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APR 27 2017

SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION

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FILED

APR 27 2017

SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION

_____	:	
STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	MERCER COUNTY
Plaintiff,	:	LAW DIVISION
	:	
v.	:	DOCKET NO.: MER- <u>L-895-17</u>
	:	
SIG SAUER, INC.,	:	COMPLAINT
	:	
Defendant.	:	
_____	:	

The State of New Jersey, Division of State Police, collectively referred to herein as the "State", by way of Complaint against Defendant Sig Sauer Inc., alleges:

Factual Background

1. Plaintiff, State of New Jersey includes: the Department of Treasury, Division of Purchase and Property which is authorized by statute to procure contracts for goods and services on behalf of the Departments and agencies in the executive branch of the State government; and the Department of Law and Public Safety, Division



of New Jersey State Police is a responsible for a variety of Statewide policing missions in the State of New Jersey.

2. Defendant, Sig Sauer, Inc. is a New Hampshire corporation registered and authorized to do business in New Jersey.

3. On or about November 29, 2011, the State of New Jersey, Division of Purchase and Property (on behalf of the New Jersey State Police) issued a Request for Proposal (RFP12-X-21817) to solicit proposals for Police and Homeland Security Equipment and Supplies, and awarded contracts for State Contract T-0106 to multiple vendors on May 1, 2011. A true and correct copy of the RFP, which forms the scope of work of the contract, is annexed hereto as Exhibit 1.

4. New Jersey State Police (NJSP) determined to test various weapons by various manufacturers in order to select a new duty weapon for State Troopers. After testing the Sig Sauer P229 Legacy as well as nineteen other weapons, NSJP selected the P229 Legacy as the duty weapon. NJSP experienced no problems with the functioning of the P229 Legacy weapons during the testing process.

5. The State issued purchase orders under to Eagle Point Gun Shop for the provision of 3,000 Sig Sauer P229s for a total price of \$1,844,000.00.

6. The State ultimately paid Sig Sauer \$1,657,000 for the P229s, after Sig Sauer, through Eagle Point Gun Shop purchased all of the NJSP's prior duty weapons for scrap value. A true and

accurate copy of the purchase orders and invoices is annexed hereto as Exhibit 3.

7. The State also purchased from State Contract T-0106, from a different vendor, 8,400 holsters of varying types for use with the Sig Sauer weapons, Safariland, for \$856,680.21. A true and accurate copy of the purchase orders and the invoices for the holsters is annexed hereto as Exhibit 4.

8. NJSP received the shipments from Sig Sauer in summer 2014 and began to use the P229s in September 2014 during the second firearms qualifications session. At that time, the weapons had a serious malfunction. Many of the P229s sporadically exhibited a failure to extract. That is, the weapons failed to eject the spent shell casing from the barrel after being fired, causing the next cartridge to become jammed behind the casing, and resulting in an inability to continue firing the weapon (FTE). An FTE malfunction renders a gun unfit for police use because a Trooper may be unable to fire more than one round of ammunition in a life-threatening situation.

9. NJSP immediately notified Sig Sauer of the FTE malfunctions. Sig Sauer suggested that the extractor pins in the P229s may be causing the FTE malfunctions by failing to effectively latch on to the casing to cause it to eject. Sig Sauer began replacing the extractor pins in some of the malfunctioning P229s.

10. Sig Sauer next suggested that a factory mold may be responsible for the issue. NJSP sent some of its P229s to the Sig Sauer factory for investigation, and Sig Sauer concluded that a misapplication of the coating on the barrels was the cause. Sig Sauer shipped a supply of new barrels to NJSP to replace the barrels on the defective P229s.

11. The FTE malfunctions continued. NJSP holds periodic firearms qualifications at which Troopers are required to demonstrate they still meet the marksmanship and other criteria to be qualified to carry their duty weapons. On July 6, 2015, after the 2015 first NJSP periodic firearms qualifications, representatives from Sig Sauer visited the NJSP to diagnose the problem. The Sig Sauer representative attributed the FTE malfunctions to the extractor springs, which are responsible for forcing the casings out of the barrel. Sig Sauer agreed to ship 250 replacement extractor springs.

12. By the second 2015 firearms qualification session, in October 2015, the FTE malfunction had still not been resolved. Sig Sauer was again notified. Sig Sauer representatives informed NJSP that they would send extractor springs used for a different model weapon to correct the problem.

13. At the end of October 2015, NJSP focused on the issue that the guns they had received, the P229 Enhanced Elite handguns, were slightly different from the weapons the State Police had

initially tested, the P229 Legacy. Though the weapons were the essentially the same P229 model, the parts in the P229 Enhanced Elite, including the extractor system, differed from those in the P229 Legacy. NJSP suspected that the different parts might account for the FTE malfunction, because the Legacy did not exhibit FTE malfunctions when it was tested. NJSP spoke to Sig Sauer about this observation on or about November 4, 2015.

14. On or about November 4, 2015, Sig Sauer agreed to replace the P229 Enhanced Elites with the P229 Legacies and provided a timeline to do so.

15. Sig Sauer failed to meet the delivery timeline. It delivered only 364 of the 750 Legacies it had agreed to provide by the end of the first week of January, 2016. Sig Sauer then informed NJSP that it could deliver only half of the 1000 P229 Legacies that it had agreed to deliver by the end of January 2016.

16. During the week of January 12, 2016, the State Police Academy class participated in a combat firearms course at the Training Academy using the replacement P229 Legacy handguns. Sig Sauer representatives were present to witness the P229 Legacies' performance.

17. The P229 Legacies exhibited FTE malfunctions, both when NJSP practice ammunition and when NJSP duty ammunition were used. Because of the FTE malfunctions, the Academy class was forced to stop using the P229 Legacy for the training.

18. At the end of January 2016, NJSP and Sig Sauer representatives met to test Sig Sauer's most recent shipment of P229 Legacies. Twenty-five P229 Legacies from the State Police inventory were randomly selected for inspection and testing. Sig Sauer gunsmiths inspected the weapons to determine whether they complied with Sig Sauer's specifications.

19. After the inspection set forth in paragraph 18, Sig Sauer representatives immediately "red-lined" five of the twenty-five P229 Legacies because they were so egregiously noncompliant with Sig Sauer's specifications that they could no longer be used. Five more P229 Legacies were added from the NJSP inventory to the pool to be tested. After the inspection as completed, NJSP members randomly selected five weapons to fire. During the first session using qualification ammunition, three out of the five weapons exhibited numerous FTE malfunctions. All five tested weapons were then serviced by the Sig Sauer gunsmiths. They were subsequently tested again using the State Police duty ammunition. Once again, FTE malfunctions occurred with one of the handguns. The State Police canceled the remainder of the testing session.

20. On January 27, 2016, Sig Sauer advised NJSP that it had completed further testing and determined that the barrel was causing the P229 Legacy FTE malfunctions.

21. NJSP declined to consider further discussion with Sig Sauer about fixes for the P229 Legacy FTE malfunctions about the

issue. On February 1, 2016, the P229 Legacy handguns were returned to Sig Sauer.

22. After spending sixteen months and substantial quantities or time and ammunition in the effort to resolve the FTE malfunctions with Sig Sauer, NJSP determined that it needed to find a more reliable weapon. Each of Sig Sauer's numerous proposed "fixes" had proved ineffective. NJSP was concerned about the risks that the unresolved P229 FE malfunctions posed to the State Troopers' safety. That the P229s exhibited the FTE malfunctions sporadically, specifically concerned NJSP officials: They could not be confident that after the prevalence of the FTE malfunction in both the P229 Enhanced Elite and Legacy, with all of the various replacement parts that had been provided, that any remedy that Sig Sauer could not propose would ever be entirely effective because a P229 that did not exhibit FTE malfunctions during one test could exhibit FTE malfunctions at a later time.

23. NJSP subsequently tested various weapons from several manufacturers, including Sig Sauer, and ultimately selected the Generation 4 Glock 19 as its duty weapon in place of the Sig Sauer P229s. NJSP has purchased the Glock 19s and all of the Troopers have qualified with them.

24. NJSP was also forced to purchase a new set of holsters, as the Safariland holsters purchased for the Sig Sauer P229 weapons were incompatible with the Glock 19s.

COUNT ONE
(Breach of Contract)

25. The State repeats and realleges all of the above allegations as if set forth fully herein.

26. Sig Sauer has breached the contract with the State by providing defective weapons and failing to correct the problem despite the State providing repeated opportunities to do so.

27. The State has sustained damages as a result of Sig Sauer's breach of contract and is entitled to compensation from Sig Sauer.

WHEREFORE, Plaintiff demands judgment:

1. Declaring that Defendant Sig Sauer breach the contract;
2. Declaring that Ordering Sig Sauer to refund the full cost the State paid for the P229s, \$1,657,000;
3. Ordering Sig Sauer to compensate the State for the cost of holsters purchased for the defective weapons, \$856,680.21;
4. Ordering Sig Sauer to compensate the State for the cost of ammunition used for the additional testing required to attempt to address the P229 FTI malfunctions; and
5. Ordering Sig Sauer to compensate the State for the time spent by NJSP Troopers and officials to attempt to address the P229 FTE malfunction.

6. Granting such other and further relief as may be equitable and just.

COUNT TWO

(Breach of Covenant of Good Faith and Fair Dealing)

28. The State repeats and realleges all of the above allegations as if set forth fully herein.

29. Sig Sauer has breached the covenant of good faith and fair dealing by supplying the NJSP with defective weapons.

30. The State has sustained damages as a result of Sig Sauer's breach of the Covenant of Good Faith and Fair Dealing and is entitled to compensation from Sig Sauer.

WHEREFORE, Plaintiff demands judgment:

1. Declaring that Defendant Sig Sauer breach the covenant of good faith and fair dealing;

2. Declaring that Ordering Sig Sauer to refund the full cost the State paid for the P229s, \$1,657,000;

3. Ordering Sig Sauer to compensate the State for the cost of holsters purchased for the defective weapons, \$856,680.21;

4. Ordering Sig Sauer to compensate the State for the cost of ammunition used for the additional testing required to attempt to address the P229 FTI malfunctions; and

5. Ordering Sig Sauer to compensate the State for the time spent by NJSP Troopers and officials to attempt to address the P229 FTE malfunction.

6. Granting such other and further relief as may be equitable and just.

COUNT THREE
(Breach of Warranty)

31. The State repeats and realleges all of the above allegations as if set forth fully herein.

32. The State gave Sig Sauer every opportunity to correct the FTE malfunctions with the P229 Enhanced Elites and the P229 Legacies, under the terms of the warranty, but the P229s continued to have FTE malfunctions.

33. Sig Sauer breached its warranty.

34. The State has sustained damages as a result of Sig Sauer's breach of the warranty and is entitled to compensation from Sig Sauer.

WHEREFORE, Plaintiff demands judgment:

1. Declaring that Defendant Sig Sauer, Inc. is in breach of its warranty;

2. Declaring that Ordering Sig Sauer to refund the full cost the State paid for the P229s, \$1,657,000;

3. Ordering Sig Sauer to compensate the State for the cost of holsters purchased for the defective weapons, \$856,680.21;

4. Ordering Sig Sauer to compensate the State for the cost of ammunition used for the additional testing required to attempt to address the P229 FTI malfunctions; and

5. Ordering Sig Sauer to compensate the State for the time spent by NJSP Troopers and officials to attempt to address the P229 FTE malfunction.

6. Granting such other and further relief as may be equitable and just.

Respectfully submitted,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Plaintiff

By: _____



Beth Leigh Mitchell
Assistant Attorney General

Dated: April 24, 2017

DESIGNATION OF TRIAL COUNSEL

Beth Leigh Mitchell is hereby designated to try this matter.