "[s]peculation and surmise" cannot defeat "a properly documented summary judgment motion" (internal quotation marks omitted)).

2. Polymer80's efforts to create a triable issue of material fact lack legal and evidentiary support.

The only competent evidence in this record shows that Polymer80's products can be readily converted to functional guns in less than 90 minutes, or at most a few hours, and Polymer80 cannot change that reality by conjuring up "*some* alleged factual dispute." *Vessels v. District of Columbia*, 531 A.2d 1016, 1019 n.9 (D.C. 1987) (internal quotation marks omitted). To the contrary, it must present admissible evidence raising a genuine, triable dispute over "material" facts—that is, "facts that might affect the outcome of the suit" under applicable "substantive law." *Linen*, 945 A.2d at 1179 (internal quotation marks omitted). Otherwise, no trial is necessary and summary judgment should be affirmed. *See Vessels*, 531 A.2d at 1018-19 & n.9 ("Factual disputes that are irrelevant or unnecessary will not be counted." (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986))).

Yet Polymer80's efforts to manufacture a triable issue of material fact fail at the threshold. Instead of applying a consistent legal test for the "readily converted" issue, Polymer80 oscillates between two different (and potentially incompatible)

standards: an "80 percent rule," Br. 11-14, 31-32, and a "critical stage of manufacture" test, Br. 27, 32, 37. But neither of those approaches has any basis in the FCRA, and Polymer80 cannot raise an issue of material fact under either of them. *See Freeman v. District of Columbia*, 60 A.3d 1131, 1142 n.20 (D.C. 2012) ("[S]howing of a genuine issue for trial is predicated upon the existence of a legal theory that remains viable under the asserted version of the facts." (cleaned up)).

a. 80 percent. As Polymer80 tells it, the ATF treats unfinished frames and receivers as "firearms" under the GCA only if they are more than "80 percent" complete. Br. 11. But in reality, the ATF has disavowed this "80 percent" rule as not "'useful in determining whether any particular product qualifies as a firearm.'" *California v. ATF*, No. 20-cv-6761, 2023 WL 1873087, at *2 (N.D. Cal. Feb. 9, 2023). As the agency has explained, the "80%" label is a marketing term with no basis in law and no relation to "the term 'readily' in the GCA.'" ATF, *Open Letter To All Federal Firearms Licensees* 3 (Dec. 27, 2022), https://tinyurl.com/46esnzh5; *see* ATF, *Definition of "Frame or Receiver" & Identification of Firearms*, 86 Fed. Reg. 27720, 27726 n.42 (May 7, 2021) ("'80%'" label is "neither found in Federal law nor accepted by ATF"). Any evidence suggesting that Polymer80 products are only "80 percent" complete is thus legally irrelevant.

Consequently, Polymer80 is wrong to accuse the trial court of "usurp[ing]" the jury's role or otherwise "ignoring" evidence. Br. 18, 31. Take, for example,

Richard McCraw's remarks that unfinished frames and receivers may not be "firearms" under an "'80 percent rule.'" Br. 11. McCraw simply responded to a series of hypothetical questions that assumed Polymer80 products did not meet an 80 percent threshold. *See, e.g.*, JA 274 (asking "*if I'm right* and Polymer80 did sell 80 percent kits" (emphasis added)). But given the ATF's disavowal of the "80 percent" nomenclature, McCraw's comments are at best a lay witness's speculation about *inapplicable law*, and at worst a lay witness's musings about *inapplicable marketing terms*. Either way, such testimony is irrelevant and incapable of raising a genuine issue of material fact. *See, e.g.*, *Jane W. v. President & Dirs. of Georgetown Coll.*, 863 A.2d 821, 826 (D.C. 2004) (requiring "admissible evidence" to defeat summary judgment); *see also Steele v. D.C. Tiger Mkt.*, 854 A.2d 175, 182 (D.C. 2004) ("[T]estimony purporting to state or apply the governing law risks misinterpreting that law and confusing or misleading the jury.").

Nor do McCraw's comments rebut McFarlin's testimony that Polymer80 products can be readily converted in "86 minutes" using common tools. JA 57-58. McCraw in fact said nothing in the excerpted portions of his deposition about how quickly a Polymer80 kit, frame, or receiver could be finalized, or about the tools needed to do so. *See* JA 267-92. And contrary to Polymer80's revisionist account (Br. 5, 18, 31), McCraw was not discussing the FCRA's "readily converted" element in surmising that a gun-parts kit "is not in a condition ready to be assembled into a

firearm." JA 277. He was referring to the inapposite "80 percent threshold," JA 277, which is irrelevant under the FCRA even if true. In sum, because McCraw's generalized speculation about the "80 percent" standard does not contradict or even undermine McFarlin's testimony, it cannot raise a triable issue of material fact—and that is true regardless of who a jury might find "more credible" (Br. 33). *See Bias v. Advantage Int'l, Inc.*, 905 F.2d 1558, 1561 (D.C. Cir. 1990) (affirming summary judgment because nonmovant's "generalized evidence" could "not contradict the more specific testimony" offered by the moving party).

b. Critical stage of manufacture. Polymer80 also loses under a "critical stage of manufacture" test. For one thing, this vague standard has no basis in the FCRA's text, structure, or history, and Polymer80 does not even attempt to argue otherwise. It admittedly plucked this language from one passage of an ATF trial-court filing in a suit involving the GCA. Br. 27 (citing JA 307 & n.3). But regardless of how the ATF has read federal law, it makes no difference under the FCRA whether a frame, receiver, or kit has reached a "critical stage" or an "semi-critical stage of manufacture." As long as those products can be "readily converted" to functioning guns, they are "firearms" as a matter of law under the FCRA.

In any event, Polymer80 offers no competent evidence to warrant a jury trial. McCraw's speculative legal conclusions are irrelevant, *see supra*, and the ATF letters Polymer80 cites are rife with outdated hearsay about federal law, not the

FCRA, Br. 32, 37. *See Freeman*, 60 A.3d at 1144 ("A proffer of inadmissible hearsay cannot defeat a motion for summary judgment."). What's more, the ATF has said that a "critical stage of manufacture" is reached when "there is *some machining* to the frame or receiver (as opposed to it being *completely unmachined*)," JA 309-10 (emphases added), and Polymer80's own documents reveal that several "machining operations" *are* "completed" in Polymer80 products, JA 222, 224, 228. Polymer80 thus cannot prevail even under its own test and with its own evidence.

II. The Superior Court Correctly Calculated An Appropriate Civil Penalty For Polymer80's Many CPPA Violations.

The CPPA authorizes a civil penalty "for each violation." D.C. Code § 28-3909(b)(1). A CPPA "violation" includes every "unfair or deceptive trade practice," even if no "consumer" was "in fact misled, deceived, or damaged." *Id.* § 28-3904. And a "'trade practice'" under the CPPA is "any act" that does or would "make available" or "provide information about" the "sale" or "transfer of consumer goods or services." *Id.* § 28-3901(a)(6). Accordingly, a CPPA "violation" occurs each day merchants "make available" or "provide" false or deceptive "information about" their "goods or services" to District consumers, regardless of how they do so (e.g., a newspaper, billboard, or website). *See id.*

The trial court thus correctly calculated the appropriate civil penalty here. Polymer80 undisputedly made available and provided information about its firearms to District consumers via its website every day for at least 1,198 days from

March 17, 2017 until June 24, 2020. JA 366-67 & n.6. In doing so, Polymer80 engaged in at least one "trade practice" under the CPPA every day during that period. D.C. Code § 28-3901(a)(6). And because the relevant information made available and provided on Polymer80's website was false, Polymer80 engaged in at least one "unfair or deceptive trade practice" every day during that period, and thus at least one CPPA "violation" each day. *See id.* §§ 28-3904, 28-3909(b)(1). Polymer80's CPPA violations therefore warranted a civil penalty of $4.038 million, particularly since Polymer80 provided multiple false statements on its website each day starting as early as January 16, 2017, in addition to selling at least 19 illegal firearms to District residents directly from its website during the same period.

Polymer80's counterarguments lack merit. Despite the sound textual basis for the Superior Court's decision, Polymer80 disparages the court's ruling as "absurd," "arbitrary," "*sui generis*," "novel," "unprecedented," "not rational," and having "no support in law or logic" or "reason." Br. 38-46. According to Polymer80, CPPA civil penalties cannot be assessed for "each day" a false statement "remains" on a website because such "passive" acts purportedly never constitute a CPPA "violation." Br. 40-41, 44. Rather, Polymer80 insists that CPPA "violations accrue on a transaction-by-transaction basis," Br. 5, and so only "affirmative" acts can be a CPPA "violation," such as the "actual purchase" or "sale of a product" or "the actual making or publication or a misleading statement," Br. 41.

But the CPPA's text draws no distinction between affirmative and passive acts. It prohibits "*any act*" that does or would "make available" or "provide" false or deceptive information about "goods or services." D.C. Code § 28-3901(a)(6) (emphasis added). The term "'any' has an expansive meaning," *Sharps v. United States*, 246 A.3d 1141, 1149 n.39 (D.C. 2021), and "any act" covers both "positive step[s]" as well as "passive refusal[s]," *In re Kuehn*, 563 F.3d 289, 291-92 (7th Cir. 2009) (holding that "any act to collect [a debt]" includes a "passive failure" to disclose information); *see United States v. Reingold*, 731 F.3d 204, 228-29 (2d Cir. 2013) ("Use of the word 'any' to modify 'act' signals that the phrase should be construed broadly."). Accordingly, in covering "any act"—both active (e.g., "create") and passive (e.g., "make available")—the Council did not limit CPPA violations only to "affirmative acts," as Polymer80 wrongly contends, Br. 44.

The structure of the CPPA reinforces the point. Limiting CPPA "violations" to the "sale of a product" (Br. 40-41, 44) would nullify the clear directive that CPPA violations do not require an actual sale or consumer harm, D.C. Code § 28-3904 (prohibiting "unfair or deceptive trade practice[s]," even if no "consumer" was "in fact misled, deceived, or damaged"). What's more, construing "each violation" to mean "each sale" or "each affirmative act" (Br. 41) would render the definition of "trade practice" nonsensical. One can "provide information" about a "sale" without making a sale, and one can "make available" false "information" every day for a

period of time, without taking "a distinct, intentional act" each day or a "daily, conscious decision to re-make and re-publish" such information (Br. 43, 46).

Nor does the phrase "*to engage in* an unfair or deceptive trade practice" alter this analysis. *Contra* Br. 41. "To engage in" simply means "to take part," *Merriam-Webster's Collegiate Dictionary* 413 (11th ed. 2004), and one can "engage in" a variety of behaviors "passively," *United States v. Finley*, 726 F.3d 483, 495 (3d Cir. 2013) (holding that the phrase "to engage in" does not require "active involvement"). One can "engage in" protest through silent pacifism, in fraud by withholding material information, and in charity by forgiving debts. Here, Polymer80 "engage[d] in an unfair or deceptive trade practice" each day during the relevant period by making available and providing false information to District consumers. That Polymer80 did so through the "act of not removing a statement from" its website (Br. 42) does not make its continued misconduct any less a daily CPPA "violation."

This Court's decision in *Green v. United States*, 312 A.2d 788 (D.C. 1973), is instructive. The defendant there was convicted of false advertising and ordered to pay a fine for each of the 60 days his fraudulent ad ran in the Washington Post. *Id.* at 789-90. On appeal, he challenged this per-day assessment on the theory "that there were not sixty offenses committed here but only one." *Id.* at 792. This Court rejected that view. The trial court properly "treat[ed] each daily publication of the false advertisement during the 60-day period as a separate offense," this Court held,

because a contrary rule "would frustrate rather than effectuate" the statute's "purpose of preventing the dissemination of false advertising." *Id.* As the Court explained, without a per-day assessment, fines would "become nothing more than a slight business expense," and merchants "would be undeterred from engaging in false advertising in the District of Columbia for prolonged periods of time resulting in thousands of dollars in additional profit." *Id.* Because that "is a result Congress obviously did not intend," this Court held that "each daily publication of the false advertisement" was "a separate offense." *Id.*[2]

The same logic applies here. The CPPA must "be construed and applied liberally to promote its purpose," which includes deterring "all improper trade practices." D.C. Code § 28-3901(b), (c). Yet this Court has recognized that only significant monetary fines can deter false advertising in traditional media, *see Green*, 312 A.2d at 792, and that is even more true in the digital space, where online

[2] Similar cases abound. *See, e.g.*, *May Dep't Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 971, 975-76 (Colo. 1993) (affirming penalty imposed "for each day a deceptive advertisement appeared in a particular media outlet"); *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 553 P.2d 423, 436 & n.12 (Wash. 1976) (holding that "[a] single advertisement may include a number of misrepresentation[s]" and that "[e]ach of these acts is a separate violation"); *State v. Menard, Inc.*, 358 N.W.2d 813, 814-16 (Wis. Ct. App. 1984) ("[A] violation occurs each time an improper advertisement is published."); *People v. Superior Court*, 157 Cal. Rptr. 628, 639 (Cal. Ct. App. 1979) ("[A] single publication constitutes a minimum of one violation."); *see also Commodity Futures Trading Comm'n v. Levy*, 541 F.3d 1102, 1111 (11th Cir. 2008) (similar); *United States v. Reader's Digest Ass'n Inc.*, 662 F.2d 955, 959-60, 966-67 (3d Cir. 1981) (similar).

merchants can spread false information through their websites just as, if not more, effectively than their brick-and-mortar predecessors did through daily periodicals. Polymer80's approach, however, would make CPPA violations downright *profitable* for these merchants by artificially confining the term "violation" to an "actual purchase" or other "commercial transaction," Br. 41-44. It would also nonsensically treat websites and billboards differently from newspaper or television ads without any principled basis or clear textual foundation. Because that counterintuitive rule would undermine the CPPA's purpose of deterring "all improper trade practices," D.C. Code § 28-3901(b), the trial court was right to reject it.

The trial court's calculation, moreover, was not "internally inconsistent" in starting on March 17, 2017, the date of Polymer80's first known sale of a firearm in the District. *See* Br. 38, 44-46. The court chose that date not because it was Polymer80's first CPPA "violation," but because it was a reasonable starting point that favored Polymer80. *See* JA 366-67. The court could have selected an earlier date—and thus imposed a much larger penalty—as Polymer80 displayed multiple false statements on its website each day starting at least two months *before* its first known sale in the District, JA 40-41, 185-86, and considering District consumers must have accessed and viewed the false statements on Polymer80's website—else, they could not have "purchased the 19 at-issue products" from "Polymer80's

website," Br.44. That the trial court exercised its discretion in favor of Polymer80 in choosing a starting date is no reason to overturn its decision.

None of Polymer80's cited cases advances its position. Two of those cases involved private *damages* under the CPPA, not civil penalties. *Zuckman v. Monster Beverage Corp.*, 958 F. Supp. 2d 293, 296-301 (D.D.C. 2013); *Sloan v. Soul Circus, Inc.*, No. 15-cv-1389, 2015 WL 9272838, at *5-8 (D.D.C. Dec. 18, 2015). This distinction is critical because, while an unlawful "trade practice" by itself is a predicate "violation" for CPPA civil penalties, even without consumer harm, *see supra* pp. 39-42, a "violation" for private CPPA damages must rest on a "trade practice" involving "goods or services that the individual *purchased or received*," D.C. Code § 28-3905(k)(1)(B) (emphasis added). That is why *Sloan* and *Zuckman* held that CPPA damages require actual "*purchase or receipt*," *Sloan*, 2015 WL 9272838, at *8—not because every CPPA "violation" for civil penalties does so.

Polymer80 fares no better with *American National University of Kentucky, Inc. v. Kentucky*, No. 2018-CA-000610-MR, 2019 WL 2479608 (Ky. Ct. App. June 14, 2019). That case barred "per day" fines under the Kentucky Consumer Protection Act absent a "separate, affirmative act" or "separate and conscious decision" each day that violates the Kentucky Act. *Id.* at *6-8. But this rule does not map onto District law. Unlike the CPPA, the Kentucky Act does not define the term "trade practice" at all, *see* Ky. Rev. Stat. § 367.110, let alone define it as

"*any act*"—affirmative or passive—that could "make available" or "provide" false "information" about goods or services, *see supra* pp. 39-42. Nor is *American National* consistent with this Court's decision in *Green*, which gave no indication that the defendant there took a separate, affirmative act each day his fraudulent ad ran in the Washington Post, much less that the case would have come out differently had he simply paid the Post once upfront for a 60-day run. *See Green*, 312 A.2d at 789-92. Polymer80's reliance on *American National* is thus misplaced.

III. The Superior Court's Permanent Injunction Reflects A Sound Exercise Of Its Broad Statutory And Equitable Discretion.

The CPPA empowers courts to permanently enjoin "any method, act, or practice" that violates the CPPA and to require "the violator to take affirmative action." D.C. Code § 28-3909(a); *see Mbakpuo v. Ekeanyanwu*, 738 A.2d 776, 782-83 (D.C. 1999) (noting courts' broad discretion to fashion equitable relief). Because an injunction demands "full and unstinting compliance," enjoined parties must "obey it honestly and fairly" and "take all necessary steps to render it effective." *D.D. v. M.T.*, 550 A.2d 37, 44 (D.C. 1988). They must not only stop doing "the prohibited thing," they must also not "permit it to be done by his or her connivance." *J.J. v. B.A.*, 68 A.3d 721, 724 (D.C. 2013) (quoting *D.D.*, 550 A.2d at 44).

Here, the trial court soundly exercised its discretion in entering a permanent injunction, especially given "Polymer80's alarming belief that the sale of its firearms is now legal in the District." JA 364-67. On its face, the injunction governs one

entity—Polymer80. It tells Polymer80 to stop engaging in certain conduct (e.g., selling firearms to District consumers), and to start engaging in other conduct (e.g., notifying dealers and distributors that it is illegal to sell Polymer80 firearms in the District). JA 368-69. Because none of those commands "restrains" or even "purports to restrain" a "non-party," Br. 47-48, the Superior Court's injunction comports with settled principles of law and equity, *see Lake Shore Asset Mgmt. Ltd. v. CFTC*, 511 F.3d 762, 766-67 (7th Cir. 2007) (applying Fed. R. Civ. P. 65(d)).

The same is true of the court's order that Polymer80 cannot circumvent the injunction through the simple expedient of using dealers and distributors to indirectly sell firearms in the District. *See Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945) ("[D]efendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding."). Historically, about 97% of Polymer80's revenue came from dealer and distributor sales, and now, 100% of its revenue comes from such sales. JA 39, 170-71. Without a prohibition on indirect sales through dealers and distributors, therefore, the injunction might have little or no practical effect.

Closing that loophole was neither "unfair" nor "beyond the power of the Superior Court," Br. 6. Contrary to Polymer80's assertions (Br. 47-48), nothing in the injunction renders it strictly liable for the actions of a rogue dealer who—despite Polymer80's commands—sells its products in the District. *See* JA 368-69. Rather,

the court's order is best read as simply requiring Polymer80 to make reasonable, good-faith efforts to prevent indirect sales in the District through dealers and distributors. *See* JA 368-69. So long as Polymer80 takes those steps and does not intentionally facilitate indirect sales in the District, it will not be held "responsible" for independent entities that it "does not and cannot control," Br. 6. Polymer80 has thus offered no sound reason to second-guess the Superior Court's well-crafted injunction, let alone to reopen a loophole that the court sensibly closed.

CONCLUSION

The Superior Court's decision should be affirmed in all respects.

Respectfully submitted,

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April 2023

REDACTION CERTIFICATE DISCLOSURE FORM

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:
     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayeridentification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); see also 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the

purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Bryan J. Leitch
Signature

22-CV-703
Case Number

Bryan J. Leitch
Name

April 7, 2023
Date

Bryan.leitch@dc.gov
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CERTIFICATE OF SERVICE

I certify that on April 7, 2023, this brief was served through this Court's electronic filing system to:

Mark T. Doerr

Matthew J. Wilkins

/s/ Bryan J. Leitch
BRYAN J. LEITCH

ADDENDUM

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ARTICLE 50. DEFINITIONS

Section 1. When used in these Regulations (Article 50 through 55 of the Police Regulations of the District of Columbia), unless the context requires otherwise, the terms "pistol," "sawed-off shotgun," "machine gun," "person," and "sell" and "purchase" shall have the meanings ascribed to them in the Act of Congress entitled "An act to control the possession, sale, transfer and use of pistols and other dangerous weapons in the District of Columbia," as amended, approved July 8, 1932 (47 Stat. 650, D. C. Code, sec. 22-3201 **et seq.**). Other terms used in these Regulations, unless the context otherwise requires, shall have the meanings ascribed to them as follows:

(a) "Commissioner" means the Commissioner of the District of Columbia or his designated agent.

(b) "Chief of Police" and "Chief" mean the Chief of Police of the Metropolitan Police Department of the District of Columbia or his designated agent.

(c) "District" means the District of Columbia.

(d) "Firearm" means any pistol, rifle or shotgun which will or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; or the frame or receiver of any such pistol, rifle, or shotgun; but does not include a firearm that is not designed or redesigned to use rim fire or center fire fixed ammunition or manufactured in or before 1898.

(e) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifle bore for each single pull of the trigger.

(f) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and a weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than twenty-six inches.

(g) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(h) "Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, machine gun, short-barrel rifle or sawed-off shotgun.

(i) The term "destructive device" means any firearm, weapon or automatic weapon which is not a pistol, rifle, shotgun, sawed-off shotgun or machine gun defined herein and includes any

(9) "Firearm" means any weapon which will, or is designed or redesigned, made or remade, readily converted or restored, and intended to, expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silence: Provided, That such term shall not include -

(A) antique firearms; and/or

(B) destructive devices;

(C) any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(D) any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(10) "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily converted or restored to shoot:

(A) automatically, more than one shot by a single function of the trigger;

(B) semiautomatically, more than twelve shots without manual reloading.

(11) "Organization" means any partnership, company, corporation, or other business entity, or any group or

"(A) A rifle capable of firing a center-fire cartridge in .50 BMG caliber, including a 12.7 mm equivalent of .50 BMG and any other metric equivalent; or

"(B) A copy or duplicate of any rifle described in subparagraph (A) of this paragraph, or any other rifle developed and manufactured after the effective date of the Firearms Registration Emergency Amendment Act of 2008, passed on emergency basis on December 16, 2008 (Enrolled version of Bill 17-1073), regardless of caliber, if such rifle is capable of firing a projectile that attains a muzzle energy of 12,000 foot-pounds or greater in any combination of bullet, propellant, case, or primer.".

(3) Paragraph (9) is amended by striking the phrase "any weapon which will, or is designed or redesigned, made or remade, readily converted or restored, and intended to," and inserting the phrase "any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to," in its place.

(4) A new paragraph (9A) is added to read as follows:

"(9A) "Intrafamily offense" shall have the same meaning as provided in D.C. Official Code § 16-1001(8).".

(5) Paragraph (10) is amended to read as follows:

"(10) "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term "machine gun" shall also include the frame or receiver of any such firearm, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a firearm into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.".

(6) Paragraph (12) is amended by striking the word "hand" and inserting the phrase "hand or with a barrel less than 12 inches in length" in its place.

(7) A new paragraph (12A) is added to read as follows:

"(12A) "Place of business" means a business that is located in an immovable structure at a fixed location and that is operated and owned entirely, or in substantial part, by the firearm registrant.".

(8) Paragraph (15) is amended by striking the phrase "20 inches in length' both times it appears and inserting the phrase "18 inches in length" in its place.

(b) Section 201(b) (D.C. Official Code § 7-2502.01(b)) is amended as follows: **Amend § 7-2502.01**

(1) Paragraph (3) is amended by striking the phrase "that such weapon shall be unloaded, securely wrapped, and carried in open view" and inserting the phrase "that such weapon shall be transported in accordance with section 4b of An Act To control the possession, sale, transfer and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, passed on 2nd reading on December 16, 2008 (Enrolled version of Bill 17-843); or" in its place.

(B) A copy or duplicate of any rifle described in subparagraph (A) of this paragraph, or any other rifle developed and manufactured after January 6, 2009, regardless of caliber, if such rifle is capable of firing a projectile that attains a muzzle energy of 12,000 foot-pounds or greater in any combination of bullet, propellant, case, or primer.

(9) "Firearm" means any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to, expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer; provided, that such term shall not include:

(A) Antique firearms; or

(B) Destructive devices;

(C) Any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(D) Any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(9A) "Firearms instructor" means an individual who is certified by the Chief to be qualified to teach firearms training and safety courses.

(9B) "Intrafamily offense" shall have the same meaning as provided in § 16-1001(8).

(10) "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term "machine gun" shall also include the frame or receiver of any such firearm, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a firearm into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(11) "Organization" means any partnership, company, corporation, or other business entity, or any group or association of 2 or more persons united for a common purpose.

(12) "Pistol" means any firearm originally designed to be fired by use of a single hand or with a barrel less than 12 inches in length.

(12A) "Place of business" means a business that is located in an immovable structure at a fixed location and that is operated and owned entirely, or in substantial part, by the firearm registrant.

(13) "Registration certificate" means a certificate validly issued pursuant to this unit evincing the registration of a firearm pursuant to this unit.

ENROLLED ORIGINAL

A RESOLUTION

23-377

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 3, 2020

To declare the existence of an emergency with respect to the need to amend the Firearms Control Regulations Act of 1975 to prohibit the issuance of a registration certificate for ghost guns, and to prohibit the sale or transfer of ghost guns; and to amend and An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes to prohibit the possession of ghost guns.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Ghost Guns Prohibition Emergency Declaration Resolution of 2020".

Sec. 2. (a) The term "ghost gun" may be used to refer generally to guns that are undetectable, untraceable, or both. The term "ghost gun" includes firearms built to avoid detection, missing serial numbers, able to be manufactured using 3-D printers and other cutting-edge technology, or able to be manufactured or assembled through commercially available kits and without the expenditure of substantial time and effort.

(b) Undetectable guns pose an imminent threat to public safety because they may thwart security screening systems and endanger people, particularly in any building or at any event requiring visitors to be screened to gain entrance.

(c) Untraceable guns pose an imminent threat because they are readily available to individuals prohibited from purchasing or possessing a commercially-manufactured firearm and because untraceable gun trafficking occurs outside the scope of existing background checks, serial numbering, waiting periods, manufacturing quality control, and other established means of firearm regulation.

(d) As part of its longstanding and common sense gun regulation policy, the District of Columbia prohibits the unlicensed manufacturing, sale, or possession of firearms, and as such, District law contains prohibitions that could be applied to ghost guns, but need to be explicitly applicable.

(e) In just one year, between 2018 and 2019, the District saw a 364% increase in the recovery of ghost guns. In 2017, the Metropolitan Police Department recovered only 3 ghost

guns in the District; in 2018, 25 ghost guns were recovered; and in 2019, 116 ghost guns were recovered. In just the first 6 weeks of this year, 28 ghost guns have already been recovered.

(f) The types of ghost guns recovered in the District include handguns and rifles, including assault weapons such as AR-15s. Ghost guns have been used in the commission of violent crimes, including at least one homicide and at least one instance where Metropolitan Police Department officers were targeted for assassination.

(g) There is an immediate need to clarify that District law prohibits the manufacture, sale, and possession of untraceable or undetectable firearms in the District of Columbia in order to protect the lives of residents, workers, and visitors.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Ghost Guns Prohibition Emergency Amendment Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

"(b) The Working Group may also request the participation of other subject matter experts, as well as designees of the following:

"(1) The Chief Judge of the Superior Court of the District of Columbia; and

"(2) The United States Attorney for the District of Columbia.

"(c) The Chairperson of the Council's Committee on the Judiciary and Public Safety and the Deputy Mayor for Public Safety and Justice shall serve as the co-chairs of the Working Group.

"(d) The duties of the Working Group shall include:

"(1) Improving public awareness of extreme risk protection orders;

"(2) Improving the coordination of District and federal agencies regarding the filing, adjudication, and execution of extreme risk protection orders;

"(3) Facilitating the education of behavioral and mental health professionals about extreme risk protection orders;

"(4) Advancing the development of District government policies and procedures to govern extreme risk protection orders, such as written directives of the Metropolitan Police Department; and

"(5) Reviewing and incorporating best practices from other jurisdictions concerning extreme risk protection order laws, policies, and procedures.

"(e) This section shall expire on January 1, 2023.".

TITLE II. GHOST GUNS PROHIBITION

Sec. 201. The Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 7-2501.01) is amended as follows:

(1) Paragraph (9B) is designated as paragraph (9C).

(2) A new paragraph (9B) is added to read as follows:

"(9B) "Ghost gun":

"(A) Means:

"(i) A firearm that, after the removal of all parts other than a receiver, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

"(ii) Any major component of a firearm which, when subjected to inspection by the types of detection devices commonly used at secure public buildings and transit stations, does not generate an image that accurately depicts the shape of the component; and

"(B) Includes an unfinished frame or receiver.".

(3) A new paragraph (12B) is added to read as follows:

"(12B) "Receiver" means the part of a firearm that provides the action or housing for the hammer, bolt, or breechblock and firing mechanism.".

(4) A new paragraph (15A) is added to read as follows:

ENROLLED ORIGINAL

"(15A) "Security Exemplar" means an object, to be fabricated at the direction of the Mayor, that is:

"(A) Constructed of 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

"(B) Suitable for testing and calibrating metal detectors.".

(5) A new paragraph (17B) is added to read as follows:

"(17B)(A) "Unfinished frame or receiver":

"(i) Means a frame or receiver of a firearm that is not yet a component part of a firearm, but which may without the expenditure of substantial time and effort be readily made into an operable frame or receiver through milling, drilling, or other means; and

"(ii) Includes any manufactured object, any incompletely manufactured component part of a firearm, or any combination thereof that is not a functional frame or receiver but is designed, manufactured, assembled, marketed, or intended to be used for that purpose, and can be readily made into a functional frame or receiver.

"(B) For the purposes of this paragraph, the term:

"(i) "Manufacture" means to fabricate, make, form, produce or construct, by manual labor or by machinery; and

"(ii) "Assemble" means to fit together component parts.".

(b) Section 202(a) (D.C. Official Code § 7-2502.02(a)) is amended as follows:

(1) Paragraph (6) is amended by striking the phrase "; or" and inserting a semicolon in its place.

(2) Paragraph (7) is amended by striking the period and inserting the phrase "; or" in its place.

(3) A new paragraph (8) is added to read as follows:

"(8) Ghost gun.".

(c) Section 501 (D.C. Official Code § 7-2505.01) is amended by striking the phrase "destructive device" and inserting the phrase "destructive device, ghost gun, unfinished frame or receiver," in its place.

Sec. 202. An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code § 22-4501 *et seq.*), is amended as follows:

(a) Section 1 (D.C. Official Code § 22-4501) is amended by adding a new paragraph (2B) to read as follows:

"(2B) "Ghost gun" shall have the same meaning as provided in section 101(9B) of the Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501.01(9B)).".

tion, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

Ante, p. 226.

SEC. 102. Chapter 44 of title 18, United States Code, is amended to read as follows:

"Chapter 44.—FIREARMS

"§ 921. Definitions

"(a) As used in this chapter—

"(1) The term 'person' and the term 'whoever' include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

"(2) The term 'interstate or foreign commerce' includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

"(3) The term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

"(4) The term 'destructive device' means—

"(A) any explosive, incendiary, or poison gas—

"(i) bomb,

"(ii) grenade,

"(iii) rocket having a propellant charge of more than four ounces,

"(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

"(v) mine, or

"(vi) device similar to any of the devices described in the preceding clauses;

§ 5847. Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary for carrying the provisions of this chapter into effect. (Aug. 16, 1954, ch. 736, 68A Stat. 726.)

§ 5848. Definitions.

For purposes of this chapter—

(1) Firearm.

The term "firearm" means a shotgun having a barrel or barrels of less than 18 inches in length, or a rifle having a barrel or barrels of less than 16 inches in length, or any weapon made from a rifle or shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

(2) Machine gun.

The term "machine gun" means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger.

(3) Rifle.

The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(4) Shotgun.

The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(5) Any other weapon.

The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, but such term shall not include pistols or revolvers or weapons designed, made or intended to be fired from the shoulder and not capable of being fired with fixed ammunition.

(6) Importer.

The term "importer" means any person who imports or brings firearms into the United States for sale.

(7) Manufacturer.

The term "manufacturer" means any person who is engaged within the United States in the business of manufacturing firearms, or who otherwise produces therein any firearm for sale or disposition.

(8) Dealer.

The term "dealer" means any person not a manufacturer or importer, engaged within the United States in the business of selling firearms. The term "dealer" shall include wholesalers, pawnbrokers, and dealers in used firearms.

(9) Interstate commerce.

The term "interstate commerce" means transportation from any State or Territory or District, or any insular possession of the United States, to any other State or to the District of Columbia.

(10) To transfer or transferred.

The term "to transfer" or "transferred" shall include to sell, assign, pledge, lease, loan, give away, or otherwise dispose of.

(11) Person.

The term "person" includes a partnership, company, association, or corporation, as well as a natural person.

(Aug. 16, 1954, ch. 736, 68A Stat. 727; Sept. 2, 1958, Pub. L. 85-859, title II, § 203(f), 72 Stat. 1427; June 1, 1960, Pub. L. 86-478, § 3, 74 Stat. 149.)

AMENDMENTS

1960—Pub. L. 86-478 included within the definition of "firearm" in par. (1), any weapon made from a rifle or shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches, and excluded rifles having barrels between 16 and 18 inches in length.

1958—Pub. L. 85-859 substituted "designed or redesigned and made or remade" for "designed and made" in pars. (3) and (4), and "the business of manufacturing firearms" for "the manufacture of firearms" in par. (7).

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-478 effective on the first day of the first month which begins more than 10 days after June 1, 1960, and, for purposes of the rate of the special tax imposed by section 5801 of this title, shall apply with respect to periods beginning after June 30, 1960, see section 5 of Pub. L. 86-478, set out as a note under section 5801 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5849. Citation of chapter.

This chapter may be cited as the "National Firearms Act" and any reference in any other provision of law to the "National Firearms Act" shall be held to refer to the provisions of this chapter. (Added Pub. L. 85-859, title II, § 203 (g) (1), Sept. 2, 1958, 72 Stat. 1427.)

EFFECTIVE DATE

Section effective on Sept. 3, 1958, see section 210(a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

Subchapter C.—Unlawful Acts

AMENDMENTS

1958—Pub. L. 85-859, title II, § 203 (h)(3), (i)(2), Sept. 2, 1958, 72 Stat. 1428, substituted "Possessing firearms illegally" for "Possessing firearms unlawfully transferred or made" in item 5851, and "Failure to register and