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17 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

18 STEVEN C. JOHNSON, an individual, on behalf of  
19 himself and all others similarly situated,

CASE NO.: 3:20-cv-08807-WHO

20 Plaintiff,

**PLAINTIFF’S NOTICE OF MOTION,**  
**MOTION FOR CLASS**  
**CERTIFICATION AND SUPPORTING**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES**

21 vs.

22 GLOCK, INC., a Georgia Corporation; GLOCK  
23 Ges.m.b.H, an Austrian entity; JOHN and JANE  
DOES I through V; ABC CORPORATIONS I-X,  
24 XYZ PARTNERSHIPS, SOLE  
25 PROPRIETORSHIPS and/or JOINT VENTURES I-  
X, GUN COMPONENT MANUFACTURERS I-V,

Judge: Hon. William H. Orrick  
Date: February 28, 2024  
Time: 2:00 p.m.  
Place: Courtroom 2, 17th Floor

26 Defendants.  
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Fed. R. Civ. P. 23(c)(4) ..... 25

**NOTICE OF MOTION**

1

2 PLEASE TAKE NOTICE that on February 28, 2024 at 2:00 p.m., before the Honorable

3 William H. Orrick, in Courtroom 2, 17<sup>th</sup> Floor, of the U.S. District Court for the Northern District of

4 California, San Francisco Division, at 450 Golden Gate Avenue, San Francisco, California, Plaintiff

5 Steven C. Johnson on behalf of himself and all others similarly situated (“Plaintiff”) will move the

6 Court for an order certifying this matter as a class action pursuant to Federal Rule of Civil Procedure

7 23. In particular, Plaintiff seeks certification of a class of consumers who purchased any Glock pistol

8 designed to shoot the following calibers: (1) 10mm, (2) 40 S&W, (3) 9mm, (4) 45 ACP, (5) 45 GAP,

9 (6) .380, and (7) .357 Sig. in the State of California since introduced into the stream of commerce by

10 Defendants (“Class Guns”) <sup>1</sup>. All of these pistol models have a substantially similar chamber design

11 and feed ramp length. Plaintiff asks that the Court certify the class pursuant to Rule 23, appoint Steven

12 C. Johnson as Class Representative, and appoint his counsel as Class Counsel.

13

14

**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

15

16

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] Accordingly, Plaintiff asserts

25 individual and class claims for the failure to disclose and concealment of a serious safety issue

26

27 <sup>1</sup> Glock Class Gun models: [REDACTED]

28 [REDACTED] and all sub-models and generations.

1 involving guns designed, manufactured, assembled, imported, and marketed by Glock Ges.m.b.H and  
2 Glock, Inc. (“Glock Defendants” or collectively “Glock”). As common issues pervade the asserted  
3 causes of action and claimed damages, this case is particularly well-suited for resolution as a class  
4 action and satisfies all the requirements for certification of a class under Rule 23(b)(3).

5  
6 Firearms are the only consumer products sold in the United States that are not subject to  
7 federal oversight or regulations for safety or design standards.<sup>2</sup> In fact, due to successful lobbying  
8 efforts of the firearm industry, a federal statute prohibits the Consumer Product Safety Commission  
9 (CPSC), the unit of the government that normally regulates safety for consumer items, from  
10 promulgating any rules or specifications for firearms or ammunition. *See* 15 U.S.C. § 2052(a)(5)(E).  
11 Instead, it is incumbent upon firearms manufacturers and sellers to effectively “self-regulate” by  
12 ensuring their products are safe for ordinary use and, at issue here, adequately informing consumers  
13 of safety risks inherent in their design or manufacturing. The lack of regulation has allowed Glock to  
14 sell to California consumers guns that [REDACTED]

15  
16 [REDACTED] Glock has not  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 Glock has profited from its misconduct as it has sold the Class Guns at a much higher price  
22 than they are actually worth. Had Glock disclosed the true danger of the guns with the UCD, it is  
23 unlikely Glock would have sold them at any price. The essential elements of the claims against Glock  
24 will be established by common proof. Class certification here is appropriate and necessary to hold  
25 Glock accountable for its misconduct and compensate those damaged by its conduct.  
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27  
28 <sup>2</sup> *See* Dru Stevenson, Smart Guns, the Law, and the Second Amendment, 124 Penn St. L. Rev. 691, 701 (2020).

STATEMENT OF FACTS

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. Ex A, [REDACTED] Depo (2023), 20:16- 21:18.<sup>3</sup> [REDACTED]  
[REDACTED]  
[REDACTED] Id. at 25:10-25:21; 111:4-21. [REDACTED]  
[REDACTED] Id.

**A. The Defect – The Unsupported Chamber**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Id. 35:4-12. Engineers John Nixon and Dr. David Bosch explain the [REDACTED] in detail in their reports. Ex F, Nixon Decl.; see also Ex G, Bosch Decl.<sup>5</sup> A simple explanation is that Glock [REDACTED]  
[REDACTED]  
[REDACTED]

<sup>3</sup> Plaintiff has attached all Exhibits to the Declaration of Robert K. Lewis in Support of Plaintiff’s Motion for Class Certification (“Lewis Decl.”), which is being filed contemporaneously with this Motion.

<sup>4</sup> These models include all pistols designed to shoot the following calibers: [REDACTED]  
[REDACTED]

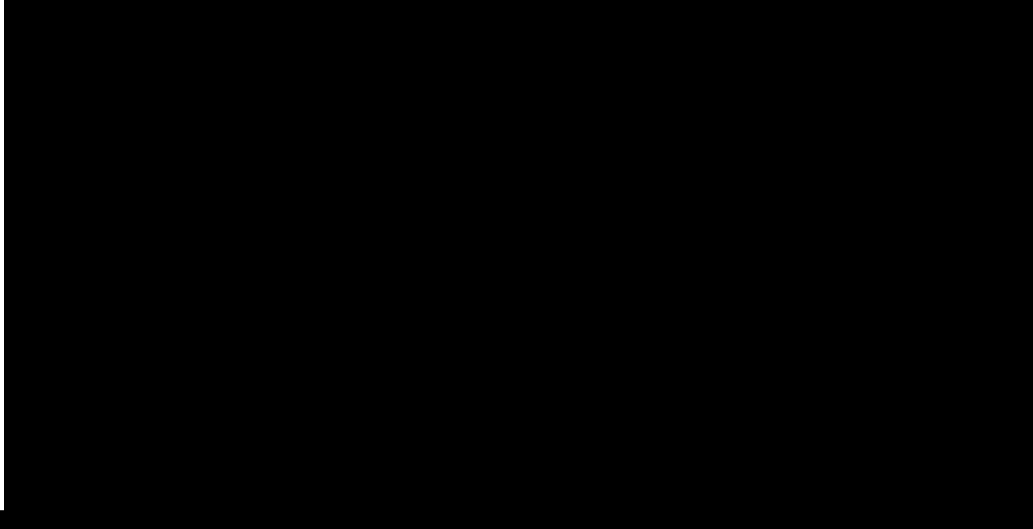
<sup>5</sup> The reports of John Nixon and David Bosch include references to additional documents which Plaintiff has not specifically cited or referenced in this brief. For the Court’s ease of reference, Plaintiff has attached these documents to the Declaration of Robert K. Lewis. The expert reports are provided for the purposes of this motion, and full liability reports will be provided after certification.

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[REDACTED]. Ex F, Nixon Decl., ¶¶ 17-18. [REDACTED]

[REDACTED]

[REDACTED] Ex A, [REDACTED] (2023), 39:22-40:10; Ex B, [REDACTED] Depo (2018),  
19:16-19:24.



[REDACTED] [Figure redacted]

[REDACTED]

[REDACTED]

[REDACTED] Ex F, Nixon Decl., ¶¶ 23-24. In a Glock,

however, [REDACTED]

[REDACTED] d.

In a Glock, [REDACTED]

[REDACTED]

[REDACTED]. Ex F, Nixon Decl., ¶¶ 23-24; Ex G, Bosch Decl.; Concl. &

Op., Ex A, [REDACTED] (2023), 17:8-18:11. [REDACTED]

[REDACTED]

[REDACTED]. Ex C, [REDACTED] Depo (2023), 95:22-

96:5. [REDACTED]

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[REDACTED]

[REDACTED]. Ex B, [REDACTED] (2018)

17:8-18:12, 19:16-24; Ex F, Nixon Decl., ¶ 21. Glock admits, however, that [REDACTED]

[REDACTED] Ex A,

[REDACTED] (2023), 104:7-105:4; Ex F, Nixon Decl., ¶¶ 38-39. Glock claims, however, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at ¶ 39; Ex Y, [REDACTED] JOHNSON\_001808, 1811.

[REDACTED]

[REDACTED]. Ex A, [REDACTED] (2023), 75:3-75:17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex C, [REDACTED] (2023), 254:21-256:20. [REDACTED]

[REDACTED]

**B. The Unsupported Chamber is Dangerous**

Glock’s claim that [REDACTED]

[REDACTED]

Ex F, Nixon Decl., ¶ 48. [REDACTED]

[REDACTED]. *Id.* at ¶¶ 41, 42, 48; *see generally*

Ex W, Kaboom Chart & Customer Claims. [REDACTED]

[REDACTED]

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See *Id.*; **Ex F**, Nixon Decl., ¶ 48; **Ex X**, Gary Brown Kaboom.

**Ex F**, Nixon Decl., ¶ 41-42; **Ex W**, Kaboom Chart & Customer Claims; **Exs Z-FF**, Lawsuits.

**Ex C**, (2023), 34:3-35:2.

**Ex C**, (2023) 254:21-256:20.

*Id.* at 78:10-18.

**Ex F**, Nixon Decl., ¶ 41-42; **Ex W**, Kaboom Chart & Customer Claims; **Ex Z-FF**, Lawsuits.

**Ex. W**, which

**Ex F**, Nixon Decl., ¶ 40.

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[Redacted] *Id.*

**C.** [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]

[Redacted]	[Redacted]
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[Redacted]

[Redacted] **Ex. I** at GGES000014.

[Redacted]

[Redacted]

[Redacted]

**Ex A,** [Redacted] (2023), 102:4-103:15. [Redacted]

[Redacted]

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[REDACTED]  
[REDACTED]  
**Ex J,** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] **Ex C.,**

Gueverra 2023 106:15-20.

**D. Glock Has Concealed the Defect for Decades**

[REDACTED] **Ex A,**  
[REDACTED] (2023), 108:10-109:10; 132:12-133:7; **Ex C,** [REDACTED] (2023), 224:8-225:25. [REDACTED]  
[REDACTED]  
[REDACTED] **Ex C,** [REDACTED] (2023), 224:8-230:24. [REDACTED]  
[REDACTED] *Id.*  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] *Id.* at 227:5-227:15; **Ex A,** [REDACTED] (2023), 132:12-  
133:7. [REDACTED] **Ex C,** [REDACTED] (2023),  
227:25-229:22; **Ex E,** [REDACTED] GINC008008. [REDACTED]  
[REDACTED] *Id.* According to Glock, [REDACTED]

<sup>6</sup> **Ex W** [REDACTED]  
[REDACTED] **Ex C,** [REDACTED] (2023), 254:21-256:20; **Ex Z-FF,** Lawsuits. Further, in nearly every  
case, Glock has insisted that the case files be kept under seal and confidential. **Ex C,** 192:25-193:2.

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[REDACTED]

[REDACTED]. *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **Ex GG**, Press Releases.

Glock does not disclose the nature of its design or the harm it causes. It works diligently to prevent the public from learning of this hazard. And when the information is made public, Glock immediately denies it and misrepresents the existence of the risk to the public.

**E. Glock Has Profited and Will Continue to Profit from Its Misconduct**

Glock put the public at risk and profited from its concealment of the defect. Specifically, by concealing the UCD and the safety issues it causes, Glock was able to sell Class Guns at prices normally charged for non-defective guns. Had Plaintiff and putative class members known about the UCD and [REDACTED], they would not likely have purchased the Glock Class. Thus, the Class Guns were worth nothing. Plaintiff stated in his declaration that he would not have paid anything for his pistol had he known the truth about the safety hazard inherent in the design due to the UCD **Ex KK**, Johnson Decl., ¶ 9. Further, there is substantial evidence that no reasonable consumer would have purchased their Glock pistols had they known about the safety hazard caused by the design. [REDACTED]

1 [REDACTED]. **Ex W**, Kaboom Chart & Customer  
2 Claims. [REDACTED]

3 [REDACTED]. **Ex F**, Nixon Decl., ¶ 40, **Ex M**, Foxworth Memo. Alternatively,  
4 to assess the financial harm Glock caused consumers at the point of sale, Plaintiff’s counsel has also  
5 retained two expert witnesses, Steven Gaskin and Colin Weir. The experts will measure damages  
6 based on conjoint analysis, which uses a combination of economic theory, statistics, and survey data  
7 to estimate the decrease in market value that would have resulted had Glock disclosed the UCD, and  
8 the safety issues it creates, at the time and point of sale. **Ex HH**, Gaskin Decl.; *see* **Ex II**, Weir Decl.

10 **F. Plaintiff and His Claims Against Glock**

11 Plaintiff Steven Johnson is an experienced gun user with a law enforcement background. He  
12 purchased a Class Gun, a Glock 30 SF (Short Frame) .45 caliber gun on or about April 15, 2016. **Ex**  
13 **JJ**, Johnson Dep., 195:6-13. Johnson learned about the UCD in 2020, and since that time, he has not  
14 used the Class Gun because of the safety risks posed. **Ex KK**, Johnson Decl., ¶¶ 7-8. Further, he  
15 would not have purchased the Class Gun had he known of the undisclosed defect. *Id.* ¶ 9. Plaintiff  
16 filed suit individually and on behalf of a class of all persons who bought Class Guns in California,  
17 and the Third Amended Complaint sets forth four causes of action: (1) a claim for violation of the  
18 Consumer Legal Remedies Act, Cal. Civil Code § 1761 et seq. (“CLRA”), (2) a claim for fraudulent  
19 omission, (3) a claim for violation of the Unfair Business Practices Act, Cal. Bus. & Prof. Code §  
20 17200 et seq. (“UBP”), and (4) violation of the False Advertising law, Cal. Bus. & Prof. Code, §  
21 17500 et seq (“FAL”). As noted, Plaintiff seeks relief on behalf of himself and all persons similarly  
22 situated who bought Class Guns in California. The proposed class is defined as: All current and  
23 former consumers of Class Guns that were purchased in the State of California.<sup>7</sup>  
24  
25  
26  
27

28 <sup>7</sup> Glock models: [REDACTED] sub-models and generations.

**ARGUMENT AND CITATIONS OF AUTHORITY****I. STANDARD FOR CERTIFICATION OF A CLASS ACTION**

In evaluating whether it is appropriate to certify an action as a class action, the Court must conduct a rigorous analysis of whether plaintiff has satisfied the requirements of Rule 23 by a preponderance of the evidence. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348-50 (2011); *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012); *Conn. Ret. Plans & Trust Funds v. Amgen Inc.*, 660 F.3d 1170, 1175 (9th Cir. 2011). This analysis is a two-step process. *In re JUUL Labs, Inc., Mkt. Sales Practices and Prod. Liab. Lit.*, 609 F. Supp. 3d 942, 959 (N.D. Cal. 2022). First, the Court must determine if the four requirements of Rule 23(a) have been met, namely numerosity, commonality, typicality, and adequacy of representation. Second, the Court must examine whether one of the grounds for certification under Rule 23(b) are present. Specifically, Rule 23(b)(3) requires that “the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). At the class certification stage, Plaintiff need not establish that he will succeed on the merits at trial, as Rule 23 “grants courts no license to engage in free-ranging merits inquiries at the certification stage.” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013). Instead, courts are “merely to decide a suitable method of adjudicating the case and should not ‘turn class certification into a mini-trial’ on the merits.” *Edwards v. First Am. Corp.*, 798 F.3d 1172, 1178 (9th Cir. 2015). The possibility that Plaintiff may not prove his allegations is insufficient reason “for declining to certify a class which apparently satisfies Rule 23.” *Marsh v. First Bank of Del.*, 2014 WL 554553, at \*4 (N.D. Cal. Feb. 7, 2014). As shown below, Plaintiff meets these requirements.

**II. THE REQUIREMENTS OF RULE 23(a) ARE SATISFIED****A. Numerosity**

Rule 23(a)(1) requires a plaintiff to show that “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Courts usually consider 40 members to be enough. *Vizcarra v. Unilever United States, Inc.*, 339 F.R.D. 530, 543 (N.D. Cal. 2021). Proof of an exact number is not required. *In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 350 (N.D. Cal. 2005). Here, the numerosity requirement is satisfied. The California Department of Justice has provided proof of 505,392 sales of certain Class Guns since 2001. Decl. of Robert K. Lewis, ¶ 40. This is incomplete information. *Id.* There are outstanding discovery requests for the remaining sales information. Plaintiff expects the class will exceed 1,000,000 members. Joinder is obviously impractical.

**B. Commonality**

Common questions of law or fact must exist among class members. Fed. R. Civ. P. 23(a)(2). “Rule 23(a)(2) has been construed permissively.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). A class may be certified where class members have shared legal issues but divergent facts or, alternatively, where they have a common nucleus of facts but seek relief under different legal theories. *Id.* “[C]ommonality requires that the class members’ claims ‘depend upon a common contention’ such that ‘determination of its truth or falsity will resolve an issue that is central to the validity of each claim in one stroke.’” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (quoting 564 U.S. at 351). Courts frequently analyze statutory claims under the UCL, FAL, and CLRA (and fraudulent omission claims) together for purposes of class certification. *See Zeiger v. Wellpet, LLC*, 2021 WL 756109, at \*25 (N.D. Cal. Feb. 26, 2021); *Hadley v. Kellogg Sales Co.*, 324 F. Supp. 3d 1084, 1093 (N.D. Cal. 2018).

Here, there are common questions of fact and law. Namely: (1) the nature of the UCD (which

1 is common to all class members); (2) Glock’s knowledge about the UCD ; (3) Glock’s concealment  
2 of the defect; (4) whether reasonable consumers would likely have been deceived by Glock’s  
3 omissions about the defect and would have found the misrepresented or omitted information material;  
4 (5) whether Glock’s acts and omissions violated the UCL, FAL, and CLRA; and (6) the amount of  
5 restitution available to consumers under California law.  
6

### 7 **C. Typicality**

8 Rule 23(a) requires that “the claims or defenses of the representative parties are typical of the  
9 claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The “test of typicality is whether other  
10 members have the same or similar injury, whether the action is based on conduct, which is not unique  
11 to the named plaintiffs, and whether other class members have been injured by the same course of  
12 conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). To satisfy the typicality  
13 requirement, the plaintiff’s claims must be “reasonably co-extensive with those of absent class  
14 members; they need not be substantially identical.” *Castillo v. Bank of Am., NA*, 980 F.3d 723, 730  
15 (9th Cir. 2020). Typicality is “satisfied when each class member’s claim arises from the same course  
16 of events, and each class member makes similar legal arguments to prove the defendant’s liability.”  
17 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001).  
18  
19

20 Here, Johnson’s claims are typical of the members of the class. Each member purchased a  
21 Glock pistol that contained the same defect. Glock made no disclosure to any of them about the defect.  
22 Glock universally concealed the existence of the defect to all members. Each of them purchased the  
23 Glock pistol at a price they would pay without knowledge of the defect. The consumer protection  
24 statutes (UCL, FAL, and CLRA) use an objective reasonable person standard. The proof necessary  
25 to establish these claims are the same for Plaintiff and the class because “the injury under the UCL,  
26 FAL and CLRA is established by an objective test. Specifically, this objective test states that injury  
27 is shown where the consumer has purchased a product that is marketed with a material  
28

1 misrepresentation, that is, in a manner such that ‘members of the public are likely to be deceived.’”  
2 *Bruno v. Quten Research Inst., LLC*, 280 F.R.D. 524, 534 (C.D.Cal. 2011). Thus, proof of Glock’s  
3 *universal* concealment of the UCD and the serious safety issues it creates forms the basis of Plaintiff’s  
4 claims as well as the claims of other class members.

5  
6 The defenses that Johnson faces are also typical. Glock asserted the statute of limitations  
7 defense in response to the complaint. The statute of limitations defense may only defeat typicality  
8 “where only the class representative is *uniquely* subjected to a statute of limitations defense.” *Aberin*  
9 *v. Am. Honda Motor Co.*, 2021 WL 1320773 at \*16 (N.D. Cal. March 23, 2021) (emphasis in  
10 original). But where, as here, the Plaintiff alleges class wide concealment, a statute of limitations  
11 defense is typical. *Id.* Here, Johnson alleged class wide concealment and delayed discovery. Third  
12 Amended Complaint, ¶¶ 74-82 [Doc 60]. Both ██████████ General Counsel for Glock, and ██████████  
13 ██████████ former Chief of Technical Development, admit that Glock ██████████  
14 ██████████. Ex A, ██████████ (2023),  
15 108:10-109:10, 132:12-133:7; Ex C, ██████████ (2023), 224:8-225:25.

16  
17 The recent case of *Beaver v. Omni Hotels Mgmt. Corp.*, 2023 WL 6120685 at \* 6-7 (S.D. Cal.  
18 Sept. 18, 2023), further illustrates the application of this rule under similar circumstances. There, the  
19 Court held a statute of limitations defense did not defeat typicality where, as here, the statute of  
20 limitations defense is potentially available to a majority of the class. *See also Corcoran v. CVS*  
21 *Health*, 2019 WL 6250972 at \*5 (C.D. Cal. Nov. 22, 2019) (finding typicality was present where  
22 defendants had made “no actual showing that [plaintiffs] are uniquely subjected to the statute of  
23 limitation.”). Here, every member of the class was subject to Glock’s common concealment and cover  
24 up of the UCD and related safety hazards. And, as a result of Glock’s active concealment, the majority  
25 of the class members Mr. Johnson seeks to represent also fall outside the applicable statute of  
26  
27  
28

1 limitations<sup>8</sup> based on the same common fraudulent concealment by Glock. In fact, the sales  
2 information provided by the State DOJ establishes that 69 percent of the class purchased their guns  
3 before October 1, 2017, and 31 percent purchased their guns after October 1, 2017. Declaration of  
4 Robert K. Lewis, ¶ 40.

5 Accordingly, both Plaintiff's claims and the defenses he faces are typical of the class.

6  
7 **D. Adequacy of Representation**

8 Rule 23(a) also requires the representative parties to "fairly and adequately protect the  
9 interests of the class." Fed. R. Civ. P. 23(a)(4). The Ninth Circuit set a two-prong test for this  
10 requirement: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other  
11 class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on  
12 behalf of the class?" *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003) (citing *Hanlon*, 150 F.3d  
13 at 1020). In this case, Plaintiff Steven Johnson is a former law enforcement officer trained in the use  
14 of firearms at Oakland's police academy. **Ex JJ**, Johnson Dep., 80:1-81:1. He has owned handguns  
15 manufactured by several manufacturers, including two Glock pistols. *Id.* at 86:25-87:3, 112:20-113:4,  
16 136:4-6. His claims are identical to those of other class members. Johnson contacted counsel  
17 originally and has actively participated in the prosecution of the case. *e.g.*, *Id.* at 36:3-6, 40:12-20;  
18 **Ex KK**, Johnson Decl., ¶¶ 12-16.

19  
20  
21 Johnson has retained highly experienced and qualified counsel. Kiesel Law LLP has served  
22 as class counsel in a variety of class actions in this district and nationally. **Ex OO**, Kiesel Law, LLP  
23 Resumes. Lewis and Lewis Trial Lawyers, PLC has represented consumers in products cases, cases  
24

25  
26  
27 <sup>8</sup> The statute of limitations for two of Plaintiff's statutory claims (CLRA and FAL) are  
28 generally three years and the UCL claim is four years. All of these claims are subject to the discovery  
rule, as well as the tolling doctrine of fraudulent concealment. *See, e.g.*, DE 73 (Court Order on  
Motion to Dismiss Third Amended Complaint). All class members are subject to the same exception  
to the statute of limitations.

1 relating to firearms and firearm safety and litigated numerous cases with complex engineering issues.  
2 **Ex PP**, Lewis and Lewis Trial Lawyers, PLC Resumes. Weinberg Wheeler Hudgins Gunn & Dial,  
3 LLC (“WWHGD”) has broad experience representing plaintiffs and defendants in class actions across  
4 the country. **Ex QQ**, WWHGD Resume. Other district courts have recently recognized WWHGD as  
5 “extremely capable counsel from [a] prominent national law firm ...who were highly competent  
6 adversaries” in the context of class action litigation involving consumer protection statutes. *See*  
7 *Taylor v. Serv. Corp. Int’l*, 2023 WL 2346295, at \*7 (S.D. Fla. Mar. 3, 2023). Neither Plaintiff nor  
8 counsel have any conflicts of interest with class members and are committed to pursuing this matter  
9 to its conclusion.  
10

11  
12 Further, Plaintiff can adequately represent class members who bought Glock models other  
13 than the one he purchased. The definition of Class Guns limits the affected class to those buying a  
14 gun with the same defect, namely the UCD. As observed in *Beyer v. Symantec Corp.*, 333 F. Supp.  
15 3d 966, 973 (N.D. Cal. 2018) “[t]his Court, like others in the Northern District, has held that a plaintiff  
16 may proceed on class claims against unpurchased products if they are ‘substantially similar’ to  
17 products he has purchased.” *Id. See also Swearingen v. Late July Snacks LLC*, 2017 WL 4641896, at  
18 \*5 (N.D. Cal. Oct. 16, 2017) (quoting *Astiana v. Dreyer’s Grand Ice Cream, Inc.*, 2012 WL 2990766  
19 (N.D. Cal. July 20, 2012). As noted, all Class Guns suffer from a common defect, namely the UCD.  
20 Josef Kroyer admits that the chamber design is “substantially similar” in all class guns. **Ex A**, Kroyer  
21 (2023), 75:3-75:17.  
22

23  
24 Mr. Johnson has actively and meaningful engaged in this litigation from the inception of this  
25 case, including working with counsel to review pleadings, answer discovery, collect documents,  
26 review depositions and document production, and sit for a seven (7) hour deposition. **Ex KK**, Johnson  
27 Decl., ¶¶ 12-16. In short, Mr. Johnson and his counsel the class will ably represent the class.  
28

### III. THE REQUIREMENTS OF RULE 23(b)(3) ARE SATISFIED

Class certification also requires that the plaintiff satisfy one of the provisions of Rule 23(b). For a damages class, Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”

#### A. Predominance

Predominance under Rule 23(b)(3) asks whether a putative class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). Predominant questions are those that make up “a significant aspect of the case” and clearly justify “handling the dispute on a representative rather than on an individual basis.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998); *In re JUUL Labs*, 609 F. Supp. 3d at 967. Further, under *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), as part of the predominance inquiry, a plaintiff must demonstrate that “damages are capable of measurement on a classwide basis.” *Id.* at 34. Plaintiff’s damages model must be consistent with the theory of liability by measuring “only those damages attributable to that theory.” *Id.* at 35. As demonstrated below, common issues predominate for each of the causes of action asserted. The core facts are: (1) the existence of the defect, (2) failure to disclose, (3) Glock’s concealment, and (4) damages and economic loss.

#### 1. Consumer Protection Statutes

Here, Plaintiff asserts claims under three California consumer protection statutes, the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq., (the “UCL”), the False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq. (“FAL”) and the Consumer Legal Remedies Act, Cal. Civ. Code § 1761 et seq. (“CLRA”). While these three causes of action are defined somewhat differently, the same common proof can establish three claims. Specifically, the UCL prohibits “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising,”

1 *id.* § 17200. *Block v. eBay, Inc.*, 747 F.3d 1135, 1140 (9th Cir. 2014). The FAL prohibits the  
2 dissemination of any advertising “which is untrue or misleading, and which is known, or which by  
3 the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code  
4 § 17500. And the CLRA makes unlawful various “unfair methods of competition and unfair or  
5 deceptive acts or practices undertaken by any person in a transaction intended to result or which  
6 results in the sale . . . of goods . . . to any consumer.” Cal. Civ. Code § 1770(a).

8 By the terms of these statutes, a claim is established where the defendant knowingly engages  
9 in a deceptive act or practice, including a misstatement or omission, that is material and causes  
10 damage to the plaintiff. An objective standard is applicable to determine whether there is an  
11 actionable deceptive practice. *See Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995) (“[T]he  
12 false or misleading advertising and unfair business practices claim must be evaluated from the  
13 vantage of a reasonable consumer.”) (citation omitted). *Hadley*, 324 F. Supp. 3d at 1094–96. “[T]o  
14 state a claim under either the UCL or the false advertising law, based on false advertising or  
15 promotional practices, it is necessary *only* to show that members of the public are likely to be  
16 deceived.” *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1020 (9th Cir. 2011) (citing *In re Tobacco*  
17 *II Cases*, 46 Cal. 4th 298 (2009)). “‘Likely to deceive’ . . . indicates that the ad[vertisement] is such  
18 that it is probable that a significant portion of the general consuming public or of targeted consumers,  
19 acting reasonably in the circumstances, could be misled.” *Lavie v. Procter & Gamble Co.*, 105 Cal.  
20 App. 4th 496, 508 (2003).

21 Further, in the case of an omission claim, there is a duty to disclose where a design defect  
22 causes an unreasonable safety hazard or risk. *See Blissard v. FCA US, LLC*, 2018 WL 6177295, at  
23 \*12 (C.D. Cal. Nov. 9, 2018); *Elias v. Hewlett-Packard Co.*, 950 F. Supp. 2d 1123, 1137 (N.D. Cal.  
24 2013). Under such a defect concealment theory, the plaintiff must prove: (1) a defect, (2) a safety  
25 hazard, (3) a causal connection between the defect and the hazard, and (4) the defendant’s knowledge  
26  
27  
28

1 of the defect at the time of sale. *See Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1142-43 (9th  
2 Cir. 2012). An omission-based claim can also be met by establishing that (1) the omission is material,  
3 (2) the defect is central to the product’s function, and (3) one of the so-called *LiMandri* factors is met.  
4 *Hodson v. Mars, Inc.*, 891 F.3d 857, 861 (9th Cir. 2018). The four *LiMandri* factors are: (1) when the  
5 defendant is the plaintiff’s fiduciary; (2) when the defendant has exclusive knowledge of material  
6 facts not known or reasonably accessible to the plaintiff; (3) when the defendant actively conceals a  
7 material fact from the plaintiff, and (4) when the defendant makes partial representations that are  
8 misleading because some other material fact has not been disclosed. *Collins v. eMachines, Inc.*, 202  
9 Cal. App. 4th 249, 255 (2011) *as modified* (Dec. 28, 2011) (citing *LiMandri v. Judkins*, 52 Cal. App.  
10 326, 336 (1997)). The question whether these elements are present turns on common proof.

11  
12  
13 Moreover, where, as here, a *safety* defect is shown, the element of materiality is satisfied,  
14 making a finding of class-wide reliance appropriate. *See, e.g., Milstead v. Gen. Motors, LLC*, 2023  
15 WL 4410502, at \*7 (N.D. Cal. July 6, 2023); *Bailey v. Rite Aid Corp.*, 338 F.R.D. 390, 407–08 (N.D.  
16 Cal. 2021); *Wilson*, 668 F.3d at 1143. And, even if the defect did not constitute a safety hazard, it  
17 would still be material because a reasonable consumer would consider the alleged defect material  
18 because, as a general matter, it is reasonable to believe that consumers would not expect their pistol  
19 to unexpectedly explode. *See, e.g., Johnson*, at \*14 (jury could find that a reasonable consumer would  
20 consider a defect that caused sunroofs to shatter while driving to be material).

21  
22 The proof necessary to establish a claim under these statutes will be common evidence.  
23 Plaintiff will demonstrate, through admissions and other evidence discovered from Glock’s 30(b)(6)  
24 depositions as well as from expert testimony, proof of Glock’s design in creating the UCD.<sup>9</sup> Common  
25

26  
27 <sup>9</sup> Further, consumer fraud claims are not subject to the same “design defect” standards as  
28 typical products liability claims, but instead, concern safety-related defects sufficiently *material* to  
trigger a duty to disclose in order to avoid deceiving a consumer. *See Lassen v. Nissan N. Am., Inc.*,  
211 F. Supp. 3d 1267, 1287 (N.D. Cal. 2016); *see also Johnson*, 2022 WL 2869528, at \*5 (“defect”

1 evidence will demonstrate that [REDACTED]

2 [REDACTED]. At all times, Glock knew that [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] Indeed, Plaintiff will also show that Glock [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] As a result, Glock had a duty to disclose and warn Plaintiff and other consumers about the  
10 safety risk inherent in the design of the Class Guns, but instead, Glock not only failed to disclose the  
11 safety hazard to Plaintiff and others similarly situated, but actively concealed or publicly  
12 misrepresented the truth of the UCD.  
13

14 Indeed, not only did Glock fail to disclose the UCD and its propensity to cause serious bodily  
15 harm to the user, it also made false and misleading representations relating to the safety of its guns in  
16 its manuals and otherwise. **Ex F**, Nixon Decl., ¶ 28; *see also generally Ex K*, Steven Johnson’s  
17 Purchase Docs & Manual; *see also Ex LL*, CLRA Notice Letter. Further the UCD is common to all  
18 Class Guns and Class members and is known to Glock but not public knowledge. Further, due to  
19 Glock’s fraudulent omissions, reasonable consumers would have been misled into believing that  
20 Class Guns were free of defects and reasonably safe for use. This information would have been  
21 material to a reasonable consumer in making their decision of whether to purchase a Class Gun. As  
22  
23

24 \_\_\_\_\_  
is relevant to consumer protection claims only to the extent that it shows it is something that the  
25 defendant was obligated to disclose or misrepresented, not in the sense that products liability law uses  
26 that term); *Braverman v. BMW of N. Am. LLC*, 2023 WL 2445684, at \*4 (9th Cir. March 10, 2023)  
27 (J. Bennett concurring) (consumer protection laws reach design defect claims where sellers willfully  
conceal or deliberately mislead consumers as to a known safety risk). Therefore, Plaintiff does not  
28 need to establish a “defect” under product liability standards of consumer expectation or risk utility  
tests, but instead, must merely show that Glock knew of a safety hazard that was related to the design  
of its product and failed to disclose that hazard to consumers.

1 a result of Glock’s fraudulent omissions or misrepresentations, Plaintiff and class members did not  
2 get the benefit of their purchase or otherwise would not have purchased their pistols had they known  
3 the truth about the safety hazard because the product is defectively dangerous and may cause great  
4 bodily harm. All of these issues are common to the whole class, as is all of the evidence necessary to  
5 establish claims under these statutes. Accordingly, predominance is established for all such claims.  
6

## 7 **2. Fraudulent Omission**

8 Common proof may also be used to establish the common law fraudulent omission claim.  
9 “Under California law, to state a claim for common law fraud and fraudulent misrepresentation, a  
10 party must plead facts alleging five elements: (1) a misrepresentation (false representation,  
11 concealment, or nondisclosure); (2) the speaker’s knowledge of falsity (scienter); (3) the intent to  
12 defraud or to induce reliance; (4) justifiable reliance; and (5) resulting damage.” *Broomfield v. Craft*  
13 *Brew Alliance, Inc.*, 2018 WL 4952519, at \*12 (N.D. Cal. Sept. 9, 2018); *Lazar v. Superior Court*,  
14 12 Cal. 4th 631, 638 (1996). Common questions will predominate with respect to consideration of  
15 these factors. The elements of scienter and intent focus exclusively on Glock’s conduct, and therefore  
16 present issues common to the class. And, as noted above, the existence of omissions by Glock will  
17 also be common to the class. The class-wide damages will be calculated using the same conjoint  
18 methodology described below.  
19  
20

21 Reliance does not require individualized proof when a presumption exists, as “a presumption,  
22 or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was  
23 material.” *In re Tobacco II Cases*, 46 Cal. 4th at 327; *In re JUUL Labs*, 609 F. Supp. 3d at 997. As  
24 discussed above, since this case concerns a safety defect, materiality is established. Accordingly, the  
25 common law fraud claim is subject to the same analysis as the statutory claims.  
26

## 27 **3. Damages**

28 The damages element of each of the above causes of action is similar and amply satisfies

1 Comcast. The UCL, FAL, and CLRA all “authorize a trial court to grant restitution to private litigants  
2 asserting claims under those statutes.” *Colgan v. Leatherman Tool Grp, Inc.*, 135 Cal. App. 4th 663,  
3 694 (2006) (citations omitted); *see also* Cal. Bus. & Prof. Code §§ 17203, 17535; Cal. Civ. Code §  
4 1780(a)(3). “Class wide damages calculations under the UCL, FAL, and CLRA are particularly  
5 forgiving. California law ‘requires only that some reasonable basis of computation of damages be  
6 used, and the damages may be computed even if the result reached is an approximation.’” *Lambert*  
7 *v. Nutraceutical Corp.*, 870 F.3d 1170, 1183 (9th Cir. 2017). Where, as here, a consumer would not  
8 have purchased the product *but for* the alleged deceptive omission or misrepresentation at all or where  
9 the fraudulent omission goes to a central safety feature of the product, a complete restitution theory  
10 is available. *See Krueger v. Wyeth, Inc.*, 396 F. Supp. 3d 931, 951 (S.D. Cal. 2019) (“price less value  
11 received” is not the only measure of restitution, and where plaintiff’s contention is that she would not  
12 have purchased the product had it been marketed accurately, a full restitution recovery may be  
13 appropriate); *see also Spann v. J.C. Penney Corp.*, 2015 WL 1526559, at \*3 (C.D. Cal. March 23,  
14 2015) (full refund proper where plaintiff presented evidence that “every dollar she spent was a result  
15 of defendant’s alleged false advertising.”). Here, Plaintiff has unequivocally declared that he would  
16 not have purchased his Class Pistol had he known of the safety risk due to the UCD and he has stopped  
17 using his pistol since learning of the defect. **Ex KK**, Johnson Decl., ¶¶ 8-10. Further, there is other  
18 evidence to support a finding that reasonable consumers would not pay anything for their Class Gun  
19 had they known of the defect because law enforcement has actually returned their Class Pistols or  
20 otherwise stopped using Class Pistols once discovering the defect. *See generally Ex W*, Kaboom  
21 Chart & Customer Claims.

22  
23  
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25  
26 Alternatively, Plaintiff will establish classwide injury (restitution) for the UCL and FAL  
27 claims), and restitution or actual damages (for the CLRA claim) for the Class through Steven Gaskin  
28 and Colin Weir’s conjoint analysis, discussed above. **Ex HH**, Gaskin Decl.; **Ex II**, Weir Decl.

1 Conjoint analyses are regularly used and accepted in consumer fraud cases as an appropriate method  
2 to measure damages. *Johnson v. Nissan N. Am., Inc.*, 2022 WL 2869528, at \*5 (N.D. Cal. July 21,  
3 2022) (accepting Gaskin and Weir’s conjoint survey and analysis in consumer fraud case); *Hadley*,  
4 324 F. Supp. 3d at 1103. . And price premium theory of recovery is also readily accepted in such  
5 cases. *See Wellpet*, 2021 WL 756109, at \*11.

7 Finally, there is no need to separately calculate the amount of restitution owed by each  
8 Defendant (Glock, Inc. and Glock Ges.m.b.H.) because under California law, “parties may be held  
9 jointly and severally liable for unfair competition and for false and misleading statements.” *People v.*  
10 *First Fed. Credit Corp.*, 104 Cal. App. 4th 721, 734 (2002).

### 11 **B. Superiority**

12 In addition, a plaintiff must show that “a class action is superior to other available methods  
13 for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The Rule specifies  
14 that the following factors are pertinent to the predominance and superiority inquiries: “(A) the class  
15 members’ interests in individually controlling the prosecution or defense of separate actions; (B) the  
16 extent and nature of any litigation concerning the controversy already begun by or against class  
17 members; (C) the desirability or undesirability of concentrating the litigation of the claims in the  
18 particular forum; and (D) the likely difficulties in managing a class action.” *Id.* Further, “[i]t is  
19 sufficient to satisfy the superiority requirement that plaintiffs’ class definitions provide objective  
20 criteria that allow class members to determine whether they are included in the proposed class,” *Farar*  
21 *v. Bayer AG*, 2017 WL 5952876, at \*14 (N.D. Cal. Nov. 15, 2017). Moreover, as affirmed by the  
22 Ninth Circuit in *Brisenov v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017), it is not a  
23 barrier to class certification that consumers may be required to self-identify to attest to purchasing  
24 the products at issue. *Id.* at 1132; *see also* Lewis Decl. ¶ 41; *Krommenhock v. Post Foods, LLC*, 334  
25 F.R.D. 552, 567 (N.D. Cal. 2020).

1  
2 Class certification here presents a superior means to resolve the claims of all class members.  
3 No class members have come forward expressing an interest in controlling their individual claim.  
4 The claims here are economic loss issues for relatively nominal amounts on an individual basis (the  
5 price of the Class Guns or diminished value for each pistol), and class consideration is an efficient  
6 and effective mechanism to resolve them. In addition, counsel is not aware of any other litigation  
7 begun by class members for these claims. Further, the claims asserted here are predominately  
8 California statutory claims, and accordingly it is desirable to have this Court in California rule on  
9 them.  
10

11 Finally, there are no apparent manageability issues. The class definition is sufficiently clear  
12 to allow potential class members to decide whether they are class members. Notice to class members  
13 can be done through targeted notices. *See, e.g., Brisenov*, 844 F.3d at 1125-29. In short, there are no  
14 manageability concerns sufficient to outweigh the substantial efficiencies in resolving the economic  
15 loss issues presented here in a class action. *See In re JUUL Labs, Inc., Mkt. Sales Practices and*  
16 *Prod. Liab. Lit.*, 396 F. Supp. 3d 1366, 1367 (U.S. Jud. Pan. Mult. Lit. 2019) (centralizing class  
17 actions in this Court to “promote the just and efficient conduct of this litigation.”).  
18  
19

#### 20 **IV. THE COURT SHOULD CERTIFY A CLASS UNDER RULE 23(B)(2)**

21 Certification under Rule 23(b)(2) is appropriate only if “the party opposing the class has acted  
22 or refused to act on grounds that apply generally to the class, so that final injunctive relief or  
23 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P.  
24 23(b)(2); see *Vizcarra*, 339 F.R.D. at 539. Here, there is no question that Glock’s misconduct here  
25 applies generally to the class. Further, injunctive relief is appropriate under the UCL and the FAL.  
26 Certification under Rule 23(b)(2) would enable the Court to decide if it is fair and equitable to address  
27 the misconduct at issue prospectively with an injunction barring the sale of Class Guns with the  
28

1 dangerous UCD.

2 **V. IN THE ALTERNATIVE, THE COURT CAN CERTIFY PLAINTIFF’S CLAIMS**  
3 **UNDER RULE 23(C)(4)**

4 Rule 23(c)(4) provides that “an action may be brought or maintained as a class action with  
5 respect to particular issues.” Fed. R. Civ. P. 23(c)(4). Even if the Court determines that the presence  
6 of individualized issues in certain aspects of the case may preclude certification of the classes under  
7 Rule 23(b)(3), certification under Rule 23(c)(4) of the many indisputably common issues will  
8 substantially advance the resolution of class members’ claims. Doing so would avoid separate trials  
9 simply to “determine whether the challenged practices were unlawful.” *McReynolds v. Merrill Lynch,*  
10 *Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 491 (7th Cir. 2012).

12 **CONCLUSION**

13 Glock is content to sell millions of handguns to consumers who are unknowingly playing a  
14 game of Russian Roulette every time they pull the trigger. [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED] For the foregoing reasons, Plaintiff respectfully submits that this  
19 Court should certify this case as a class action with Plaintiff appointed as class representative and the  
20 undersigned appointed as class counsel.

21 Dated: October 12, 2023

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**CERTIFICATE OF SERVICE**

The foregoing document was filed with the clerk of the court using CM/ECF system and automatically served upon registered recipients appearing in this case.

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