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10 **the STATE OF CALIFORNIA,**
11 **and the CALIFORNIA DEPARTMENT OF JUSTICE**

12
13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF FRESNO

15 EDWARD W. HUNT, in his official capacity as
16 District Attorney of Fresno County, and in his
personal capacity as a citizen and taxpayer; DAVE
17 SUNDY, former Oakdale Chief of Police, in his
personal capacity as a citizen and taxpayer; LAW
18 ENFORCEMENT ALLIANCE OF AMERICA, on
behalf of its members whose duty it is to enforce the
19 law and/or to comply therewith, and as citizens and
taxpayers; CALIFORNIA SPORTING GOODS
20 ASSOCIATION, INC., a California nonprofit
corporation; HERB BAUER SPORTING GOODS, a
21 California corporation; and BARRY BAUER, as
taxpayer and licensed firearm dealer,
22

23 Plaintiffs,

24 v.

25 STATE OF CALIFORNIA; WILLIAM LOCKYER,
Attorney General of the State of California;
26 CALIFORNIA DEPARTMENT OF JUSTICE; Does
1 - 100,

27 Defendants.
28

Case No. 01 CE CG 03182

**DEFENDANTS' MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
CHANGE VENUE**

Date: January 16, 2002
Time: 8:30 a.m.
Department 98A

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18 **STATUTES**

19 Code of Civil Procedure

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1 Defendants Attorney General Bill Lockyer, the State of California, and the
2 California Department of Justice hereby submit this memorandum in support of their motion for
3 change of venue in this action. Aside from recklessly creating by this lawsuit a potential obstacle
4 to successful enforcement of California's assault weapons laws, plaintiffs at the threshold have
5 selected a venue that is not convenient to the anticipated witnesses, that is not directed to the
6 ends of justice, and in which there is reason to believe that an impartial trial cannot be had.
7 Accordingly, defendants request that this Court transfer this action to the Superior Court for the
8 County of Sacramento.

9 STATEMENT OF FACTS

10 This is an action for declaratory and injunctive relief brought against the Attorney
11 General and the California Department of Justice in which plaintiffs are seeking a determination
12 that certain existing California law applicable to assault weapons is not enforceable. In
13 particular, plaintiffs challenge Penal Code sections 12020(a)(2), 12020(b)(19)-(29),
14 12020(c)(25), 12020.5, and 12276.1, and California Code of Regulations, Title 11, sections
15 978.10-44. Compl., ¶ 3. In broad brush strokes, these provisions for the first time defined
16 prohibited assault weapons by reference to objective design characteristics, in addition to the list
17 of banned assault weapons identified by manufacturer and model. Compl., ¶ 14. Plaintiffs are
18 the District Attorney of Fresno County, the former Oakdale Chief of Police, the Law
19 Enforcement Alliance of America, California Sporting Goods Association, Inc., and a Fresno
20 firearms dealer. Compl., ¶¶ 7-11.

21 Plaintiffs' primary complaints are that defendants have allegedly obfuscated the
22 assault weapons law by promulgating defective regulations (*see, e.g.*, Compl., ¶¶ 16, 20-21, 23)
23 and exacerbated the difficulty by delaying adoption of the regulations (Compl., ¶¶ 18-19).
24 Plaintiffs also attack the adequacy of defendants' public education campaign in connection with
25 the regulations. Compl., ¶ 5. Plaintiffs allege that defendants are aware of ongoing public
26 confusion, that defendants have been deluged with public inquiries, that the inquiries include
27 inquiries from many confused police officers, and that defendants have responded by extending
28 the registration deadline for police officers only. Compl., ¶¶ 19-21. Plaintiffs also complain

1 that defendants have obscured the meaning of the assault weapons law by issuing letter rulings
2 and/or advice letters that allegedly conflict with the regulations and have issued an allegedly
3 insufficient "California Attorney General 2000 Assault Weapons Identification Guide." Compl.,
4 ¶¶ 4, 22, 24, 46, 57, 66-76, Exs. 16-20.

5 It is employees of the Firearms Division of defendant Department of Justice,
6 located in Sacramento, who in the first instance are responsible for creation of the regulations in
7 question, for appropriately informing the public of their provisions, and for responding to
8 relevant inquiries. Declaration of Randy Rossi ("Rossi Decl."), ¶¶ 2-3; Compl., Exs. 16-20.

9 Because it would promote the convenience of the witnesses and the ends of
10 justice, and because there is reason to believe that an impartial trial cannot be had in Fresno
11 County, defendants now move for a change of venue to Sacramento County.

12 ARGUMENT

13 This Court should transfer this action to the Sacramento County Superior Court.

14 The court may, on motion, change the place of trial in the
15 following cases:

16 * * *

17 (b) When there is reason to believe that an impartial trial cannot be
18 had therein.

19 (c) When the convenience of witnesses and the ends of justice
20 would be promoted by the change.

21 Code of Civil Procedure section 397. In this case both of these provisions apply to plaintiffs'
22 selection of Fresno County as the venue for this action.

23 I. There is reason to believe that an impartial trial of this action 24 cannot be had in Fresno County.

25 Whenever a county sues an arm of state government, there is potential for
26 miscarriage of justice as a result of local prejudice. *See McCarthy v. Superior Court*, (1987) 191
27 Cal. App. 3d 1023, 1033 (issuing writ of mandate under Code of Civil Procedure section 394
28 requiring change of venue from Contra Costa County Superior Court where Contra Costa County
sued the California Department of Corrections, its Director, and other state officials).

1 Plaintiff Hunt has been the District Attorney of Fresno County for nearly 20
2 years. The allegations of the Complaint detail his, and the other plaintiffs', contention in forceful
3 language that California's Assault Weapon Control Act is too vague for him to constitutionally
4 enforce. While the testimony of Fresno County's highest law enforcement officer may have
5 some not-insignificant impact in other counties around the State, in Fresno County plaintiff
6 Hunt's testimony on this subject would likely be received with disproportionate weight. If the
7 case were to remain in Fresno County, defendants would thus be vulnerable to being perceived
8 unfairly as the distant, oppressive sovereign trampling on the interests of the local residents. As
9 between plaintiffs Hunt, the former Oakdale Chief of Police, and the local retail firearms dealer,
10 on the one hand, and defendants, on the other hand, defendants are likely to suffer from a
11 perception as outsiders.

12 In order to level the playing field, this Court should transfer this case out of
13 Fresno County pursuant to section 397(b).

14 **II. The convenience of the witnesses and the ends of justice would be promoted**
15 **by a change of venue to Sacramento County.**

16 Plaintiffs' allegations make clear that the relevant witnesses and documentary
17 evidence in this case are located in Sacramento County. It is the employees of the Firearms
18 Division of defendant Department of Justice, located in Sacramento, who are the central figures
19 in this dispute.

20 Plaintiffs' primary complaints are that defendants have allegedly obfuscated the
21 assault weapons law by promulgating defective regulations (*see, e.g.*, Compl., ¶¶ 16, 20-21, 23)
22 and exacerbated the difficulty by delaying adoption of the regulations (Compl., ¶¶ 18-19). It is
23 employees of the Firearms Division who were responsible for adoption of the regulations in
24 question, and it is they whom plaintiffs will need to call to give testimony on that subject. *See*
25 Rossi Decl., ¶ 2. Plaintiffs also attack the adequacy of defendants' public education campaign in
26 connection with the regulations and, in particular, allege that defendants are aware of ongoing
27 public confusion, that defendants have been deluged with public inquiries, that the inquiries
28 include inquiries from many confused police officers, and that defendants have responded by

1 extending the registration deadline for police officers only. Compl., ¶¶ 5, 19-21. Again, the
2 witnesses necessary to prove these allegations would be employees of the Firearms Division.
3 See Rossi Decl., ¶ 2. Plaintiffs also complain that defendants have obscured the meaning of the
4 assault weapons law by issuing letter rulings and/or advice letters that allegedly conflict with the
5 regulations and an allegedly insufficient "California Attorney General 2000 Assault Weapons
6 Identification Guide." Compl., ¶¶ 4, 22, 24, 46, 57, 66-76, Exs. 16-20. Again, any evidence of
7 these events would have to come from the employees of defendants' Firearms Division. See
8 Rossi Decl., ¶ 2. This is to say nothing of defendants' own presentation in defense against
9 plaintiffs' claims. It is the Firearms Division employees whose testimony will establish the
10 validity of the assault weapons regulations in question and will establish the potential for harm to
11 the public that would come from any delay in enforcement. See Rossi Decl., ¶ 2.

12 In a case with venue characteristics strikingly similar to the present circumstances,
13 the plaintiff insurance company had sued for an injunction to restrain the California Insurance
14 Commissioner from enforcing a ruling establishing certain workers compensation insurance
15 minimum rates. *State Comp. Ins. Fund v. Maloney*, (1954) 122 Cal. App. 2d 920, 921. The
16 Insurance Commissioner had moved to transfer the action from Los Angeles to San Francisco
17 Superior Court, where he kept his principal office, on the ground that the convenience of the
18 witnesses and the ends of justice would be promoted thereby. *State Comp. Ins. Fund v. Maloney*,
19 122 Cal. App. 2d at 922. In affirming the Los Angeles court's transfer of the action, the court of
20 appeal stated:

21 [A]ll of the original records, including the exhibits, made and used
22 in the proceeding comprising the notice and hearing prerequisite to
23 the issuance of Ruling 67, were in his principal office in San
24 Francisco; and that the entire staff and records of the Division of
25 Rate Regulation of the Department of Insurance, which was
26 charged with the duty of assisting, and which did assist him in the
27 proceeding, are assigned to and located at his principal office. It
28 appears from the answer that such division is charged with the duty
of assisting defendant in his rate regulatory duties and that it
assisted him in the preparation of Ruling 67. The principal offices
of four of the seven plaintiffs are located in San Francisco. The
pleadings disclose that the records of defendant are necessary
evidence both in support of defendant's case and that of plaintiffs.
The trial court was warranted in inferring from the pleadings and
the affidavits of defendant that the evidence to be produced by both

1 plaintiffs and defendants was more readily accessible in San
2 Francisco where the principal office of the Department of
3 Insurance is located, and could not be produced conveniently in
4 Los Angeles. The trial court was justified therefore, in concluding
5 that the convenience of witnesses and the ends of justice would be
6 promoted by the change.

7 *State Comp. Ins. Fund v. Maloney*, 122 Cal. App. 2d at 926 (citation omitted).

8 Just as the Insurance Commissioner in *State Comp. Ins. Fund* maintained his
9 principal office in San Francisco, the Attorney General maintains his principal office in
10 Sacramento. Just as the entire staff and records of the Division of Rate Regulation were located
11 in San Francisco in *State Comp. Ins. Fund*, the staff and records of the Firearms Division are
12 located in Sacramento in this case. Just as the court in *State Comp. Ins. Fund* thus concluded that
13 the convenience of the witnesses and ends of justice would be served by transfer to San
14 Francisco, this Court should conclude likewise here that the convenience of the witnesses and
15 ends of justice would be served by transfer to Sacramento.

16 Plaintiffs cannot avoid this conclusion by reference to the general rule that the
17 convenience of the parties' employees will not be considered on a motion pursuant to section
18 397(c). "While generally the convenience of the employees of either party will not be
19 considered, when such employees are being called by an adverse party, the court may properly
20 consider their convenience." *J.C. Millett Co. v. Latchford-Marble Glass Co.*, (1959) 167 Cal.
21 App. 2d 218, 227 (citations omitted); *see also Harden v. Skinner & Hammond*, (1955) 130 Cal.
22 App. 2d 750, 757; *Barclay v. Supreme Lodge of the Fraternal Brotherhood*, (1917) 34 Cal. App.
23 426, 430 (consideration of convenience of officers of defendant fraternal order).

24 Nor can plaintiffs seek to interject their own convenience or the convenience of
25 their employees into the analysis. First, defendants have no need for plaintiffs or their employees
26 as witnesses, and so the above exception to the general rule against consideration of party
27 employees does not apply to plaintiffs. Second, two of the plaintiffs have no particular
28 connection to Fresno County. Plaintiff Law Enforcement Alliance of America alleges that its
principal offices are in Virginia and that its executive director is a retired New York police
officer. Compl., ¶ 9. Plaintiff California Sporting Goods Association, Inc. lists its address as in

1 Norco, California, in Riverside County. Indeed, the Fresno County connections of the other
2 plaintiffs, District Attorney Hunt, the former Oakdale Chief of Police, and the firearms dealer,
3 are of no particular relevance to the issues in the case. The challenged law is a general law of
4 statewide application, falling with no particular emphasis on any activity in Fresno County. It is
5 apparent that the local Fresno County plaintiffs are simply placeholders for their non-local
6 counsel and the firearms interests these non-local counsel represent.^{1/}

7 Finally, in addition to the convenience of the relevant witnesses, it would promote
8 the ends of justice to transfer this action to Sacramento County. The location of the Firearms
9 Division's documentation and records in Sacramento alone would justify the transfer. *See Rossi*
10 *Decl.*, ¶ 3; *Minatta v. Crook*, (1959) 166 Cal. App. 2d 750, 755-56; *J.C. Millett Co. v. Latchford-*
11 *Marble Glass Co.*, 167 Cal. App. 2d at 227; *Harden v. Skinner & Hammond*, 130 Cal. App. 2d at
12 755 (also benefit from accessibility of witnesses for immediate recall if necessary); *Barclay v.*
13 *Supreme Lodge of the Fraternal Brotherhood*, 34 Cal. App. at 429-30. Consistent with the
14 decision in *State Comp. Ins. Fund* described above, the ends of justice are promoted by a change
15 of venue to another county where all aspects of the case are linked to the new county and there is
16 nothing to commend remaining in the old venue. *See Richfield Hotel Management v. Superior*
17 *Court*, (1994) 22 Cal. App. 4th 222, 226-27 (holding abuse of discretion to deny motion to
18 change venue where witnesses lived or worked in area around requested county, relevant events
19 took place in requested county, and relevant documents in requested county). The danger that an
20 impartial trial cannot be had in Fresno County as a result of District Attorney Hunt's
21 participation as a plaintiff, described in the previous section, also suggests that the ends of
22 justice would be promoted by transfer of this case to Sacramento County.

23 This Court should transfer this case to Sacramento County in order to promote the
24 convenience of the witnesses and the ends of justice.

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28 1. Note plaintiffs' counsel's November 2, 2000, letter attached as Exhibit 19 to the
Complaint.

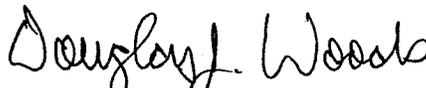
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CONCLUSION

For the reasons set forth above, defendants respectfully request that this Court grant their motion to change the venue of this action from Fresno County to Sacramento County.

DATED: December 10, 2001

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of the State of California
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