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SMITH & WESSON CORP.

ORIGINAL FILED

SEP 17 1999

LOS ANGELES  
SUPERIOR COURT

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 CITY AND COUNTY OF LOS ANGELES

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|--|---|--|
| 16 THE PEOPLE OF THE STATE OF                | ) | CASE NO. BC 214794                           |
| CALIFORNIA, ex rel. the County of Los        | ) |  |
| 17 Angeles, COUNTY OF LOS ANGELES, on        | ) | MEMORANDUM OF POINTS AND                     |
| behalf of itself and the general public, and | ) | AUTHORITIES IN SUPPORT OF                    |
| 18 GLORIA MOLINA, ZEV YAROSLAVSKY            | ) | DEFENDANTS' PRELIMINARY                      |
| and YVONNE BRATHWAITE BURKE,                 | ) | MOTION FOR PERMISSION TO                     |
| 19 SUPERVISORS OF LOS ANGELES                | ) | SUBMIT A COORDINATION PETITION               |
| COUNTY, on behalf of the general public,     | ) | AND REQUEST FOR STAY                         |
|  | ) | (Cal. Civil Proc. §404 and Cal. Rules Of Ct. |
| 20 Plaintiffs,                               | ) | 1520(b))                                     |
|  | ) |  |
| 21 v.  | ) | Case Assigned: Hon. Carolyn B. Kuhl          |
|  | ) | Dept.: 22                                    |
| 22   | ) |  |
| 23 ARCADIA MACHINE & TOOL, BRYCO             | ) | [Motion set for hearing before Hon. Victor   |
| ARMS, DAVIS INDUSTRIES, LORCIN               | ) | E. Chavez, Presiding Judge, pursuant to CCP  |
| ENGINEERING CO., INC., PHOENIX               | ) | § 404]                                       |
| 24 ARMS, SUNDANCE INDUSTRIES, INC.,          | ) |  |
| EXCEL INDUSTRIES, INC., ACCU-TEK             | ) |  |
| 25 FIREARMS, BERETTA U.S.A., CORP.,          | ) | Date: October 4, 1999                        |
| PIETRO BERETTA S.p.A., BROWNING              | ) | Time: 8:30 a.m.                              |
| 26 ARMS CO., CARL WALTHER GmbH,              | ) | Dept: 1                                      |
| CHARTER ARMS, INC., COLTS                    | ) |  |
| 27 MANUFACTURING CO., INC., FORJAS           | ) | Trial Date: None Set                         |
| TAURUS, S.A., GLOCK, INC., GLOCK             | ) |  |
| 28 GmbH, H&R 1871, INC., HECKLER &           | ) | Case Filed: August 6, 1999                   |
| KOCH, INC., MKS SUPPLY, INC., HI-POINT       | ) |  |

1 FIREARMS. KEL-TEC CNC INDUSTRIES )  
 1 A/K/A/ NORINCO, NAVEGAR, INC. D/B/A/ )  
 INTRATEC U.S.A., INC., NORTH )  
 2 AMERICAN ARMS, INC., SIGARMS, INC., )  
 SMITH & WESSON CORP., STURM, )  
 3 RUGER & COMPANY, INC., S.W. DANIEL, )  
 INC., A/K/A/ COBRAY FIREARMS, INC., )  
 4 TAURUS INTERNATIONAL )  
 MANUFACTURING, INC., AMERICAN )  
 5 SHOOTING SPORTS COUNCIL, INC., )  
 NATIONAL SHOOTING SPORTS )  
 6 FOUNDATION, INC., SPORTING ARMS )  
 AND AMMUNITION MANUFACTURERS' )  
 7 INSTITUTE, INC., B.L. JENNINGS, INC., )  
 ELLETT BROTHERS, INTERNATIONAL )  
 8 ARMAMENT CORP., D/B/A INTERARMS )  
 INDUSTRIES, INC., RSR WHOLESALE )  
 9 GUNS, INC., SOUTHERN OHIO GUNS )  
 DISTRIBUTORS, B&B GROUP, INC., B& B )  
 10 & B GUNS, ANDREWS SPORTING GOODS, )  
 INC., NATIONAL GUN SALES, INC., S.G. )  
 11 DISTRIBUTING, INC., HAWTHORNE )  
 DISTRIBUTORS, INC., and DOES 1-300, )  
 12 )  
 Defendants. )  
 13 )  
 14 )

15 **I. INTRODUCTION**

16 Defendants Beretta U.S.A. Corp., Sturm, Ruger & Company, Inc. and Smith & Wesson Corp.  
 17 (collectively, the "Moving Defendants") seek permission of this court to submit a petition to the  
 18 Judicial Council for coordination of two virtually identical cases filed by the People of the State of  
 19 California against manufacturers, distributors and retailers of firearms.<sup>1</sup> The first case is pending in  
 20 San Francisco Superior Court and is brought by the People of the State of California through various  
 21 city and county attorneys. The second case is this pending litigation, also brought by the People of the  
 22 State of California through the County of Los Angeles and three individual supervisors. Both cases  
 23 involve the People of the State of California as plaintiffs, virtually the same defendants and the same  
 24 claims.

25 No defendants have appeared in this action to date. Although the Moving Defendants are

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26  
 27 <sup>1</sup> A third virtually identical case exists – *People of the State of California v. Arcadia, et al.*, which  
 28 originated in Los Angeles Superior Court (BC210894), but has been removed to federal court. (C.D.  
 Cal. Case No. 99 08411-RSWL (AIJ)) Currently, a motion to remand to state court is pending. If  
 remanded, defendant expects this case (and any other identical cases which may be filed) would be  
 subject to the add-on provisions of Code of Civ. Proc. § 404.4.

1 unaware of any opposition to this coordination petition by any defendant. they have been unable to  
2 secure from all of the named defendants (some of which are defunct or located overseas) their formal  
3 joinder in this petition. Accordingly, the Moving Defendants respectfully move this Court for  
4 permission to file a coordination petition with the Judicial Council. The Moving Defendants are  
5 informed and believes that other defendants that have been served with the complaint will join in this  
6 petition.

7 A motion for coordination must be granted when the moving party can, as here, make two  
8 showings: (1) that the actions are complex as defined by the Standards of the Judicial Administration  
9 Section 19; and, (2) that the general standards for coordination pursuant to California Code of Civil  
10 Procedure § 404.1 are met. The Court will then grant permission for the petition for coordination to be  
11 filed with the Judicial Council. Pending this determination, all actions should be stayed until the final  
12 resolution of the coordination motion.

13 As is discussed in more detail below, this is a classic case for coordination. First, all  
14 requirements for categorization as “complex litigation” are easily met. Second, this case also passes  
15 the threshold test for consolidation, i.e., it involves identical issues of law and fact. Finally, all the  
16 facts that must be considered by the Court weigh in favor of coordination here. Accordingly, this  
17 motion should be granted.

## 18 II. STANDARD OF REVIEW

19 When a motion for coordination is made, the presiding judge is given the initial opportunity to  
20 decide whether the coordination is proper. If the criteria for obtaining coordination are met, the  
21 presiding judge must grant the motion unless he finds the motive for coordination is “oppression or  
22 delay.” Code Civ. Proc. § 404, *Coordination of California Civil Actions*, 19 Pepperdine Law Review  
23 163, 173 (1991). Therefore, the presiding judge’s ruling on the motion should be limited to deciding  
24 whether the petition is technically sufficient or justifies coordination. If the motion is sufficient, the  
25 only other inquiry is whether there is any evidence indicating “oppression or delay.” If none exists, as  
26 is the case here, the motion must be granted.

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### III. STATEMENT OF FACTS

On July 16, 1999, the City Attorneys for the Cities of Los Angeles and San Francisco filed closely similar First Amended Complaints in the San Francisco and Los Angeles Superior Courts. In both suits, the City Attorneys were joined by various other municipal entities or officials, all of whom purported to be suing on behalf of the People of the State of California and the "general public" within those municipalities. The Los Angeles suit was removed to federal court, where a motion for remand presently is pending. On August 6, 1999, the present action was filed, as a third, virtually identical case brought by the People of the State of California, and the County of Los Angeles (the "L.A. County action"). The San Francisco and the present case assert three causes of action: (1) Public Nuisance, (2) Violations of Business and Professions Code §§ 17200 *et seq.*, and (3) Violations of §§ 17500 *et seq.* See Declaration of David A. Ongaro ("Ongaro Decl.") Exhibits A and B (copies of the operative complaints in the San Francisco and present action).

At least forty-one of the factual allegations are identical. Not all of the named defendants have been served in either case. Both cases qualify as complex litigation. These two cases also involve virtually identical parties. The plaintiff claims to be the People of the State of California and both cases involve forty-four identical defendants. Large portions of the San Francisco Complaint are cited verbatim in the present complaint. (See Ongaro Decl. ¶¶ 4-6.)

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### IV. LEGAL DISCUSSION

**A. The Present Case And City of San Francisco Cases Qualify As Complex Litigation As Defined By The Standards For Judicial Administration.**

According to Section 19 of the Standards for Judicial Administration, "[c]omplex litigation is not capable of precise definition" but may involve: (1) multiple related cases; (2) extensive pretrial activity; (3) extended trial times; (4) difficult or novel issues; (5) postjudgment judicial supervision; or (6) special categories of cases such as class actions. I App. Cal. Rules of Ct. § 19. No single criterion is controlling and each situation must be considered separately. Here, the present case and San Francisco cases satisfy all of the factors considered by courts in determining whether a case is "complex."

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1                   **1.       The Present Case and the San Francisco Action are Multiple Related Cases**

2                   The present action and the San Francisco case are virtually identical. Both cases were filed on  
3 behalf of the people of the State of California by various cities and counties. Both cases name almost  
4 the same list of firearm manufacturers, distributors and retailers as defendants. In fact, there are forty-  
5 four overlapping defendants between this action and the San Francisco case.

6                   Both cases also involve the same causes of action. The instant complaint includes causes of  
7 action for public nuisance and violations of Section 17200 of the Business and Professions Code  
8 (“Section 17200”) and Section 17500 of the Business and Professions Code (“Section 17500”). The  
9 complaint in the San Francisco case alleges public nuisance, violations of Section 17200 and violations  
10 of Section 17500 .

11                   Finally, both cases seek the same relief. On both cases, plaintiffs ask the Courts to abate public  
12 nuisances, enjoin defendants from violating California’s unfair competition laws, order defendants to  
13 disgorge wrongfully obtained monies and to award prejudgment and postjudgment interest and for  
14 plaintiffs costs of suit.

15                   Given the similarity of the parties, causes of actions and relief sought, this action and the San  
16 Francisco case qualify as multiple related cases.

17                   **2.       Both Cases Are Likely to Entail Extensive Pretrial Activity**

18                   The number of parties, complexity and profile of these two cases ensures extensive pretrial  
19 activity. First, plaintiffs in both cases are attempting to use old legal claims in new ways. For  
20 example, plaintiffs’ allegations that defendants’ sales of firearms constitute a public nuisance will  
21 almost certainly be challenged by demurrer and, if necessary, summary judgment motion. Further,  
22 plaintiffs’ allegation that defendants’ sales of firearms constitutes “unfair, unlawful and deceptive”  
23 trade practices is an attempt to expand California’s unfair competition laws into new legal territory and  
24 will likewise also certainly be challenged before trial.

25                   Second, the far-ranging factual allegations in the complaint guarantee extensive factual and  
26 expert discovery. Indeed, plaintiffs will be seeking discovery from forty-four separate defendants in  
27 these two cases. Both plaintiffs and defendants in these cases will need a lengthy and detailed schedule  
28 in order to effectively manage discovery.

1 It is reasonable to anticipate that there will be substantial pretrial discovery and motion practice  
2 by both sides.

3 **3. Both Cases are Likely to Require Extended Trial Times**

4 Because of the extensive pretrial activity in these cases, the courts will almost have no choice  
5 but to set extended trial times. The wide-ranging factual and legal allegations in both complaints  
6 ensure a large number of expert and fact witnesses at trial. The Moving Defendants expect that a trial  
7 on the merits, even as to only one or two plaintiffs, would require at least one month of trial time.

8 **4. Both Cases Contain Difficult or Novel Issues**

9 As discussed above, both cases present the courts and the parties with difficult and novel  
10 issues. These cases claim that the lawful sales of firearms constitute a public nuisance and that the  
11 underlying alleged product defects means that defendants have violated Sections 17200 and 17500.  
12 Neither public nuisance nor Sections 17200 and 17500 have ever been advanced in this context before.  
13 Therefore, a Court presented with these issues will be evaluating the propriety of applying California  
14 nuisance and unfair competition laws without any directly applicable precedent. This means that the  
15 issues presented to the Court will be both novel and difficult, requiring careful and exacting study.  
16 Ultimately, some issues will undoubtedly be appealed. Coordination will ensure the orderly resolution  
17 of these issues without conflicting opinions. Accordingly, both cases present difficult and novel legal  
18 issues.

19 **5. Both Cases may Require Postjudgment Judicial Supervision**

20 Depending on the outcome of these cases, the Court may have postjudgment judicial  
21 supervision duties. Plaintiffs in both cases have asked the Court for injunctive relief under Sections  
22 17200 and 17500 and for an abatement of a public nuisance. If the Court were to find for plaintiffs and  
23 order abatement and/or injunctive relief, then the Court would necessarily assume significant  
24 postjudgment supervision duties.

25 **6. Both Cases Contain Special Categories**

26 Finally, both cases should be placed in a special category. The two cases involve important  
27 issues related to public policy and are sure to receive substantial media coverage. Indeed, these two  
28 cases are merely a part of a larger, nationwide litigation campaign by state and local governments

1 against firearm manufacturers, distributors and retailers.’ Both cases will be followed by local and  
2 national media and will have a substantial impact on the emerging debate in this country over firearms.  
3 Further, it may eventually be judicially expedient to separate the defendants into classes based on their  
4 status as manufacturers, distributors, retailers or trade industry representatives. If this occurs,  
5 coordination of these cases could be essential to ensure the orderly progress of discovery, pre-trial and  
6 trial issues as they relate to each group.

7 In light of the foregoing, the present case and the San Francisco case are “complex” as defined  
8 by the Standards for Judicial Administration §19 and are therefore eligible for coordination.

9 **B. These Cases Meet the Standard For Coordination Pursuant to California Code of**  
10 **Civil Procedure §§ 404.1 and 404.**

11 The purpose of coordination is to “promote judicial efficiency and economy by providing for  
12 the unified management of both pre-trial and trial phases of coordinated cases.” (*CitiCorp. N.A., Inc.*  
13 *v. Superior Court* (1989) 213 Cal.App.3d 563, 566, at n.3.) Coordination may be requested when civil  
14 actions sharing common questions of law or fact are pending in different courts. (*Keenan v. Superior*  
15 *Court* (1980) 111 Cal.App.3d 336, 340.) Coordination is appropriate if having one judge preside over  
16 all subject actions for all purposes in a selected site or sites will promote the ends of justice. Code Civ.  
17 Proc. § 404.1. The Code requires the following factors be taken into account in a determination of  
18 whether coordination is appropriate: (1) whether common questions of law or fact are predominating in  
19 significant litigation; (2) the convenience of the parties, witnesses and counsel; (3) the relative  
20 development of the actions in the work product of counsel; (4) the efficient utilization of judicial  
21 facilities manpower; (5) the calendar of the court; (6) the disadvantages of any duplicative and  
22 inconsistent rulings, orders or judgments; and (7) the likelihood of settlement of the actions without  
23 further litigation. Code Civ. Proc. § 404.1.

24 Though all factors are considered, the threshold or most important factor in this test is whether  
25 common questions of law or fact exist. Code Civ. Proc. §§ 404, 404.1.

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1                   1.       **The Present Case and the San Francisco Litigation Contain Common**  
2                                   **Issues of Both Law and Fact, Making Them Appropriate for Coordination**

3                                   a)       **Common questions of fact.**

4                   Close scrutiny of both complaints reveals that they are nearly identical. In fact, large sections  
5 of the San Francisco complaint are cited verbatim in the instant complaint. In addition to the similar  
6 verbiage of the complaints, every material allegation in the San Francisco complaint is mimicked in the  
7 present complaint. In each case the plaintiffs will be attempting to prove the same set of facts. The  
8 crucial allegations which plaintiffs seek to prove in both cases include the following:

9                   (1)       defendants have created an illegitimate secondary market for handguns by "marketing  
10 and distribution policies and practices facilitate, promote, and yield high volume sales, widespread  
11 availability and easy access without meaningful attention to concern for the foreseeable consequences"  
12 (S.F. Complaint ¶23) (L.A. County Complaint ¶81);

13                   (2)       defendants saturate the legitimate gun markets with the knowledge these guns will end  
14 up in a secondary market. (S.F. Complaint ¶25) (L.A. County Complaint ¶82);

15                   (3)       defendants distribute guns without exercising adequate control over the distributor (S.F.  
16 Complaint ¶27) (L.A. County Complaint ¶84);

17                   (4)       defendant's practices and policies facilitate "straw purchases" and multiple sales (S.F.  
18 Complaint ¶33) (L.A. County Complaint ¶90)

19                   (5)       defendants engage in sales to "kitchen table" dealers resulting in the unlawful sale of  
20 firearms (S.F. Complaint ¶38) (L.A. County Complaint ¶95);

21                   (6)       defendants' design weapons without features to discourage unauthorized use (S.F.  
22 Complaint ¶40) (L.A. County Complaint ¶99);

23                   (7)       defendants have designed their guns to appeal to criminals and have increased  
24 production to meet illegal demand (S.F. Complaint ¶42) (L.A. County Complaint ¶101);

25                   (8)       defendants have failed to incorporate feasible and existing safety technology into the  
26 design and distribution of firearms (S.F. Complaint ¶54) (L.A. County Complaint ¶111);

27                   (9)       defendants failed to provide adequate warning and safety feature would prevent many  
28 unintentional shootings (S.F. Complaint ¶54) (L.A. County Complaint ¶111);



1 (10) defendants failed to implement personalized safety technology which would prevent  
2 access to firearms by unauthorized users (S.F. Complaint ¶59) (L.A. County Complaint ¶117);

3 (11) defendants have failed to compete to develop firearms with personalized safety  
4 technology (S.F. Complaint ¶65) (L.A. County Complaint ¶123);

5 (12) defendants have used false, deceptive and misleading statements (S.F. Complaint ¶68)  
6 (L.A. County Complaint ¶126);

7 (13) defendants have profited from their unfair, unlawful or fraudulent business practices at  
8 the expense of California and its residents(S.F. Complaint ¶24) (L.A. County Complaint ¶132).

9 The essential facts which plaintiffs must prove to support their legal theories are identical.  
10 Therefore coordination is appropriate in this matter.

11 **b) Common questions of law**

12 The same essential facts must be proven because plaintiffs proffer the identical legal theories in  
13 both suits. Not surprisingly, these two cases have common questions of law, because both assert the  
14 identical three causes of action:

15 (1) Defendants' conduct allegedly constitutes a public nuisance;

16 (2) Defendants' conduct allegedly constitutes a violation of Business and Professions Code  
17 §17200 for unfair, unlawful and fraudulent business practices; and

18 (3) Defendants' conduct allegedly violates Business And Professions Code §17500.

19 There are threshold issues of law which must be decided in both cases. These include whether  
20 the lawful sale of a product protected by the United States Constitution can constitute a nuisance under  
21 state or local law and whether plaintiffs will be able to maintain claims for violations of Business and  
22 Professions Code Section 17200 and/or 17500.

23 In addition, there are a variety of other legal issues which will undoubtedly be presented in  
24 both cases. It is undeniable that common issues of law permeate both cases.

25 **2. The Convenience of the Parties, Witnesses and Counsel**

26 It is anticipated that, by and large, the same defense counsel will represent their respective  
27 clients in both the Northern and Southern California cases. Coordinating these cases in a single  
28 jurisdiction will save the parties substantial time and money in not duplicating efforts in two

1 different venues. Since the majority of witnesses are likely to be expert witnesses, all parties will  
2 reap the benefits of having this matter coordinated. A review of the applicable rules adopted by the  
3 Judicial Council indicates that the procedures, which may be utilized by the coordinating judge, are  
4 flexible. Rule 1541 provides that the court may order any hearing be conducted at various sites in  
5 the state as may be selected to provide convenience to witnesses, parties and counsel. The court  
6 can take into account the needs of witnesses parties and counsel throughout the litigation to ensure  
7 the timely, and equitable resolution of issues.

8 **3. The Relative Development of the Actions and The Work Product Of Counsel**

9 Both cases are currently in their infancy. Many parties have not yet been served. Thus, no  
10 party will suffer any prejudice by coordination. Neither case will be unreasonably delayed by  
11 coordination. In fact, centralizing and coordinating discovery would move these cases more quickly  
12 towards a final resolution, thereby reducing the burden on the courts, and, ultimately, the taxpayers  
13 that have brought this suit. Because these cases are in the initial stages of litigation, there is no  
14 adverse effect on the work product of counsel. Thus, no party will obtain an unjust advantage at  
15 the cost of another party.

16 **4. The Efficient Utilization of Judicial Facilities Manpower**

17 Based on the novel issues presented in this case it is expected that this case will generate a  
18 substantial amount of motion practice and resulting demurrers and summary judgment motions.  
19 Centralizing rulings on these issues will streamline the judicial process and will not waste judicial  
20 resources by requiring different judges to rule on identical motions brought by the same parties in  
21 different courts. This will also result in consistent rulings from one court. Rules 1528 and 1543 give  
22 judges the power to sever or try specific issues leading to judicial economy. "[I]t is the intent of the  
23 Judicial Council to vest in the coordinating judge whatever great breadth of discretion [that] may be  
24 necessary and appropriate to ease the transition through the judicial system of the logjam of cased  
25 which gives rise to coordination." (*McGhan Medical Corp v. Superior Court* (1992) 11 Cal.App.4th  
26 804, 812.)

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5. **Consolidation Will Benefit The Calendar Of The Courts**

Coordination of the pending actions would save judicial resources and impose less of a burden on the calendars of the court. Coordination would allow these cases to be litigated in one court, thereby imposing a burden on the calendar of only one judge, rather than imposing a burden on the calendars of two or more judges overseeing uncoordinated actions. "The object of the procedure is to promote judicial efficiency and economy by providing for the unified management of both the pretrial and trial phases of the coordinated cases. This is accomplished by the assignment of all cases to a single judge who thereafter may try the cases in one or more trials in one or more courts." (*CitiCorp, supra*, 213 Cal.App.3d 563, 566 at n.3.) Rather than attempting to schedule deadlines and court dates with multitudinous parties in two forums, this task, as with nearly all aspects of litigation, would be made more efficient through coordination.

6. **Coordination Would Safeguard Against The Disadvantages Of Any Duplicative And Inconsistent Rulings**

Given the novelty of the causes of action, the complexity of the facts and legal issues raised and the number of parties involved, the danger of inconsistent rulings is quite real. This danger is magnified by the fact that these cases are likely to be vigorously litigated, with each of the many parties filing motions with the court. Such was the posture of *McGhan*, where the court predicted that a great volume of motion practice would precede trial of the cases being considered for consolidation. (11 Cal.App.4th at 814). As the *McGhan* court stated, "[t]he rulings on these motions should be uniform. If possible, trial rulings should be accomplished in a manner permitting uniform and centralized resolution on appeal. This sort of treatment can be achieved by coordination of motion practice. . . . We doubt that it can be otherwise achieved." (*Id.*). Following *McGhan*, this Court should take action to prevent inconsistent rulings by granting the motion to petition for coordination.

7. **Denial of Coordination Will Not Increase The Likelihood Of Settlement**

These cases involve injunctive relief and, as such, are unlikely to settle. Without ruling out the possibility of settlement, it is clear that there is no likelihood that these actions will settle without further litigation if coordination is denied. In fact, coordination of the action is likely to *increase* the chances of some resolution short of trial. Coordination will bring all of the parties

1 before one court. By reducing the opportunity to re-litigate issues in different forums, coordination  
2 is likely to speed the resolution of certain issues. This would clarify the status of each party's case  
3 and allow settlement discussions to take place at an earlier date.

4  
5 **V. THE REASONABLE STAY REQUESTED BY  
DEFENDANTS IS APPROPRIATE IN THIS CASE**

6 Moving Parties request that the Court exercise its authority to stay the subject case pending  
7 a final disposition on the coordination petition. "Pending any determination of whether  
8 coordination is appropriate, the judge making that determination may stay any action being  
9 considered for, or affecting an action being considered for, coordination." C.C.P. § 404.5 (1998).  
10 Granting a stay, especially at this early stage of litigation, will further the goals of coordination by  
11 preventing duplicative filings and rulings, thereby conserving the resources of both the Court and  
12 counsel for all parties.

13 **VI. CONCLUSION**

14 As the pending cases are both complex and meet the statutory criteria for coordination, the  
15 Moving Defendants respectfully request the permission of this Court to submit a Petition for  
16 Consolidation.

17  
18 Dated: September 17, 1999

Respectfully submitted,

19 SCHNADER, HARRISON, SEGAL & LEWIS LLP

20 CRAIG A. LIVINGSTON  
21 ATTORNEYS FOR DEFENDANT  
BERETTA U.S.A. CORP.

22 LUCE, FORWARD, HAMILTON & SCRIPPS, LLP

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26 COMPANY, INC. and SMITH & WESSON  
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