

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No: _____

In the matter between:

| | |
|------------------------------|-------------------|
| Gun Free South Africa | First Applicant |
| Mansoer Eksteen | Second Applicant |
| Andre Levi Cornelius | Third Applicant |
| Dianne Cornelius | Fourth Applicant |
| Denise Mentor | Fifth Applicant |
| Evenlyn Davids | Sixth Applicant |
| Melanie Kiel | Seventh Applicant |
| Natalie Dirks | Eighth Applicant |
| Simoné Julies | Ninth Applicant |
| Niezaam Cupido | Tenth Applicant |

and

| | |
|---|--------------------|
| Minister of Police | First Respondent |
| National Commissioner of Police | Second Respondent |
| Provincial Commissioner of Police: Gauteng | Third Respondent |
| Provincial Commissioner of Police: Western Cape | Fourth Respondent |
| Provincial Commissioner of Police: Northern Cape | Fifth Respondent |
| Provincial Commissioner of Police: Eastern Cape | Sixth Respondent |
| Provincial Commissioner of Police: Free State | Seventh Respondent |
| Provincial Commissioner of Police: Mpumalanga | Eighth Respondent |
| Provincial Commissioner of Police: KwaZulu-Natal | Ninth Respondent |

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Provincial Commissioner of Police: Limpopo

Tenth Respondent

Provincial Commissioner of Police: North West

Eleventh Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

Adèle Kirsten

do hereby make oath and state that:

- 1 I am an adult and the Director of Gun Free South Africa, the First Applicant herein. I confirm that I am duly authorised to depose hereto on behalf of the Applicants. In this regard, I refer to the resolution annexed hereto as “AK1”, as well as the affidavits filed on behalf of the Second to Tenth Applicants confirming the same.
- 2 Save to the extent that the context indicates to the contrary, the facts contained herein are within my own personal knowledge and belief and are true and correct. Where I make averments of a legal nature, these are made under the advisement of the Applicants’ attorneys of record.

OVERVIEW OF THIS APPLICATION

- 3 This is an application for the certification of class action proceedings. I am advised that the nature of this relief is procedural and is a prerequisite for the Applicants to pursue a class action against the Respondents for damages.

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4 The Applicants contend that the Respondents are liable to pay damages to a class of people who have suffered loss as a result of:

4.1 The Respondents' wrongful and negligent failure to fulfil their constitutional, statutory and common law duties; and

4.2 The wrongful and intentional conduct committed by former South African Police Services' (**SAPS**) employees during the course and scope of their employment.

5 A draft of the particulars of claim in respect of the full extent of the relief sought has been attached to this application as "**AK2**".

6 The relevant class includes:

6.1 Persons who have suffered loss on account of being injured by a firearm which was in the SAPS' possession and control prior to it being wrongfully distributed by one or both of SAPS' erstwhile employees, Colonel Christian Lodewyk Prinsloo (**Prinsloo**) and Colonel David Charles Naidoo (**Naidoo**) (a **Prinsloo Firearm(s)**); and

6.2 Dependants, parents, legal guardians, and other persons who have suffered loss arising from the death, and/or prior injuries, of victims who have been killed with a Prinsloo Firearm.

7 The class sought to be certified includes persons in the above-described categories who have suffered loss on account of a shooting with a Prinsloo Firearm which took place within South Africa, alternatively, within the Western Cape.

- 8 In preparing for this application, the Applicants' attorneys have:
- 8.1 Consulted with key individuals formerly employed by SAPS who were involved in the SAPS' official investigative team tasked to track and uncover Prinsloo Firearms. These individuals confirmed the identity of victims who were found, in terms of SAPS' investigation, to have been shot from 2007 onwards by a Prinsloo Firearm.
- 8.2 Consulted with a number of individuals who have provided instructions that they believe that they fall within the Class and who:
- 8.2.1 Have been identified in terms of SAPS' official investigations, as victims injured with a Prinsloo Firearm; or
- 8.2.2 Are dependants, parents, legal guardians, and other persons who have suffered loss arising from the death and/or prior injuries of persons who have been identified in terms of SAPS' official investigations, as victims killed with a Prinsloo Firearm.
- 9 The Applicants contend that it is in the interests of justice for this Court to grant certification of the proposed class action, for the reasons set out in this application. I am advised that this Court will consider several factors when determining whether to grant certification, including whether it is established that there are: an identifiable class of members, a cause of action which raises triable issues, common issues of fact or law and a suitable representative. However, these factors will not be treated conditions precedent for a certification application to succeed, as the Court

will consider the overarching question of whether it is in the interests of justice for the application to succeed.

10 I submit that the Court ought to find that it is in the interests of justice to grant certification of the proposed class action, and it ought to grant prayers one to four in the Applicants' Notice of Motion. The remaining prayers canvass the management of the class action.

11 If certified, the Applicants seek to pursue the class action in two stages:

11.1 First, they will seek a declaratory order establishing the nature and extent of the Respondents' liability. This relief will be sought on behalf of the Class on an 'opt out' basis, with due notice to the Class as set out in paragraph 7 of the Notice of Motion.

11.2 Second, if successful at the first stage, liability and damages will be sought on an individual basis. Persons falling within the Class definition will be required to 'opt in' to the Class at this stage, by notifying the Applicants' attorneys of record accordingly. Directions will be sought from the trial court in respect of notice required to be given to class members for this purpose.

12 I now turn to set out in greater detail:

12.1 The identity of the parties;

12.2 The definition of terms used;

12.3 The background and series of events which gave rise to this application, including:

12.3.1 Prinsloo and Naidoo's access to firearms in SAPS' possession and control;

12.3.2 Prinsloo and Naidoo's illegal firearm enterprise;

12.3.3 The lifecycle and findings of the key SAPS investigation into Prinsloo and Naidoo's illegal firearm enterprise, termed 'Project Impi';

12.3.4 The linking of the Prinsloo Firearms to the class;

12.3.5 The continued growth of the class;

12.3.6 The prosecution of Prinsloo and Naidoo;

12.3.7 The history of access to firearms in South Africa prior to and after 2010;

12.4 The Respondents' relevant constitutional, statutory and international obligations in respect of firearm and ammunition management, storage, control and destruction;

12.5 The Applicants' cause of action;

12.6 Relevant factors to consider in applications of this nature, including:

12.6.1 The definition of the class;

12.6.2 Common issues of fact and law;

- 12.6.3 The suitability of the class representative;
 - 12.6.4 The certification of the Applicants' attorneys of record;
 - 12.6.5 Appropriateness of a class action;
- 12.7 Management of the class action, including:
- 12.7.1 The bifurcated process to be followed;
 - 12.7.2 Notification to class members;
- 12.8 The interests of justice; and
- 12.9 Notification of this application to the Respondents.

THE PARTIES

- 13 The First Applicant is Gun Free South Africa (**GFSA**), a voluntary association and non-profit organisation constituting a universitas, which is aimed at working to create a safer more secure South Africa by reducing gun violence through public policy advocacy, education, awareness-raising, and community mobilisation, with registration number NPO: 014 085, and registered address in Killarney, Johannesburg.
- 14 The Second to Tenth Applicants (the **Further Applicants**) are individuals who are members of the class. Each Further Applicant has deposed to an affidavit which sets out their circumstances more fully and confirms the contents of my affidavit insofar as it relates to them personally.

- 14.1 The Second Applicant is Mansoer Eksteen, an adult male cabinet builder residing in Manenberg. Mr Eksteen was personally injured with a Prinsloo Firearm in October 2014.
- 14.2 The Third Applicant is Andre Levi Cornelius, an adult male general assistant residing in Manenberg. Mr Cornelius' minor son, Dillan Cornelius, was fatally wounded by a Prinsloo Firearm in August 2013 in a shooting incident which occurred in Manenberg.
- 14.3 The Fourth Applicant is Dianne Cornelius, an unemployed adult female residing in Manenberg. Ms Cornelius is the mother of Dillan Cornelius.
- 14.4 The Fifth Applicant is Denise Mentor, an adult female residing in Hanover Park. Ms Mentor is cited in her capacity as the legal guardian of Leana van Wyk, a minor female child residing in Hanover Park who sustained serious head injuries during a shooting incident with a Prinsloo Firearm in Hanover Park in 2012.
- 14.5 The Sixth Applicant is Evenlyn Davids, an adult female pensioner residing in Hanover Park. Ms Davids is cited in her capacity as Liam Davids' legal guardian, who is a minor male child residing in Hanover Park. Mr Davids sustained serious neck injuries as a result of a shooting incident in Hanover Park with a Prinsloo Firearm in 2012.
- 14.6 The Seventh Applicant is Melanie Alison Kiel, an adult female currently residing in Mitchell's Plein. She is cited in her capacity as the mother of Dudley Richards, a minor male who was fatally wounded in 2013 due to a shooting in Mitchell's Plein with a Prinsloo Firearm.

- 14.7 The Eighth Applicant is Natalie Dirks, an adult female residing in Mitchell's Plein. Ms Dirks is the mother of Lukas Dirks, who was killed by a Prinsloo Firearm in January 2015.
- 14.8 The Ninth Applicant is Simoné Julies, an adult female, residing in Mitchell's Plein. Ms Julies is the mother of Mogamat Moeneer and Mogamat Nazeer, two minor male children who were injured in 2014 following a shooting in Mitchell's Plein with a Prinsloo Firearm.
- 14.9 The Tenth Applicant is Niezaam Cupido, an adult male, residing in Mitchell's Plein. Mr Cupido was injured in 2013 following a shooting in Mitchell's Plein with a Prinsloo Firearm.
- 15 The First Respondent is the Minister of Police (the **Minister**), cited in his official capacity as the political functionary responsible for the SAPS at Telkom Towers, North Wing, 24th floor, 152 Johannes Ramokhoase Street, Pretoria, 0002.
- 16 The Second Respondent is the National Commissioner of Police (**National Commissioner**), cited in his official capacity as the national executive head of the Department of Police at Maupa Naga Building, 3rd Floor, 3 Troye Street, Pretoria, 0001. The National Commissioner is the Registrar of Firearms (the **Registrar**) in terms of section 123 of the *Firearms Control Act* 60 of 2000 (the **FCA**).
- 17 The Third Respondent is the Provincial Commissioner of Police: Gauteng Province, cited in his official capacity as the provincial executive head of

the Gauteng Department of Police at 16 Empire Road, Parktown, Johannesburg, 2193.

- 18 The Fourth Respondent is the Provincial Commissioner of Police: Western Cape Province, cited in his official capacity as the provincial executive head of the Western Cape Department of Police at 25 Alfred Street, Greenpoint, Cape Town, 8005.
- 19 The Fifth Respondent is the Provincial Commissioner of Police: Northern Cape Province, cited in his official capacity as the provincial executive head of the Northern Cape Department of Police at 19 George Street, Kimberly, 8300.
- 20 The Sixth Respondent is the Provincial Commissioner of Police: Eastern Cape Province, cited in his official capacity as the provincial executive head of the Eastern Cape Department of Police at Griffiths Mxenge Building, Buffalo Road, Zwelitsha, Qonce, 5601.
- 21 The Seventh Respondent is the Provincial Commissioner of Police: Free State Province, cited in his official capacity as the provincial executive head of the Free State Department of Police at 126 Charlotte Maxeke Street, Bloemfontein Central, Bloemfontein, 9301.
- 22 The Eighth Respondent is the Provincial Commissioner of Police: Mpumalanga Province, cited in his official capacity as the provincial executive head of the Mpumalanga Department of Police at 7 Ferreira Street, Mbombela, 1201.

- 23 The Ninth Respondent is the Provincial Commissioner of Police: KwaZulu-Natal Province, cited in his official capacity as the provincial executive head of the KwaZulu-Natal Department of Police at 15 Bram Fischer Road, Durban Central, Durban, 4001.
- 24 The Tenth Respondent is the Provincial Commissioner of Police: Limpopo Province, cited in his official capacity as the provincial executive head of the Limpopo Department of Police at 44 Schoeman Street, Polokwane Central, Polokwane, 0700.
- 25 The Eleventh Respondent is the Provincial Commissioner of Police: North West Province, cited in his official capacity as the provincial executive head of the North West Department of Police at 123 Peter Mokaba Street, Potchefstroom, 2531.

BACKGROUND

- 26 It is anticipated that, to a large extent, the background will effectively constitute common cause facts between the parties.
- 27 I say so because the information set out hereunder has been obtained either from the State's own records or from unimpeachable sources. These records have been obtained through the following channels:
- 27.1 SAPS' official correspondence, reports and presentations. This includes:
- 27.1.1 A presentation prepared by SAPS in 2013 entitled "Forensic Services Ballistics Etch Investigation" by Ballistics Section Western Cape, Q Bothman, Z Meiring, PG Engelbrecht in 2013

(the **SAPS 2013 Ballistics presentation**), attached hereto as annexure “**AK3**”;

27.1.2 Reports to the Western Cape Provincial SAPS Commissioners by Major General Vearey (**Vearey**) in his capacity as Project Manager of Project Impi, attached hereto as annexures “**AK4**” and “**AK5**” respectively.

- (1) The first is dated 21 July 2016 (the **July Project Impi Report**).
- (2) The second is dated 13 September 2016, (the **September Project Impi Report**).

27.1.3 A presentation entitled ‘SAPS back to basics’ prepared in 2016 by Major General PC Jacobs of Legal Services, attached hereto as annexure “**AK6**”;

27.2 The public records of other litigation, most notably that in:

27.2.1 The State’s prosecution of Prinsloo in *S v Prinsloo*, case no SH1/122/16. In this regard I refer to:

- (1) the plea agreement in terms of section 105A of the *Criminal Procedure Act*, 51 of 1997 (the **CPA**), attached hereto as annexure “**AK7**”; and
- (2) Prinsloo’s statement to SAPS dated 11 February 2015, attached hereto as annexure “**AK8**”.

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27.2.2 The criminal proceedings against two individuals who are accused of engaging in organised crime through the distribution of the Prinsloo Firearms in:

- (1) *The State v Irshaad Laher and Alan Robert Raves* (Western Cape High Court: CC 21/16). I attach the amended summary of substantial facts in terms of section 144(3)(a) of the CPA here to as “**AK9**”.
- (2) *Raves v Director of Public Prosecutions, Western Cape and Another* (A150/2020) 2021 (2) SACR 140 (WCC). I do not attach this judgment hereto as it is publicly available online.¹

27.2.3 The Labour Court proceedings in *POPCRU and others v the Minister of Police and others* (**POPCRU**) (Labour Court, Cape Town; C671/2016). I attach the founding affidavit, together with relevant annexures and supporting documents hereto as “**AK10**”.

27.3 Correspondence from the Office of the Director of Public Prosecutions (**DPP**). I annex hereto as annexure “**AK11**”, a letter from the DPP in the Western Cape to the Provincial Commissioner of Police for the Western Cape dated 18 August 2016 with subject title: “Project Impi: the State versus A.R Raves and I. Laher”.

¹ See <http://www.saflii.org/za/cases/ZAWCHC/2021/11.html>

27.4 Information received as a result of a request made by GFSA in terms of the *Promotion of Access to Information Act, 2 of 2000 (PAIA)* during September 2021.

Prinsloo and Naidoo's access to firearms in SAPS' possession and control

28 Prinsloo, an employee of the SAPS, oversaw the control and destruction of firearms during or about 2002 in the capacity of Station Commander in the Vaal Area. It was in this capacity that he met Naidoo. Prinsloo was subsequently promoted to Colonel Provincial Commander: Firearms and Liquor Control (now termed Firearms, Liquor and Second Hand Goods or 'FLASH') and appointed as a Designated Firearms Officer (DFO) in 2005, in terms of section 124(2)(h) of the FCA. Prinsloo's duties included supervising and documenting firearms at police stations in the Vaal area at station, district and regional level. Prinsloo was involved in the destruction of forfeited firearms.²

29 Naidoo was employed by SAPS in the capacity of an operational officer in the Confiscated Firearms Store at Silverton under the Head Office: Confiscated Firearms Store. Naidoo's duties included removing firearms from the Vaal region, once documented, to a storage facility in Silverton, Pretoria. Naidoo was responsible for the destruction of such firearms and had complete control over the Confiscated Firearms Store at Silverton,

² Annexure AK8: Prinsloo's statement dated 11.02.2015 para 15- 19

being the only official with keys for the Store.³ Naidoo also appears to have had the authority to certify that firearms had been destroyed.

30 The firearms that are sent to the Confiscated Firearms Store at Silverton include those which are designated for destruction. Further, firearms which are deactivated or dismantled are also stored at the Confiscated Firearms Store.

31 The destruction of firearms takes place, inter alia, in the following circumstances:

31.1 Where a firearm is forfeited to the State;

31.2 Where a firearm is recovered from a crime scene or is otherwise confiscated by the State;

31.3 Where a firearm is voluntarily surrendered to the State, including during an amnesty; or

31.4 Where the National Commissioner, as the Registrar of Firearms, provides written authorisation for any other lawful reason or the same is provided by any other law. In this regard I understand that the National Commissioner has provided permission to destroy firearms in circumstances where such firearms:

31.4.1 were previously owned by parastatals whose private security presence has been disbanded;

³ Annexure AK8: Prinsloo's statement dated 11.02.2015 para 19-22. I do however note that Prinsloo appears to have had access to the safe at certain times (Prinsloo's statement para 38)

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31.4.2 infringed patent protections, where the State was under a legal obligation to destroy the same; and

31.4.3 were in the possession of SAPS, the South Africa National Defence Force (**SANDF**), the Department of Correctional Services, the intelligence service, or any other government institution, and no longer required or in working order.

32 In summary, and as a result of their positions, both Prinsloo and Naidoo were in charge of and had control over the documentation and destruction of firearms at the Confiscated Firearms Store at Silverton.⁴

Prinsloo and Naidoo's illegal firearm enterprise

33 In or around 2007 Naidoo approached Prinsloo and indicated that he had access to firearms in the Confiscated Firearms Store at Silverton which were valuable but that he did not have a market to sell them to.⁵ As noted above, Naidoo had the authority to certify that firearms held in the storage facility had been destroyed. Naidoo utilised this authority to falsely certify that the firearms at issue in these proceedings had been destroyed.⁶ In addition, firearms which were deactivated and dismantled were assembled and reactivated.⁷

⁴ Annexure AK9: S v Laher and Raves, the State's amended summary of substantial facts in terms of s144(3)(a) of the Criminal Procedure Act, 1977, case no CC 21/16

⁵ Annexure AK8: Prinsloo's statement dated 11.02.2015 para 20-21; Annexure AK9: S v Laher and Raves, the State's amended summary of substantial facts in terms of s144(3)(a) of the Criminal Procedure Act, 1977, case no CC 21/16 p 2

⁶ Annexure AK8: Prinsloo's statement dated 11.02.2015, para. 20

⁷ Annexure AK11: Letter from the DPP in the Western Cape to the Provincial Commissioner of Police for the Western Cape dated 18 August 2016 with subject title: "*Project Impi: the State versus A.R Raves ad l. Laher*" para 6.7

34 Naidoo and Prinsloo colluded to steal the firearms in the Confiscated Firearms Store at Silverton and to sell them to, inter alia, contacts of Prinsloo's which included⁸:

34.1 Alan Raves (**Raves**), an arms dealer, registered collector and National Heritage inspector of firearms in Gauteng; and

34.2 Irshaad 'Hunter' Laher (**Laher**), a businessman who resides in the Western Cape.

35 As a result of Naidoo's unfettered access to the Confiscated Firearms Store at Silverton, Prinsloo, Naidoo and their 'buyers' would visit the facility in order to peruse the firearms and select appropriate firearms for sale.⁹ Certain firearms which were 'removed from the police computer' were on-sold to buyers.¹⁰

36 Other firearms which were dismantled or deactivated were unlawfully reactivated and put together by Prinsloo and Naidoo.¹¹

37 Prinsloo and Naidoo sold at least 2400 firearms in this manner and split the proceeds between them.¹²

⁸ Annexure AK8: Prinsloo's statement dated 11.02.2015; Annexure AK7: S v Prinsloo, plea agreement in terms of s105A of the CPA, case no SH1/122/16; Annexure AK9: S v Laher and Raves, the State's amended summary of substantial facts in terms of s144(3)(a) of the CPA, case no CC 21/16

⁹ Annexure AK8: Prinsloo's statement dated 11.02.2015 para 31

¹⁰ Annexure AK8: Prinsloo's statement dated 11.02.2015 para 35-36

¹¹ Annexure AK11: Letter from the DPP in the Western Cape to the Provincial Commissioner of Police for the Western Cape dated 18 August 2016 with subject title: "*Project Impi: the State versus A.R Raves ad I. Laher*" para 6.7

¹² Annexure AK9: S v Laher and Raves, the State's amended summary of substantial facts in terms of s144(3)(a) of the CPA, case no CC 21/16, p 2

38 Following the removal and sale of the firearms, Naidoo certified that they had been destroyed in the ordinary course and scope of his duties.

The lifecycle and findings of Project Impi

39 In or around September 2013 the SAPS noticed certain patterns in the removal of identification markings on firearms recovered from crime scenes in the Western Cape. This led the SAPS to form a suspicion that someone with specialised knowledge from within the SAPS was involved in removing the identification markings on certain firearms. These firearms were largely being confiscated and recovered in relation to crimes involving gang members in the area within the Western Cape known as the Cape Flats.¹³

40 Vearey, as one of the initiators and Project Manager, was a key figure in this SAPS investigation, which became known as Project Impi, and I refer to his affidavit filed in support of this application, which sets out the establishment of the investigation, its findings and its disbandment in further detail.

41 For present purposes I note that Project Impi found that¹⁴:

41.1 The core function of Prinsloo and Naidoo's partnership was to steal firearms and ammunition designated for destruction from the Confiscated

¹³ Annexure AK3: SAPS presentation entitled "Forensic Services Ballistics Etch Investigation" by Ballistics Section Western Cape, Q Bothman, Z Meiring, PG Engelbrecht in 2013 and particularly slide 38-39; Annexure AK9: S v Laher and Raves, the State's amended summary of substantial facts in terms of s144(3)(a) of the CPA, 1977, case no CC 21/16 p 1-2

¹⁴ Annexure AK9: S v Laher and Raves, the State's amended summary of substantial facts in terms of s144(3)(a) of the CPA, 1977, case no CC 21/16

Firearms Store at Silverton and to unlawfully distribute them to gangs and other criminals on the Cape Flats for financial reward.

41.2 At least 2400 firearms (and an unknown amount of ammunition) were taken from the State's firearm facility in this manner.¹⁵

41.3 All firearms stolen by Prinsloo and Naidoo were subject to the same expert method of removing the firearm's identification markings¹⁶, inter alia, characterised by the presence of deeply removed serial numbers and the obliteration of markings (the lab number) on the trigger guard area.

41.4 Various other components of the firearm, such as the firing pins, ejectors, extractors and the chamber of the barrels were also modified (annexure **AK3**).¹⁷ SAPS reports indicate that these are the components directly relied upon by the Ballistics section of SAPS to perform the Independent Ballistics Integrated System (**IBIS**)¹⁸, analysis.

41.5 Firearms which were previously examined by the Ballistics section of the Forensic Science Laboratory, Western Cape, and which were supposedly in the safekeeping of the SAPS, were being recovered and sent again to the Ballistics section for examination, having been involved in new and separate crimes to those initially linked to such firearms.

15 Annexure AK9: S v Laher and Raves, the State's amended summary of substantial facts in terms of s144(3)(a) of the Criminal Procedure Act, 1977, case no CC 21/16; Annexure AK4: July Vearey report para 2.3

16 Annexure AK9: S v Laher and Raves, the State's amended summary of substantial facts in terms of s144(3)(a) of the Criminal Procedure Act, 1977, case no CC 21/16

17 Annexure AK3: SAPS presentation entitled "Forensic Services Ballistics Etch Investigation" by Ballistics Section Western Cape, Q Bothman, Z Meiring, PG Engelbrecht in 2013 and particularly slides 8 and 35 -36

18 I note that IBIS is an electronic database for firearm evidence

41.6 Additionally, it was evident that the responsible party was one with inside knowledge and/or within the SAPS and was stealing firearms in possession of the State which were designated for destruction.¹⁹

41.7 Prinsloo and Naidoo were able to steal these firearms for approximately seven years undetected as a result of, inter alia:

41.7.1 significant corruption within SAPS generally;

41.7.2 significant corruption by DFOs at, inter alia, station level²⁰ and

41.7.3 exploitation of gaps and loopholes within the management of the CFR as well as the relevant legislation and regulations.²¹

41.8 The stolen firearms were sold to various criminals including, inter alia, Raves, Laher, members of the taxi industry and gang members.

41.9 Between 2007 and June 2016, the stolen firearms were used in the commission of, at least, 2784 crimes in the Western Cape alone. This includes²²:

41.9.1 1066 murders;

41.9.2 1403 attempted murders; and

41.9.3 315 other crimes.

¹⁹ Annexure AK3: SAPS presentation entitled "Forensic Services Ballistics Etch Investigation" by Ballistics Section Western Cape, Q Bothman, Z Meiring, PG Engelbrecht in 2013 and particularly slide 22

²⁰ Annexure AK11: Letter from the DPP in the Western Cape to the Provincial Commissioner of Police for the Western Cape dated 18 August 2016 with subject title: "*Project Impi: the State versus A.R Raves ad I. Laher*" para 6.2 and 6.5

²¹ Annexure AK5: September Vearey report para 4.4

²² Annexure AK4: July Vearey report para 2.2

41.10 Of the 1066 murders identified, 187 were minors and could be identified by name and the SAPS case ('CAS') number.²³

41.11 The firearms sold by Prinsloo and Naidoo "are still in circulation and continue to contribute towards gang related crime in the Western Cape".²⁴

41.12 They were (and are) also used in crimes in the other South African provinces.

41.13 It is estimated that, as at 2016, at least 1012 of the Prinsloo Firearms were still outstanding and that it was likely that these firearms would be used in the commission of further serious crimes.²⁵

Linking the Prinsloo Firearms to the class

42 I am advised that the Court will need to be satisfied that there is, at least prima facie, a methodology whereby the alleged claim of any particular class member may be linked to a death or injury caused by a Prinsloo Firearm.

43 It is possible, using IBIS and SAPS tracing systems, to:

43.1 Identify a recovered firearm as one that was stolen and unlawfully distributed by Prinsloo and Naidoo and to link that firearm to the commission of a particular crime;²⁶ and

²³ Annexure AK5: September Vearey report para 1.4 read with annexure A

²⁴ Annexure AK11: Letter from the DPP in the Western Cape to the Provincial Commissioner of Police for the Western Cape dated 18 August 2016 with subject title: "*Project Impi: the State versus A.R. Raves ad I. Laher*" para 6.1

²⁵ Annexure AK5: September Vearey report para 4.3

²⁶ Annexure AK3: SAPS presentation entitled "Forensic Services Ballistics Etch Investigation" by Ballistics Section Western Cape, Q Bothman, Z Meiring, PG Engelbrecht in 2013 and particularly slide 38-39; Annexure AK4; and Annexure AK5: July and September Vearey reports

43.2 Identify that any bullet or shell casing recovered from the scene of a crime was, on a balance of probabilities, fired by a Prinsloo Firearm.

44 In this regard, I refer to:

44.1 the explanation set out more fully in the supporting expert affidavit of **Mark Stanley Mastaglio**, an independent forensic scientist specialising in the examination of firearms and related items with more than 33 years' experience; and

44.2 the views of the SAPS' own forensic experts based on a 2013 presentation prepared by the SAPS Ballistics Section, Western Cape.²⁷

45 Accordingly, should this certification be granted, and should the matter proceed to the second stage of the proposed bifurcated process, an individual class member will be able to demonstrate on a balance of probabilities that his or her respective claim arises from a death or injury caused by the firing of a Prinsloo Firearm.

The continued growth of the class

46 As far as I can gather, there is no publicly accessible information related to the SAPS' progress (if any) in recovering the firearms and ammunition unlawfully distributed to criminals by Prinsloo and Naidoo.

²⁷ Annexure AK3: SAPS presentation entitled "Forensic Services Ballistics Etch Investigation" by Ballistics Section Western Cape, Q Bothman, Z Meiring, PG Engelbrecht in 2013 and particularly slide 38-39; Annexure AK4; and Annexure AK5: July and September Vearey reports

47 This means that, following on from the 2016 Vearey Reports, there is no indication of whether additional firearms and ammunition which were in the SAPS' possession ended up in communities nationally as a result of Prinsloo and Naidoo's criminal enterprise (aside from those which Project Impi discovered prior to its disbandment) and how many of these firearms remain in circulation.

48 I note that:

48.1 Within a two-year period of 2013/2014 and 2014/2015 (a portion of period prior to Prinsloo's arrest) SAPS reported that a staggering amount of²⁸:

48.1.1 4 552 491 rounds of ammunition were reported as missing from SAPS possession; and

48.1.2 1526 firearms were reported as missing from SAPS possession.

48.2 Between 2021 and 2022 SAPS reported a total of 4529 firearms, which were recovered without identifiable serial numbers on them.²⁹

48.3 At this stage, it is unclear to what extent the missing firearms and ammunition as well as the recovered firearms without serial numbers can be linked to Prinsloo and Naidoo's criminal enterprise and whether an analysis was done by SAPS in order to confirm the same and assist in the recovery of the remaining firearms and ammunition.

²⁸ Parliamentary Question and Answer 102 to Minister of Police (NW102) dated 28 June 2019

²⁹ Parliamentary Question and Answer 2074 to Minister of Police (NW2475E) dated 27 May 2022

49 In response to a parliamentary question, the Minister declined to specifically comment on whether there is any investigation prioritising an enquiry into the theft and sale of police firearms which are being used to commit crimes, inter alia, by gangsters in the Western Cape. Instead, the Minister commented that "*A capability on Weapons Control exists*" at head office level, which handles matters relating "*to all threats involving the use of firearms...including the current threat of firearms being stolen from police stations, which poses a threat to the national security of the country*".³⁰

50 What is clear is that the Minister and SAPS have not provided any confirmation that:

50.1 There is any ongoing intelligence operation aimed at recovering firearms and ammunition which were unlawfully distributed through Prinsloo and Naidoo's criminal enterprise; or

50.2 All such firearms and ammunition have been recovered.

51 In the circumstances, new victims of crimes committed with Prinsloo Firearms still in circulation would fall within the class sought to be certified.

The prosecution of Prinsloo and Naidoo

52 Prinsloo was arrested on 16 January 2015 and was charged with a number of offences under the FCA, the Prevention and Combatting of Corrupt

³⁰ Parliamentary Question and Answer 6 to Minister of Police (NW6) dated 10 February 2022

Activities Act 12 of 2004 (**PRECCA**) and the Prevention of Organised Crime Act 121 of 1998 (**POCA**), together with a number of common law offences.

53 On 21 June 2016 Prinsloo was sentenced in one of the cases against him in relation to Project Impi (Parow Cas 73/05/15) to 46 years imprisonment, reduced to 18 years concurrently, on 13 charges including: managing a criminal racket, corruption, theft, possession of illegal and prohibited firearms, sale of illegal firearms, illegal altering of firearms and money laundering.

54 Prinsloo entered into a plea bargain with the State and was sentenced to an effective imprisonment of 18 years and his assets in the amount of R1 221 600 were confiscated by the Asset Forfeiture Unit. Both Prinsloo and Naidoo testified in the matter.

55 Laher and Raves were also arrested and are subject to an ongoing prosecution.

The history of access to firearms in South Africa

56 Research reveals that there has been an increase in firearm-related violence from 2007 (when Prinsloo Firearms began entering the market), and particularly in the Western Cape. In this regard I refer to the affidavit of **Richard Matzopoulos**, an epidemiologist and specialist scientist at the South African Medical Research Council (**MRC**), which deals with this phenomenon more fully. For present purposes, I have summarised below some of the reported findings.

57 A report prepared in 2021 for the National and Provincial Departments of Health by the MRC indicates the following (the **MRC report**):

57.1.1 32.2% of all deaths in 2017 were firearm-related.

57.1.2 The Western Cape had the highest rate of firearm homicide with 42.3% of all homicides involving a firearm.

57.1.3 The age-standardised firearm injury mortality rates per 100 000 for males in the Western Cape in 2017 was 44.0 whilst the corresponding figures in the other eight provinces ranged from 2.3 to 28.2.

57.1.4 There has been a substantial increase in firearm-related homicide in the Western Cape specifically between 2009 and 2017. It is noted that a former (2018) study suggests that this may be attributed to the illegal supply of firearms by an ex-police officer (Prinsloo).

58 I attach hereto the MRC report which is entitled 'The 2nd Injury Mortality Survey: A National Study of injury and mortality levels and causes in South Africa in 2017', as "**AK12**".

59 The 2018 study referred to in the MRC report is annexed hereto as "**AK13**" and is entitled 'A retrospective time trend study of firearm and non-firearm homicide in Cape Town from 1994 to 2013'. In that study, which was published in the SA Medical Journal, the authors concluded:

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59.1 Firearm homicide rates are strongly associated with the availability of firearms.

59.2 Between 1994 and 2000 the firearm homicide rates in Cape Town increased steadily at 13% year on year. The rates stabilized between 2000 and 2002 (at a time when the FCA was enacted) and decreased substantially by 15% from 2003 to 2006. After 2007 (when Prinsloo Firearms began entering the market), firearm homicide rates increased significantly by 21% per annum. In contrast, non-firearm homicide rates either decreased or remained stable over the entire period.

59.3 The analysis of firearm homicide trends by race reveals differences among rates in the coloured community compared with other race groups that again can be explained by differential firearm availability. The decreasing trend in firearm homicide rates that began in all race groups after the introduction of the FCA in 2000 was sustained among blacks and whites until 2010, after which firearm homicide rates began to increase for all population groups, coinciding with easier access to licensed firearms. Among coloureds, the decrease was not sustained after 2006, coinciding with Prinsloo Firearms being supplied through illicit channels. Moreover, after 2010 the rate of increase in firearm homicide for coloureds was significantly higher than for other race groups.

59.4 This finding is supported by international research, including meta-analyses, which show that firearm availability is associated with firearm-

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related deaths.³¹ In the United States, studies have shown that firearm ownership is a significant predictor of firearm homicide rates and that restrictive licensing laws on handguns are associated with a decline in firearm homicide rates.³² A European study found similar results.³³ Australia has seen some of the most drastic rates of reduction of firearm homicide after strict laws were introduced which reduced the number of firearms in circulation and available to the public.³⁴ Other South African studies provide similar evidence as per the article of G Lamb (2018)³⁵ annexed hereto as “AK14”.

60 To summarise, there is credible evidence to support the conclusion that the increase in the supply of firearms to a specific community is highly likely to result in a proportionate increase in the number of firearm-related murders and assaults. Given that there is no other reported source of increased firearm supply to the Cape Flats, the only reasonable conclusion that could be reached is that the Prinsloo Firearms were directly responsible for the increase in firearm-related murders noted in the aforementioned studies.

³¹ Santaella-Tenorio J, Cerdá M, Villaveces A, Galea S. 2016. What do we know about the association between firearm legislation and firearm-related injuries? *Epidemiologic Reviews*, 38: 140-157

³² Siegel M, Ross CS, King C. 2013. The relationship between gun ownership and firearm homicide rates in the United States, 1981-2010. *American Journal of Public Health* 103(11):2098-2105. doi.org/10.2105/AJPH.2013.301409; Gunn F, Boxer P, Andrews T, Ostermann M, Bonne SL, Gusmano M, Sloan-Power E, Hoh B. 2021. The Impact of Firearm Legislation on Firearm Deaths, 1991–2017. *Journal of Public Health* 44(3): 614-624. <https://doi.org/10.1093/pubmed/fdab047>

³³ Hurka, S, Knill, C. 2018. Does regulation matter? A cross-national analysis of the impact of gun policies on homicide and suicide rates. *Regulation & Governance*. doi:10.1111/rego.12235

³⁴ Chapman S, Alpers P, Agho K, Jones M. 2006. Australia's 1996 gun law reforms: Faster falls in firearm deaths, firearm suicides, and a decade without mass shootings. *Injury Prevention*;12(6):365-372. doi.org/10.1136/ip.2006.013714

³⁵ Lamb, G Murder and the SAPS's Policing of Illegal Firearms in South Africa *Acta Criminologica: Southern African Journal of Criminology* 30(1)/2018. <https://hdl.handle.net/10520/EJC-103dc1c7e0>

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61 I am advised and submit that this causal relationship warrants the authorisation of a class action suit precisely because there is a reasonable to strong probability that any gun-related murder or assault that occurred on the Cape Flats after 2007 was committed using a Prinsloo Firearm. At the very least, it is statistically probable that a large number of the firearm-related murders and assaults that took place after 2007 were committed by persons using a Prinsloo Firearm.

62 I point out that these conclusions are drawn irrespective of the veracity of the SAPS presentation³⁶ or the Vearey Reports.³⁷ I point out, in any event, that there is direct evidence linking Prinsloo Firearms to many cases of injury and death.

THE STATE'S OBLIGATIONS IN RESPECT OF FIREARM CONTROL

Introduction

63 I set out in some detail the instruments that regulate the State's obligations in respect of firearm control, particularly the storage and destruction of firearms.

The common law

64 I am advised that the State and, in particular the Respondents, owe the public a general duty of care at common law. The content of this duty is

³⁶ Annexure AK3: : SAPS presentation entitled "Forensic Services Ballistics Etch Investigation" by Ballistics Section Western Cape, Q Bothman, Z Meiring, PG Engelbrecht in 2013

³⁷ Annexure AK4; and Annexure AK5: July and September Vearey reports

informed by the various Constitutional and statutory obligations resting upon officials of the SAPS.

- 65 A failure by the Respondents to comply with this duty in respect of members of the class gives rise to delictual liability in respect of any damages or loss suffered as a consequence thereof.

The Constitution of South Africa, 1996

- 65.1 The police, as an arm of the State, is required to:

“respect, protect, promote and fulfil the rights in the Bill of Rights.”

- 65.2 These rights include the right to: dignity (section 10), life (section 11), freedom and security of the person (section 12) which includes the right to be free from all forms of violence from either public or private sources and the right not to be treated or punished in a cruel, inhuman or degrading way and a child’s right to be protected from, inter alia, abuse and to have their best interests considered as paramount in all instances involving them.

- 65.3 Section 237 of the Constitution requires that:

“All constitutional obligations must be performed diligently and without delay.”

- 66 The national police service forms part of the security services, together with the national defence force and the intelligence services, as envisaged in section 199 of the Constitution.

66.1 The Constitution sets out the standard of conduct expected of, inter alia, the police service and its members and indicates that a certain level of training is required in order to ensure that this standard is known and being adhered to. In this regard section 199(5) requires that:

“(5) The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.”

66.2 The structure, objects, responsibilities, and control of the police service are set out from sections 205 to 208 of the Constitution.

66.3 The mandate of the police service is set out in section 205(3) of the Constitution as follows:

“(3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”

66.4 The Minister is responsible for policing and is required to enact legislation in order to ensure that the police mandate and functions are carried out in an effective manner. In this regard, section 205(2) of the Constitution provides:

“(2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge

its responsibilities effectively, taking into account the requirements of the provinces.”

66.5 Section 207 of the Constitution provides for the appointment of national and provincial police commissioners. Provincial police commissioners are responsible for policing in their respective provinces, as prescribed by national legislation, in terms of section 207(4) of the Constitution.

The South African Police Services Act, 1995

67 The SAPS Act 68 of 1995 (the **SAPS Act**) establishes the SAPS and sets out its powers and functions.

67.1 The preamble to the SAPS Act notes that there is a need to:

“ensure the safety and security of all persons and property in the national territory;

uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3³⁸ of the Constitution;

....

...provide for a Directorate in the Service that is dedicated to the prevention, investigation and combating of national priority offences, in particular serious organised and transnational crime, ... and serious corruption, and that enjoys adequate independence to enable it to perform its functions.”

67.2 Section 11 of the SAPS Act reinforces the National Commissioner’s duty to exercise control over and manage the police service and outlines the incumbent’s functions further.

³⁸ I understand that there is an error in the Act’s text and this ought to read chapter 2, namely, the Bill of Rights



- 67.3 Section 12 of the SAPS Act reinforces a Provincial Commissioner's duty to exercise control and command over the police service under the incumbent's jurisdiction.
- 67.4 Section 17 of the SAPS Act establishes a Directorate for Priority Crime Investigation. The Directorate's functions are set out in section 17D and include preventing, combatting and investigating national priority offences.
- 67.5 The National Crime Combating Strategy (**NCCS**) records that the first SAPS strategic priority is to combat organised crime, focusing on crimes relating to, inter alia, firearm trafficking and corruption among public officials. The second strategic priority is serious and violent crime which includes a focus on strategies to counter the proliferation of firearms which is fuelling high levels of violent crime and to combat crimes related to, inter alia, gang violence.
- 67.6 Parliament has a duty to oversee the functioning of the Directorate in terms of section 17K of the SAPS Act and the National Commissioner is required to report on its performance annually to Parliament.
- 68 Regulation 4 of the Regulations published in terms of the SAPS Act, 1964 (as amended 2018) (the **SAPS Regulations**) provide that the National Commissioner is responsible for the effective performance and functions of the police, the effective administration and the proper use and care of government property in the police.

The Firearms Control Act, 2000

69 The preamble to the FCA recognises that:

“increased availability and abuse of firearms and ammunition has contributed significantly to the high levels of violent crime in our society.”

69.1 The stated purpose of the FCA includes the protection of civilian rights in the Bill of Rights, the removal of illegal firearms in circulation and the safe storage, control and management of firearms by the State. Section 2 provides that the purpose of the FCA is to:

“(a) enhance the constitutional rights to life and bodily integrity;

(b) prevent the proliferation of illegally possessed firearms and, by providing for the removal of those firearms from society and by improving control over legally possessed firearms, to prevent crime involving the use of firearms;

(c) enable the State to remove illegally possessed firearms from society, to control the supply, possession, safe storage, transfer and use of firearms and to detect and punish the negligent or criminal use of firearms;

(d) establish a comprehensive and effective system of firearm control and management; and

(e) ensure the efficient monitoring and enforcement of legislation pertaining to the control of firearms.”

69.2 Chapter 11 (sections 95 to 101), section 109 and 145 of the FCA are applicable to SAPS.

69.3 Section 97 notes that SAPS (as an official institution) is subject to such conditions in respect of the acquisition, use, safekeeping and disposal of firearms as may be prescribed and as imposed by the Registrar of Firearms, the National Commissioner.

69.4 Section 98(4) provides that the head of SAPS may impose conditions on the possession and use of firearms and ammunition under its control and may issue instructions to employees of SAPS prescribing conditions relating to the acquisition, storage, transport, carrying, possession, use and disposal of such firearms and ammunition.

69.5 Section 99 provides that SAPS is required to keep a record of "every firearm under its control", including particulars regarding the disposal, transfer, loss, theft or destruction of firearms under its control. All firearms under SAPS' control must bear the prescribed identification marks.

69.6 Section 109 provides that a police official authorised by the Registrar, the National Commissioner, may enter any office or premises of an official institution (including SAPS) and conduct an inspection to determine whether the conditions of the FCA or any permit/authorisation issued in terms of the FCA is being complied with.

69.7 Section 145 empowers the Minister to make regulations in respect of, inter alia:

"(f) the security of any premises at ... Official Institutions [including SAPS) ..., including precautions and procedures to be taken to prevent the theft or unlawful use of firearms and ammunition in the possession of such persons;

(g) precautions to be taken in respect of the carriage, use, safe custody or destruction of firearms and ammunition;

...

(n) generally with regard to any other matter which it is necessary or expedient to prescribe in order to achieve or promote the objects of this Act.”

70 Chapter 9 of the Regulations issued under the FCA, 2004 (the **FCA Regulations**) speak to SAPS’ obligations in respect of firearm storage and management.

70.1 FCA Regulation 76 provides that:

70.1.1 Firearms are required to be stored in a safe or strong room which conforms to the prescripts of SABS Standard 953-1 and 953-2.

70.1.2 SAPS may only dispose of a firearm through: transferring it in accordance with the FCA, destruction as prescribed, or through display at a museum.

70.2 FCA Regulations 81 and 82 provide that:

70.2.1 SAPS keep a register in the format of an “*electronic database*”, accessible at the “*place where the firearms and ammunition are stored and controlled*”, recording all firearms and ammunition under its control. Read with section 125(2) of the FCA, the database must contain a record of all firearms in the possession of SAPS (as an official institution); including the particulars regarding the disposal, transfer, loss, theft or destruction of firearms in its possession.

- 70.2.2 This register must be kept for a period of 10 years from the last entry therein.
- 70.3 Section 149 of the FCA provides that the State must destroy any firearm or ammunition forfeited within six months of the forfeiture being confirmed (including any appeals), unless the Registrar, the National Commissioner, deems a forfeited firearm to be of special value. No firearm may be destroyed without the written approval of the National Commissioner.
- 70.4 FCA Regulation 104 prescribes the process of destruction of firearms and ammunition by the State. The process can be summarised as follows:
- 70.4.1 The firearm must be marked if it does not bear an identification mark and those details entered into the CFR;
- 70.4.2 A DFO, must perform an audit before destruction to verify the particulars provided to the Registrar, the National Commissioner, after destruction;
- 70.4.3 The relevant firearm and ammunition must be destroyed in the presence of a DFO; and
- 70.4.4 The relevant DFO must supply the Registrar, the National Commissioner, with a list of firearms and ammunition destroyed within 14 days of destruction.

SAPS Standard Operating Procedures and Standing Orders

71 SAPS has issued various internal standard operating procedures, directives and internal guidelines on firearm storage and destruction since the FCA and Regulations have come into effect. All of these internal policies recognise that:

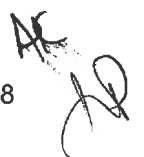
71.1 It is the responsibility of SAPS to eliminate the number of illegally held firearms in circulation; and

71.2 It is the sole responsibility of SAPS to effectively and efficiently manage the destruction of all redundant, obsolete and discarded firearms (owned by the State) as well as firearms recovered and forfeited to the State, through the implementation of checks and balances.

72 The process for the destruction of forfeited firearms and ammunition is different from that applicable to State-owned firearms and ammunition. I briefly outline both below, based on the available laws and publicly available SAPS policies.

73 State-owned firearms and ammunition:

73.1 State-owned firearms and ammunition must be destroyed where redundant, obsolete or unserviceable. Destruction of State-owned firearms remains a national centralised competency. Standing Order (Stores) 48, issued in notice 6 of 2011, attached hereto as annexure "AK15" provides that this process must be carried out centrally by the Provisioning Stores within the Supply Chain Management (**SCM**) Division. The Standing Order also indicates that State-owned firearms must bear a unique identification mark allocated by the CFR. Further, that regular inspections of firearms



stored by SAPS must take place, weekly at a police station level, annually by the SCM armourers and by the store master of the Firearm Provisioning Store. This remains the case under National Instruction 6 of 2018 on management of movable government property (chapter 10), the relevant chapter which is attached hereto as annexure “AK16”.

74 Forfeited firearms and ammunition:

74.1 This process applies to firearms which have been forfeited to the State, unclaimed licensed firearms, voluntarily surrendered licensed firearms, unlicensed firearms and home-made firearms.

74.2 Since 2003 the destruction of non-state-owned firearms and ammunition has been decentralised. This means that, where possible³⁹, firearms and ammunition are destroyed at a provincial as opposed to a national level.

74.3 The destruction process which was applicable from 2003 is described in a national circular issued by the Second Respondent (presumably acting as Registrar under the FCA) to all Provincial Commissioners titled ‘Decentralization of the Destruction of Firearms and parts thereof’, dated 20 August 2003 and attached hereto as annexure “AK17”. The process in the 2003 circular is as follows:

74.3.1 The station commanders of police stations nationwide are required to physically inspect all firearms and parts which are

³⁹ In certain provinces firearms will be sent to Pretoria if the province does not have the capability to arrange for destruction. For example, I understand that presently the Western Cape has not found a suitable destruction site (the two previous sites are no longer options), accordingly all firearms are being sent to Pretoria for destruction

destined for destruction and compare these against, inter alia, a packing note (SAPS 498) and send the documentation to the Provincial Head of Crime Prevention to arrange for destruction;

74.3.2 The SAPS member (under the supervision of the station commander) packing the firearms to be sent for destruction is required to check all firearms and parts physically and compare these against the packing note;

74.3.3 The SAPS member transporting the firearms is required to inspect all firearms and parts which are destined for destruction and compare these against, inter alia, a packing note;

74.3.4 On arrival at the destruction facility the Provincial Head of Crime Prevention must receive the firearms and check them against the packing note received;

74.3.5 The firearms must then be destroyed in the presence of the Provincial Head of Crime Prevention as well as the Provincial Commander of Firearms and Liquor Control (now termed FLASH), both of which must sign confirmation of such destruction and send it to the relevant station commander as well as the central firearms registry; and

74.3.6 A monthly schedule of firearms destroyed must be sent to the Logistics Division as well as the Crime Prevention Division. Provinces are expected to destroy firearms on, at least, a quarterly basis to prevent the accumulation of firearms.



74.4 The National Instruction 8 of 2017 on property and exhibit management (chapter 15) and National Instruction 5 of 2020 (destruction of firearms in terms of section 149 of the FCA) amended the destruction process slightly by introducing new role players and protocols. These instructions, which are attached hereto as annexure “AK18” and “AK19” respectively, require the following steps to be taken:

- 74.4.1 Prior to their destruction all firearms which are forfeited to the State must be recorded (in, inter alia, the SAPS 13 Property Register, the Firearm Transfer Register, and an individual firearm file), test fired at a provincial office by a member of the Ballistics Unit and an IBIS report compiled. Ammunition must also be entered as separate items in the same record;
- 74.4.2 Forfeited firearms must be kept in a safe or strong room which meets certain minimum standards. If no such storage is available such firearms must be stored at a central firearm storage facility or nearby police stations;
- 74.4.3 Firearms and ammunition must be disposed of as soon as possible to avoid theft and related risks;
- 74.4.4 Firearms and ammunition must be destroyed on a regular monthly basis;
- 74.4.5 In instances where the serial number of a firearm has been obliterated or tampered with and cannot be determined during

a physical examination, the firearm must be marked (the process of etching) with a Firearm Identification Number (**FIN**);

74.4.6 The SAPS member involved in packing, transporting and unpacking of firearms and ammunition sent for destruction must be a DFO. Station commanders remain responsible for overseeing the process and signing off on the packing note;

74.4.7 Once firearms and ammunition have been recorded, test fired and packed for destruction they must be sent to the provincial firearm store and received by the Provincial DFO (replacing the Provincial Head of Crime Prevention in the 2003 circular).

74.5 Once the firearms are at the provincial firearms store, the Provincial Commander of FLASH is responsible for:

74.5.1 Liaising with the South African Heritage Resources Agency (**SAHRA**) in order to allow the SAHRA to identify any firearms which must be set aside and issued a certificate as a result of their heritage value;

74.5.2 Compiling a packing note in respect of the remaining firearms and ammunition, storing them appropriately and sending a list of all firearms ready for destruction to the Firearm Compliance and Enforcement Section;

74.5.3 Conducting a joint physical firearms audit with the Head of the Firearm Compliance and Enforcement Section to check the

firearms against the packing note and to confirm the same in writing;

74.5.4 Sending a list of firearms for destruction to the Firearm Compliance and Enforcement Section for gazetting for a 21 day period;

74.5.5 Arranging for the transportation of the firearms to the destruction site and informing the Firearm Compliance and Enforcement Section of the date of delivery to the site for inspection;

74.5.6 Ensuring that firearms are destroyed through melting in the presence of him or herself as well as two additional persons: the Provincial Head of Visible Policing and the Head of Firearm Compliance and Enforcement;

74.5.7 Sending a certificate of all destroyed firearms to the Firearm Compliance and Enforcement Section.

74.6 The Provisional Commissioner has a role in overseeing the destruction event and reporting on the same.

75 As appears from the above, the applicable framework is designed, through the application of several checks and balances, to allocate responsibilities to various functionaries involved in different parts of the process, to keep track of which firearms are destroyed and to ensure the integrity of the destruction process.

- 76 In March 2011, SAPS reported areas of non-compliance in relation to the handling of State-owned firearm and ammunition as well as forfeited firearms and ammunition. This is evident from a presentation compiled by the SAPS Inspectorate Services (**2011 Firearms Presentation**) annexed hereto as "**AK20**".
- 77 The presentation lists various aspects of non-compliance, including inadequate storage of firearms and ammunition (not secure) and poor controls with respect to safes and keys, untagged and unlabelled firearms. Furthermore, delayed IBIS testing led to a backlog in firearm destruction which negatively influenced the management of forfeited firearms and ammunition.
- 78 The 2011 Firearms Presentation outlined the SAPS SCM Strategy in relation to SAPS owned firearms. It includes the requirement of bi-annual firearms audit aimed at combating the delay in reporting and detecting lost firearms. Specific guidelines were provided for the marking of SAPS firearms using dot pin markings on specific areas of the firearm and the marking of all State-owned firearms with the SAPS emblem. This was introduced to improve the identification of firearms in relation to its make and model as well as if it was State-owned. IBIS testing was required for all SAPS firearms in order to identify them even when identification marks had been removed as well as to link any such firearms to criminal activity.

International law

79 The Constitution provides that when interpreting the Bill of Rights, a court must consider international law and may consider foreign law.

79.1 In terms of South Africa's international law obligations, the following instruments are relevant:

79.1.1 The Protocol on the Control of Firearms, Ammunition and Other Matters in the Southern African Development Community (SADC) Region (2001) which addresses the need for operational capacity, sufficient record keeping, transparency and information exchange, provision for voluntary surrender of firearms, public education and awareness and institutional arrangements for effective implementation of these measures. This regional security agreement was signed by South Africa in August of 2001. In 2020 an agreement amending the SADC Protocol was adopted by SADC member states (which has yet to be signed by all states to come into force) which strengthens states' recordkeeping requirements by the insertion of a new "Article 15: Record-Keeping". It requires that states maintain records of all firearms, including firearms already within their territory and in transit, that records be "accurate and comprehensive" to "enable national authorities to trace illicit small arms and light weapons in a timely and reliable manner", and that records, to the extent possible, be kept indefinitely. Another new Article (17) identifies recordkeeping as a necessary procedure for stockpile management.

- 79.1.2 The United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (**the Firearms Protocol**), which establishes a framework for member states to control and regulate firearms, prevent the diversion of firearms into the illicit market and facilitate the investigation and prosecution of violations. South Africa ratified this instrument in February 2004;
- 79.1.3 As a signatory of the UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, a globally agreed framework for activities to counter the illicit trade in small arms and light weapons and to control its negative consequences, South Africa has a number of obligations regarding managing its weapons stockpiles, in particular to assess and manage surplus stockpiles. This includes to: regularly review state stockpiles; to establish and implement programmes for the responsible disposal of surplus stock; and to ensure that surplus stocks are adequately safeguarded until disposal; and
- 79.1.4 Resolution 29/10 adopted by the UN Human Rights Council on the regulation of civilian acquisition, possession and use of firearms calls on States to do their utmost in the form of appropriate legislative and administrative measures consistent with international human rights law and their constitutional

frameworks to ensure effective regulation of civilian acquisition, possession and use of firearms.

THE APPLICANTS' CAUSE OF ACTION

80 I am advised that in these certification proceedings, the Court is not required to determine the merits of the Applicants' cause of action or to make any factual determinations, beyond merely being satisfied that the Applicants have a triable cause of action.

81 The Applicants' cause of action is more fully set out in the attached particular of claim. For present purposes, I highlight below the key submissions.

82 Firstly, I emphasise that it is effectively common cause, based on documentation authored by the Respondents, the SAPS, or other government functionaries that:

82.1 Prinsloo and Naidoo, employed at the time as senior SAPS officials with the specific duties to ensure the safekeeping, storage and destruction of firearms, wrongfully stole and unlawfully distributed firearms and ammunition in the control of SAPS to intermediaries and gang members;

82.2 The gang members made use of the firearms to murder, injure and/or threaten members of the public;

82.3 Specific firearms used in the commission of specific crimes can be identified as firearms stolen and unlawfully distributed by Prinsloo and

Naidoo, as a result of, inter alia, the identification marks, the removal thereof and the IBIS system.

83 Secondly, each class member has incurred loss, either as a result of:

83.1 Being injured with a firearm which was meant to be in the SAPS possession and/or destroyed by SAPS, but was unlawfully distributed through Prinsloo and Naidoo's criminal enterprise; or

83.2 Being a dependant, parent, legal guardian, or other person whose loss arises from the death, and/or prior injuries, of victims who have been killed with a firearm which was meant to be in the SAPS possession and/or destroyed by the SAPS, but was unlawfully distributed through Prinsloo and Naidoo's criminal enterprise.

84 The precise nature of the loss would differ per class member but would include: funeral costs, medical expenses (past and future), loss of income, and loss of support.

85 Third, the Applicants contend that the Respondents are liable to the class members for their loss on the basis of:

85.1 Prinsloo and Naidoo's intentional and wrongful conduct; and

85.2 The Respondents' direct negligent and wrongful conduct, which caused the loss experienced by the class members.

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- 86 The Applicants submit that the Minister is vicariously liable for the actions of all officials acting within the course and scope of their employment with SAPS. In this regard:
- 86.1 Prinsloo and Naidoo, were employed by SAPS;
- 86.2 Their duties included the storage, safekeeping and destruction of various firearms and ammunition in the SAPS' possession and they were granted the requisite access to firearm storage units for such purposes;
- 86.3 Prinsloo and Naidoo invited various individuals to the SAPS firearm store at Silverton to view the SAPS armoury and provided them with firearms and ammunition from the store in exchange for personal financial gain;
- 86.4 Prinsloo and Naidoo, with the assistance of intermediaries, caused firearms and ammunition under SAPS' control to be distributed to various gang members and related unlawful owners within the Western Cape;
- 86.5 In doing so, Prinsloo and Naidoo acted within the course and scope of their employment;
- 86.6 Accordingly, the Minister is vicariously liable to the class for the loss arising from Prinsloo's and Naidoo's actions.
- 86.7 The same applies to the actions of other employees who did not adhere to their responsibilities forming part of the applicable checks and balances (already described herein), and who acted in the course and scope of their employment.

86.8 I note that the common law principle of vicarious liability ought to be understood and applied within the normative framework of our Constitution, and the social and economic purposes which they seek to pursue.

87 Further, the Respondents are directly liable to the class as a result of their failure to comply with their respective duties of care. In this regard:

87.1 The Respondents owed the members of the class a duty of care, which duty they each failed to discharge. The duty of care relates to the Respondents' responsibility to protect the public from violent crime and to ensure adequate firearm forfeiture, storage, management and destruction procedures are designed, implemented and monitored.

87.2 These duties arise not only from the common law, but from the constitutional obligations enshrined in sections 7(2), 199, 205, 206, 207 and section 237, read with sections 10, 11, 12 and section 28 of the Constitution, as well as the SAPS Act 68 of 1995 and the FCA, the corresponding regulations and SAPS Standing Orders.

87.3 The SAPS is one of the primary agents responsible for the protection of the public in general against the invasion of their fundamental rights by perpetrators of violent crime. All SAPS members, and their employer, bear a constitutional, statutory and common law duty to prevent crime and protect the public.

87.4 As a result of the enormous potential for public harm inherent in the inadequate safekeeping and control of firearms, a government department

should not, in general, be able to avoid liability for wrongful acts of commission or omission of employees that it has appointed to carry out its duties to safeguard and control firearms under its supervision.

87.5 The Respondents failed to fulfil these duties as the design, implementation and monitoring of the Respondents' system and procedures to ensure firearm forfeiture, storage, management and destruction were wholly inadequate during the course of around 2007 to 2016, when Prinsloo and Naidoo stole firearms from the Silverton storage facility. In this regard:

87.5.1 There was a lack of oversight from higher management (acting within the course and scope of their employment) regarding access to firearms;

87.5.2 No physical audits of weapons marked for destruction were conducted, or these were conducted inadequately, resulting in the undetected collusion between Prinsloo and Naidoo and falsification of documentation over a number of years;

87.5.3 There was a lack of actual guidance and clear direction as to what needed to happen to firearms which were regarded as redundant or marked for heritage use;

87.5.4 There was a lack of sufficient checks and balances within the FLASH and SAPS armoury divisions to prevent collusion and corruption between members;

87.5.5 There was a failure to implement an electronic and/or effective system for registering firearms for destruction and providing conclusive proof of destruction thereof; and

87.5.6 There was a failure to conduct physical inspections of the destruction of firearms.

87.6 The failings in the CFR are ongoing as a presentation to Parliament on 3 May 2023 made clear.⁴⁰

87.7 Further, the Respondents continue to breach their constitutional, statutory and common law duties in failing to implement adequate measures to recover the Prinsloo Firearms which remain in circulation.

87.8 As a consequence of the Respondents' failure to fulfil their respective duties of care (and constitutional and statutory duties), the members of the class were exposed to an invasion of their rights and suffered loss.

87.9 Finally, I note that the criminals who received firearms from the Confiscated Firearms Store at Silverton would not have had access to those firearms had Prinsloo and Naidoo not facilitated such access.

88 In summary, and given that the Court is not asked to make a ruling on whether the Applicants' claims will ultimately be sustained at trial, for the

⁴⁰ <https://www.dailymaverick.co.za/article/2023-05-03-an-unmitigated-firearms-crisis-parliament-hears-cops-are-firing-blanks-on-proper-firearm-control/> . The minute of this meeting is yet to be made available at the date of deposing to my affidavit.

purposes of certification I submit that it is clear that the members of the class have a *prima facie* cause of action against the Respondents.

RELEVANT FACTORS TO CONSIDER IN APPLICATIONS OF THIS NATURE

89 I am advised that certification is a necessary procedural requirement for the institution of a class action in terms of section 38(c) of the Constitution.

90 I understand that this Court will consider whether it is in the interests of justice to grant certification of this proposed class action.

91 I understand that relevant factors include but are not limited to the following:

91.1 Whether the class is **defined** with sufficient precision by objective criteria;

91.2 Whether the class members have a ***prima facie* cause of action** against the Respondents;

91.3 Whether there are **common claims or issues of fact and law** that are capable of class-wide determination;

91.4 That the **damages** sought flow from the cause of action, are ascertainable and capable of determination and that an appropriate procedure for allocation of damages exists;

91.5 Whether the **class representatives** (and their legal team) are appropriate to represent the class; and

91.6 Whether the cause of action is such that its pursuit in the **form of a class action is most appropriate**.

92 The proposed class action satisfies these requirements. I will address each of these requirements which have not yet been canvassed in this affidavit.

93 I have already touched on many of these factors, but I expand thereon below.

Definition of the class

94 The Applicants intend to proceed in respect of two sub-classes:

94.1 Persons who have suffered loss on account of being injured by a Prinsloo Firearm; and

94.2 Dependants, parents, legal guardians, and other persons who have suffered loss arising from the death, and/or prior injuries, of victims who have been killed with a Prinsloo Firearm.

95 I am advised that it is necessary to be able to identify the members of the class with sufficient accuracy. In respect of the class members' identification, same is clearly defined, namely it pertains to those persons who were injured by a person using a Prinsloo Firearm and/or dependants, parents, legal guardians, and other persons who have suffered loss arising from the death, and/or prior injuries, of victims who have been killed with a Prinsloo Firearm.

96 In respect of certain members of the class this information is already available. They are the injured victims who are listed in annexure A to the September Project Impi Report and, inter alia, the dependants, parents,

legal guardians of such victims. Based on the ballistics audit performed by the SAPS, it can be established that the persons listed in annexure A were injured or killed in a shooting involving a Prinsloo Firearm. Even to the extent that the Respondents seek to renounce the content of their own ballistics audit, it can be established with the requisite degree of certainty that those persons listed in annexure A were shot using a Prinsloo Firearm.

97 In addition to the class members identified through annexure A to the September Project Impi Report, there is an unknown number of potential class members. These are persons who were injured in a shooting involving a Prinsloo Firearm, as well as the dependants, parents, legal guardians and family members of those persons who were killed in a shooting involving a Prinsloo Firearm.

98 The events giving rise to the claims of the unidentified class members would have taken place at any stage after approximately 2007 (when the Prinsloo Firearms were first distributed to criminals) up until the present day (given that as many as 1012 Prinsloo Firearms remain in circulation). It is thus necessary for the Applicants to demonstrate to the Court that a scientific methodology exists for determining whether a victim of a shooting was shot with a Prinsloo Firearm.

99 There are a number of methods by which this exercise can be performed, the precise details of which are set out in the annexed affidavit of Mark Margolis. For present purposes, I summarise the main methods:

99.1 It can be established through the recovery of a Prinsloo Firearm itself at the scene of a shooting, coupled with a chain of evidence that establishes causally that the firearm was used in respect of the victim's shooting. As noted above, whether any recovered firearm is a Prinsloo Firearm can be accurately determined by SAPS' own internal records, as well as the manner in which it has been tampered with in order to remove identification markings.

99.2 Secondly, because all of the recovered Prinsloo Firearms would have been IBIS tested and recorded, any bullets retrieved from other crime scenes could be tested to determine whether a recovered Prinsloo Firearm was used.

99.3 Even if it were to be the case that a firearm was not recovered, it is scientifically possible to ascertain that any particular shell casing, or even any particular bullet, had been fired by a Prinsloo Firearm. This is due to the range of unique alterations that Prinsloo made to the firearms in question and which would have translated to corresponding markings on the bullet and casing.

100 Thus in summary, once the Court entertains stage two of the bifurcated enquiry, any particular opt-in claimant seeking to prove their claim would be able to adduce credible and reliable evidence to demonstrate that they are a member of the class.

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101 I thus submit that there is sufficient precision as to the identification of the class. There is moreover no risk of certain persons being included in the class without reason.

Common claims or issues of fact and law

102 I am advised that there must be sufficient commonality between the class members.

103 The cause of action in respect of each class member is substantially the same. The only significance in respect of the members of the sub-classes is that the first sub-class incurred damages as a result of personal injuries and the second sub-class incurred damages as a result of the death of another person.

104 In this regard, all class members base their claim on the cause of action described above.

105 The damages claimed by members of each class will be similar in nature.

Determination of damages

106 It is uncontroversial that should the Respondents be found liable, damages would be appropriate relief for class members.

107 Class members who were injured with a Prinsloo Firearm will be required to provide documentary and expert evidence of damages suffered in respect of:

107.1 Emotional shock;

107.2 Loss of amenities of life;

107.3 Loss of past and/or future income; and

107.4 Medical expenses.

108 Class members who have suffered damages on account of the death of another person shot with a Prinsloo Firearms will be required to provide documentary and expert evidence of damages suffered in respect of:

108.1 Emotional shock;

108.2 Loss of support;

108.3 Medical expenses; and

108.4 Funeral expenses.

109 The quantum of the individual claims will be determined at the second stage of the class action. The manner in which such damages are to be determined and allocated need only be decided by the trial court if and when it finds that the Respondents are liable. This Court does not need to determine the issue in this application.

The appropriateness of the applicants as class representatives

110 GFSA was established in 1995 with a commitment to create a safer more secure South Africa by reducing gun violence through public policy advocacy, education and awareness raising, and community mobilisation. Amongst other objectives, GFSA:

- 110.1 Works to strengthen gun control policy and programming and the enforcement thereof through lobbying and advocacy as well as community mobilisation;
- 110.2 Focuses on highlighting, through the media, the risks of guns in the home for household members, particularly women, and how to use the law to save a life; and
- 110.3 Is involved in community safety interventions to engage and support youth and community-based networks to create and access safe spaces through establishing gun free zones and build capacity to amplify young voices working towards safer communities.
- 111 GFSA was instrumental in the drafting of the country's legislation regulating firearms, namely the FCA.
- 112 Most recently, GFSA has provided detailed submissions concerning the Draft Firearms Control Amendment Bill, 2021 which provides very welcome innovations designed to limit the proliferation of guns in society, including the perpetual risk of licensed firearms being diverted through theft and other means into criminal hands.
- 113 GFSA is also currently advocating for enhancements to the CFR as a means of ensuring that firearms are always traceable and not subject to diversion through fraud, corruption and theft.
- 114 Through its involvement as a founding member of the International Action Network on Small Arms ('IANSA') GFSA has been exposed to

international advocacy aimed at reducing gun violence and has access to numerous resources related to international law obligations relating to firearms.

115 IANSA is an international network of organisations which supports efforts to make people safer by reducing demand for firearms, improving regulations and increasing controls over arms transfers. It co-ordinates global advocacy campaigns and keeps its members abreast of all small arms control matters at the United Nations.

116 GFSA is a universitas with the capacity to litigate, and has provided useful submissions as *amicus curiae* in the following matters:

116.1 *Minister of Safety and Security v South African Hunters and Game Conservation Association* 2018 (10) BCLR 1268 (CC) which dealt with a challenge to the constitutionality of certain provisions related to the renewal and termination of firearm licences (sections 24 and 28 of the FCA). GFSA drew the Court's attention to South Africa's international law obligations with respect to firearms control and submitted that the relevant FCA provisions were constitutionally sound. The Constitutional Court indicated that GFSA's submissions were valuable to the Court.

116.2 *National Commissioner of Police and Another v Gun Owners of South Africa* 2020 (6) SA 69 (SCA) which dealt with an application to set aside an interdict granted by the High Court which prevented SAPS from fulfilling its obligations with respect to the receipt and seizure of firearms with expired licences. GFSA submitted that the granting of the interdict was an

inappropriate exercise of judicial power since it did not take into account section 233 of the Constitution and interpret the Act in accordance with international law, and that the High Court had exercised its remedial power in a manner that interfered with South Africa's international obligations. Once again, GFSA's contribution was noted as valuable to the Court.

117 GFSA's attorneys of record represented GFSA in the more recent SCA matter and thus have detailed knowledge of GFSA and the programmes that it seeks to advance.

118 GFSA has formed a coalition known as 'Silence the Guns' which brings together various actors in the NGO sector to advocate for better gun control in South Africa. At present, the coalition includes: GFSA, the African Policing Civilian Oversight Forum (**APCOF**) and Sonke Gender Justice.

119 During the course of 2021 these members entered into a memorandum of understanding (**MOU**) in respect of a project in which the coalition would participate, known as 'Holding the State Accountable'. I annex their MOUs hereto as "**AK21**" to "**AK22**".

120 As a result of this coalition GFSA has the support of counsellors, social workers, advocacy partners, community members and related NGO services in acting as the class representative in this matter.

121 GFSA has engaged with various NGO, State and media actors to obtain further information on the impact of the theft and unlawful distribution of Prinsloo Firearms. More recently it submitted a lengthy request for

information to the National Prosecuting Authority and SAPS under the PAIA.

122 In summary, GFSA is well suited to act as representative of the class.

123 The Further Applicants are members of the class who would otherwise have direct individual claims based on the cause of action detailed herein and in the attached draft particulars of claim, against the Respondents, for the loss that they have suffered. The Further Applicants, which represent the class, have been instrumental in assisting GFSA in coordinating the class action and are, for that reason, suited to act as class representatives.

124 I confirm that GFSA has sufficient resources to cover the costs of this litigation. Both the Applicants' attorneys and counsel are acting on a pro bono basis in this matter. GFSA has secured sufficient funding in order to cover the disbursements (including costs associated with notification) and related costs that will be required in this class action.

The appropriateness of the legal representatives

125 I submit that the Applicants' legal representatives have capacity and are suitably qualified and experienced to represent the Applicants in these proceedings.

126 The firm of attorneys representing the Applicants is Norton Rose Fulbright Inc., a large law firm with a global presence. Norton Rose Fulbright Inc. has been involved in a number of class action matters including:

126.1 Nkala and Others v Harmony Gold Mining Company Limited and Others
2016 (5) SA 240 (GJ); and

126.2 Bartosch v Standard Bank of South Africa Limited and Others (2286/2014)
[2014] ZAECPEHC 52 (21 August 2014).

127 The firm has a dedicated team, the Impact Litigation team, tasked with handling matters in the public interest and other matters of a pro bono nature. The Impact Litigation Team has been involved in a number of public interest litigation related to the enforcement of constitutional rights, including:

127.1 District Six Committee and Others v Minister of Rural Development & Land Reform and Others [2019] ZALCC 15; 2019 (5) SA 164 (LCC);

127.2 District Six Committee and Others v Minister of Rural Development & Land Reform and Others [2019] ZALCC 13; [2019] 4 All SA 89 (LCC);

127.3 Scalabrini Centre of Cape Town and Another v Minister of Social Development and Others [2020] ZAGPPHC 308; 2021 (1) SA 553 (GP);

127.4 Minister of Safety and Security v South African Hunters and Game Conservation Association 2018 (10) BCLR 1268 (CC), GFSA intervening as amicus curiae;

127.5 Counsel for the Advancement of the South African Constitution as amicus curiae in Minister of Cooperative Governance and Traditional Affairs v De Beer and Another [2021] 3 All SA 723 (SCA);

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127.6 Tshabalala v S; Ntuli v S 2020 (5) SA 1 (CC);

127.7 South African Human Rights Commission and others v Madibeng Municipality and others under case number 21088/2017 in the Gauteng Division, Pretoria.

128 The Impact Litigation Team will also have access to a number of other directors within Norton Rose Fulbright Inc. who will provide further assistance as needed.

129 The Impact Litigation Team has briefed senior and junior counsel who both have extensive experience suitable to this action.

130 The Applicants' attorneys have not entered into a contingency fee agreement with the Applicants nor do they plan to do so. The Applicants' legal representation will be provided throughout this litigation on a pro bono basis. The Applicants' legal team will only seek to recover their costs. Accordingly, no conflicts of interest arise between the Applicants and their representatives.

The suitability and appropriateness of a class action

131 As set out above, the class is made up of a number of identifiable plaintiffs, some of which are named in the September Vearey Report.

132 The September Vearey Report however only refers to minors and persons aged 18 years old who were killed or injured with a Prinsloo Firearm as of 2016. The September Vearey Report does not detail those who had attained the age past majority, those who were injured or killed after 2016

and those who were simply not ballistically linked at the time of the report. GFSA has identified some of the adult direct victims through community engagement initiatives. However, as matters stand, the majority of those members of the class are not presently identifiable and will not be so until notice of the class action is made public in the manner contemplated below.

133 In particular, many child dependants will have suffered the loss of a provider through a shooting, but will not know that this was a shooting involving a Prinsloo Firearm, or even that the Respondents' conduct regarding the diversion of those guns was wrongful.

134 For these reasons, a class action would be best suited to advancing the claims of the class members.

135 I also stress that the majority of the class members come from extremely poor communities that would not have access to legal representation and are thus unlikely to be in a position to bring a personal claim against the Respondents even if they were aware that such a claim existed in principle. Accordingly, the class action is the only realistic means by which the class members might have access to justice as guaranteed by section 34 of the Constitution. This point is illustrated by the fact that, to the best of my knowledge, not a single personal claim has been brought against the Respondents in respect of wrongful conduct vis-à-vis the Prinsloo Firearms.

136 To summarise, the class action would advance access to justice and would be expedient because:

136.1 It enables persons who, as a result of lack of means, lack of information or lack of access to legal services, cannot otherwise obtain legal assistance to obtain such redress through the collective representation undertaken by others.

136.2 It will ensure that the class and the Respondents litigate at parity. By aggregating their claims and proceeding as a class, represented by a capable NGO and adequately resourced legal representatives, they are better placed to litigate effectively against a State respondent with (in principle) limitless resources. This would not be the case in respect of individual litigants.

136.3 The litigation is more likely to proceed in an orderly fashion and with judicial economy, precisely because a single hearing would determine the extent of the Respondents' liability based on the same evidentiary material and on a single consideration of the expert testimonies.

136.4 There would be no risk of a duplicity of claims with the resultant risk of contradictory determinations of identical claims.

PROPOSED MANAGEMENT OF THE ACTION

The bifurcated process to be followed

137 The Applicants have sought a bifurcated process, the first phase being an opt-out one, seeking a declaratory judgment on common liability questions

of fact and law. If successful, damages would be quantified at an individual level on an opt-in basis.

138 I submit that there would be no prejudice to the class members through an opt-out first stage. A declaratory judgment will resolve questions of fact and law shared equally by all class members, and will thus only benefit those that might have a potential claim.

139 The second stage is best approached on an opt-in basis whereby members of the class can participate in decisions over quantum, settlement and so-on. It would also allow for more individualised assessments of causation and damages. Equally, class members may simply choose not to participate in the second stage if they were to adopt the view that they personally do not have an interest in the litigation.

Notification to class members

140 The members of the class are, generally speaking, confined to the geographical boundaries of the Western Cape and, in most cases, the City of Cape Town, but there is a possibility that some of them have relocated to other areas in South Africa (it is for this reason that the class is sought to be certified across South Africa; and in the alternative, in the Western Cape province).

141 In the circumstances, it is intended that notice be given to potential class participants in the following manner:

141.1 By publication in one edition per week of the following daily newspapers for four weeks: Cape Times, Cape Argus, Die Burger, Athlone News, City Vision, Plainsman, Constantiaberg Bulletin; Southern Mail and the Sunday Times.

141.2 By having the notice read out over the following radio stations, which have a high listenership in the aforementioned geographical area, one a week for four weeks: Bush Radio 89.5 FM, Voice of the Cape (95.8 FM, 100.4 FM, 90.7 FM, and 90.9 FM), Good Hope FM, Cape Talk (567 AM), KFM, Umhlobo Wenene FM and SAFM.

141.3 By publication of the notice on the GFSA webpage and Facebook pages, and keeping such notice there for a period of eight weeks.

142 I am of the view that this notification campaign is in keeping with previous certification decisions and will have the effect of creating sufficient awareness amongst the relevant communities of the existence of the class action and the rights of each class member.

143 The notifications shall clearly set out:

143.1 The definition of the members of the class;

143.2 The relief sought in the class action;

143.3 That those members of the class who do not wish to be bound by the judgment must give written notice of their exclusion as members of the class by a specified date;

143.4 That the judgment in the class action, whether favourable or not, will bind all members of the class who do not request exclusion.

144 I am advised that there is authority for the proposition that the Respondent party should carry the costs associated with these notifications and I submit that it would be appropriate to order the Respondents to reimburse GFSA or its attorneys for the reasonable costs associated with such notification.

145 I confirm that following publication and the expiry of the above-mentioned periods, GFSA will submit to this Court proof of compliance with the means of notification and a list of persons who have elected to opt out of this class action.

THE INTERESTS OF JUSTICE

146 I am advised that the Constitutional Court has stressed that the overarching criteria in respect of the certification of a class action is the interests of justice.⁴¹

147 I submit that given consideration of all the factors set out above as well as the rights of the class, a class action would constitute the most appropriate and fair means of determining the dispute of the class participants. In summary, I submit that there is no other appropriate or reasonable means of vindicating their rights as against the Respondents.

⁴¹ *Mukaddam v Pioneer Foods (Pty) Ltd and others* 2013 (5) SA 89 (CC) at paras 33 - 34



NOTIFICATION IN TERMS OF SECTION 3(1)(A) OF *THE INSTITUTION OF LEGAL PROCEEDINGS AGAINST CERTAIN ORGANS OF STATE ACT, 2002*

148 I am advised that it is unnecessary to serve notice on the Department of Police in terms of the provisions of the *Institution of Legal Proceedings Against Certain Organs of State Act, 2002* (the **State Act**).

149 That being said, in order to meet any argument that may be advanced to the contrary, and to put the issue beyond debate, GFSA has considered it prudent to serve notice in terms of section 3(1)(a) of the State Act on the persons nominated by section 4(1) of the State Act. Accordingly, notice was given to the Minister, the National Commissioner and each of the nine Provincial Commissioners of the SAPS between 20 and 24 February 2023. I attach a copy of the notice as annexure "**AK23**".

150 I submit that the notice is in compliance with the State Act generally.

151 Service was effected electronically as contemplated by section 4(2) of the State Act. Moreover, and in terms of section 4(2)(b), service affidavits were deposed to by GFSA's attorneys of record on 27 February 2023. These affidavits have not been annexed hereto in order avoid overburdening the papers, but are available on request.

152 As at the date of deposing to this affidavit, the following responses have been received:

152.1 A letter dated 2 March 2023 which appears to have been authored on behalf of the National Commissioner. I annex this correspondence as annexure "AK24".

152.2 A letter dated 4 March 2023 on behalf of the Provincial Commissioner: Northern Cape. I annex this correspondence as annexure "AK25".

153 As will appear from the notice, I have addressed the fact that it might be construed that the notice has not been issued with the six months contemplated by section 3(2)(a) of the State Act. On the assumption that such a construction is correct, GFSA's attorneys have set out in the notice the reasons why condonation ought to be granted in terms of section 3(4) of the State Act. I pray that the content thereof be incorporated herein, and pray that the Court grant, to the extent necessary, condonation in respect of the late service of the notice on the Department of Police.

154 I understand that further legal argument will be addressed to the Court when the matter is argued in order to deal with any objections raised by the SAPS regarding the adequacy of the notice.

155 I confirm that this certification application will only be issued and served on the Respondents 60 days after 20 February 2023 in compliance with section 5(2) of the State Act.

CONCLUSION

156 Thousands of individuals, including children, have been killed or have suffered injuries, or lost family members as a result of firearms and

ammunition stolen and unlawfully distributed by Prinsloo and Naidoo to criminals. The Respondents have failed to comply with their duties towards the public and to take reasonable steps to prevent such an occurrence. Such failings are ongoing.

157 The Applicants are seeking to hold the Respondents accountable and in doing so to prevent future incidents of a similar nature.

158 I submit that all the relevant factors already identified, have been satisfied and that the interest of justice require that certification of the class action is granted. Accordingly, a proper case has been made for the relief claimed in the Applicants' Notice of Motion.



ADELE KIRSTEN

I certify that the deponent has acknowledged that she knows and understands the contents of this declaration and informed me that she does not have any objection to taking the oath and that she considers it to be binding on her conscience and that the deponent uttered the following words "I swear that the contents of this declaration are true, so help me God". I certify further that the provisions of Regulation R1258 of the 21st July 1972 (as amended) have been complied with.

Signed and sworn to before me at Cape Town on this the 4th day of May 2023.

The Department of Local Government
Western Cape Government
Private Bag X9076; Cape Town; 8000

Full Names Lynette Phillips
Commissioner of Oaths Ex Officio

Position Held Assistant Director

04/05/23, Tel. 021 812 000



COMMISSIONER OF OATH