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10

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 FOR THE COUNTY OF SAN DIEGO
14

15 Judicial Council Coordination Proceeding
16 Special Title (Rule 1550(b))

17 FIREARMS CASES

18 Coordinated actions:

19 THE PEOPLE OF THE STATE OF
20 CALIFORNIA, by and through San
21 Francisco City Attorney Louise H. Renne,

22 v.

23 ARCADIA MACHINE & TOOL, et al.,

24 THE PEOPLE OF THE STATE OF
25 CALIFORNIA, by and through JAMES K.
26 HAHN, City Attorney of the City of Los
27 Angeles, et al.,

28 v.

29 ARCADIA MACHINE & TOOL, et al.,

30 THE PEOPLE OF THE STATE OF
31 CALIFORNIA, ex rel. the County of Los
32 Angeles, et al.,

33 v.

34 ARCADIA MACHINE & TOOL, et al.

JUDICIAL COUNCIL COORDINATION
PROCEEDINGS NO. 4095

Superior Court of California, City and County
of San Francisco, Case No. 303753

Superior Court of California, City and County
of Los Angeles, Case No. BC210894

Superior Court of California, City and County
of Los Angeles, Case No. BC214794

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT ANDREWS SPORTING
GOODS'S AND S.G. DISTRIBUTING'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Date:

Time: 8:30 a.m.

Dept. 65

Hon. Vincent. P. DiFiglia

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1 **I. INTRODUCTION**

2 Defendant Andrews Sporting Goods, Inc., dba Turners Outdoorsman (“ASG”), one of only two
3 viable firearm retailers remaining in this case, and SG Distributing (“SGD”) (collectively “Defendants”)
4 hereby move for Judgment on the Pleadings on most claims brought against Defendants by 12 of the 23
5 plaintiffs involved in the three separate actions that have been coordinated in this Court (the “FIREARMS
6 CASES”). In essence, Plaintiffs’ three separate actions allege that Defendants’ otherwise lawful
7 manufacture, distribution, and sale of firearms creates a public nuisance and constitutes unfair business
8 practices. A threshold problem, however, is that most plaintiffs lack standing to raise some or any of those
9 claims.

10 While the state legislature authorized certain government attorneys to bring these actions on behalf
11 of the “People of the State of California” and certain private parties to bring these actions on behalf of
12 themselves or the “general public,” the state legislature also established *specific* standing requirements for
13 such actions. Based on a review of the standing requirements for the statutes at issue, this Court can and
14 should dismiss 49 of the 75 claims brought by Plaintiffs (as depicted on the “Statutory Standing Chart”
15 attached hereto as Exhibit “A”). Moreover, thirteen plaintiffs can be eliminated entirely, for they lack
16 standing to bring claims under *any* of the subject statutes.

17 Thus, Defendants seek by this motion for judgment on the pleadings to substantially reduce the
18 number of claims and parties in this coordinated case, thereby narrowing the issues, reducing its own
19 defense burden and, at the same time, serving judicial economy.¹

20
21 **II. JUDGMENT ON THE PLEADINGS, LIKE A DEMURRER, APPLIES TO LACK OF**
22 **STANDING.**

23 A defendant is entitled to a judgment on the pleadings if the complaint does not state facts sufficient
24 to constitute a cause of action against that defendant. (Cal. Code of Civ. Proc. § 438 (c)(1)(B)(ii).) A

25 ¹ **San Francisco Action:** The complaint filed by and through San Francisco City Attorney Louise H. Renne,
26 et al. (the “San Francisco City Suit”), does not name Defendants. San Francisco nonetheless has treated them as
27 though it were part of its lawsuit, something ASG and SGD deny, inasmuch as these cases have been coordinated not
28 consolidated. Regardless, because the standing analysis applies equally to the plaintiffs in the San Francisco City Suit,
this analysis includes those plaintiffs in footnotes to the standing analysis and the “Statutory Standing Chart” attached
hereto as Exhibit “A,” for the Court’s consideration.

1 judgment on the pleadings “may be made on the same ground as those supporting a general demurrer.”
2 (*Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 650 [122 Cal.Rptr.2d 747].)

3 “It is elementary that a party asserting a claim must have standing to do so.” (*Berclain America*
4 *Latina v. Baan Co.* (1999) 74 Cal.App.4th 401, 405 [87 Cal.Rptr.2d 745].) Where an action is entirely
5 statutory, it is necessary to bring the action in name of a person to whom the right to sue was given by
6 statute, regardless of any question as to the real party in interest. (*Black Rock Placer Mining Dist. v.*
7 *Summit Water & Irrigation Co.* (1943) 56 Cal.App.2d 513, 517 [133 P.2d 58].) Where a complaint states
8 a cause of action in someone, but not in plaintiff, a general demurrer for failure to state a cause of action
9 will be sustained. (*Parker v. Bowron* (1953) 40 Cal.2d 344, 351 [254 P.2d 6].)

10 Further, as noted in B. E. Witkin’s treatise on California procedure, lack of standing is commonly
11 raised through a motion for judgment on the pleadings:

12 Objections that a complaint does not state facts sufficient to constitute a cause of action
13 are normally raised by a general demurrer. But the general demurrer is not the only
14 procedural device available for this purpose, and it is possible to raise the objection more
15 than once by different methods. The most common is a motion at the trial, or prior to trial,
16 for judgment on the pleadings. That motion by the defendant is made on the same grounds,
17 and is decided on the same basis as a general demurrer, i.e., it will be granted only if the
18 complaint on its face fails to state a cause of action. Since this defect of substance is not
19 waived by failure to demur and may be raised at any time on trial or appeal (*supra*, §911),
20 the motion may be made without previously demurring, and an order overruling a general
21 demurrer does not preclude granting the motion at trial. (5 Witkin, Cal. Proc. 4th (1997)
22 Plead, § 954, p. 410-11 (case citations omitted)(emphasis added).)

23 As shown below, a number of plaintiffs lack standing to be party to this action, either in its entirety
24 or as to certain causes. Defendants will address the standing requirements for each cause of action and
25 claim for relief separately, and then examine whether each plaintiff in the FIREARMS CASES meets those
26 requirements.

27 **III. ONLY DISTRICT ATTORNEYS AND CITY ATTORNEYS MAY BRING ACTIONS ON**
28 **BEHALF OF “THE PEOPLE OF THE STATE OF CALIFORNIA” TO ABATE A PUBLIC**
NUISANCE UNDER CCP §731.

Fifteen of the twenty-three plaintiffs in the FIREARMS CASES allege a public nuisance cause of
action on the grounds that Defendants’ conduct is a public nuisance within the meaning of Civil Code
sections 3479 and 3480. The statutory standing provisions for a civil action seeking to abate a public
nuisance are found in Code of Civil Procedure section 731 (“Section 731”). Section 731 provides that such

1 actions may be brought by district or city attorneys, only, and must be brought in the name of the ‘People of
2 the State of California.’”

3 731. . . . A civil action may be brought in the name of *the people of the State of California*
4 to abate a public nuisance, as the same is defined in section thirty-four hundred and eighty of
5 the Civil Code, *by the district attorney* of any county in which such nuisance exists, *or by the*
6 *city attorney* of any town or city in which such nuisance exists . . . (Code Civ. Proc., §
7 731)(emphasis added)

8 Standing for public nuisance actions under Section 731 has been narrowly construed to include only
9 those public officers listed, i.e., district attorneys and city attorneys, exclusively. For example, in *Lamont*
10 *Storm Water Dist. v. Pavich* (2000) 78 Cal. App. 4th 1081 [93 Cal.Rptr.2d 288], a storm water district
11 brought an action against a county and property owners seeking to have the diversion of certain water flows
12 declared an abatable public nuisance. (*Id.* at pp. 1082-83.) The court held that, despite the authority to sue
13 and be sued under its charter, the water district lacked standing to sue for abatement of a public nuisance,
14 noting that:

15 [W]hen the Legislature has intended to grant the power to abate a nuisance, it has done so
16 specifically and in clear terms. Thus, Code of Civil Procedure section 731 provides that the
17 district attorney and the city attorney have the right and, upon direction from their respective
18 legislative bodies, the duty to bring an action to abate a public nuisance. (*Id.* at pp. 1084-
19 1085.)

20 Similarly, in *Board of Sup'rs of Los Angeles County v. Simpson* (1951) 36 Cal.2d 671 [227 P.2d
21 14], the California Supreme Court held that it was the duty of the district attorney, not county counsel, to
22 abate a public nuisance. (*Id.* at p. 675) In that case, the Court examined the respective roles of the county
23 counsel and district attorney in the context of deciding who was the proper party to bring an action to abate
24 a public nuisance. The Court noted that the Los Angeles County charter “invests the county counsel with
25 the duty of representing all county officers in all matters pertaining to their duties and with ‘exclusive
26 charge and control of all civil actions and proceedings in which the county or any officer thereof, is
27 concerned or is a party.’” (*Id.* at p. 672, *citing* Los Angeles County Charter, § 21; Stats. 1913, p. 1484.)
28 Further, the Court noted that abatement of a public nuisance is a civil action. (*Ibid.*) The Court held,
however, that the specific provisions of Section 731 requiring district attorneys or city attorneys to
prosecute actions to abate a public nuisance in the name of the People of the State of California overrode
any general authority county counsel might have to bring such actions under its charter. Accordingly, the
Court held that it was the particular duty of the district attorney, not the county counsel, to seek abatement

1 of a public nuisance. (*Board of Sup'rs of Los Angeles County v. Simpson, supra*, 36 Cal.2d at p. 673.):

2 "A civil action may be brought in the name of the people of the State of California to abate
3 a public nuisance ... by the *district attorney* of any county in which such nuisance exists ...
4 and such district attorney ... of any county ... in which such nuisance exists *must* bring such
5 action whenever directed by the board of supervisors of such county ..." (Emphasis added.)
6 (Code Civ. Proc., § 731.) (See, also, Gov. Code, § 26528.) Thus the particular duty with
7 respect to abatement of public nuisances is that of the district attorney. That is a factor with
8 some significance as a particular statutory provision should prevail over a general one. (Civ.
9 Code, § 3534; Code Civ. Proc., § 1859.)

7 (*Ibid.*)

8 The court in *People v. Parmar* (2001) 86 Cal.App. 4th 781, 798 [104 Cal.Rptr.2d 31] thoroughly
9 analyzed the distinction between county counsel and district attorneys in the context of public nuisance
10 abatement:

11 2. The nature of the district attorney's office

12 ... When county counsel is employed, most, but not all, of the district attorney's civil
13 functions are performed by the county counsel. *However, the district attorney retains some*
14 *civil law duties, including nuisance abatement.*

14 (*Ibid.*)(emphasis added).

15 Despite this clear legislative directive and settled case law, seven plaintiffs in the FIREARMS
16 CASES alleged public nuisance as a cause of action, even though they were not city attorneys or district
17 attorneys and/or did not bring the action in the name of the "People of the State of California." These
18 causes should be summarily dismissed.

20 **A. Los Angeles County Suit: All Plaintiffs Lack Standing to Bring a Public**
21 **Nuisance Claim; None are District Attorneys or City Attorneys.**

22 According to paragraph 12 of the complaint filed in the Los Angeles County Suit, the plaintiffs
23 therein bringing a public nuisance cause of action are as follows:

- 24 (1) The People of the State of California, *ex rel.* the County of Los Angeles;
25 (2) Los Angeles County, on behalf of itself and the general public;
26 (3) Gloria Molina, Supervisor of Los Angeles County, on behalf of the general public;
27 (4) Zev Yaroslavsky, Supervisor of Los Angeles County, on behalf of the general public;
28 (5) Yvonne Burke, Supervisor of Los Angeles County, on behalf of the general public.

27 None of the Los Angeles County plaintiffs is a district attorney or city attorney, thus all lack
28 standing. In addition, all but the first plaintiff listed above, People of the State of California, *ex rel.* the

1 County of Los Angeles, brought their public nuisance claims on behalf of the “general public,” another
2 disqualifying defect.²

3 Notably, the distinction between which plaintiffs bring the claims at issue in this FIREARMS CASE
4 is not merely one of form. It would make little sense for the legislature to draw such specific distinctions in
5 Section 731 and the other standing statutes at issue herein, if that were the case. In short, standing matters.
6 For example, in *Board of Sup'rs of Los Angeles County v. Simpson, supra*, 36 Cal.2d 671, Simpson was the
7 Los Angeles District Attorney and had refused the Board’s request to bring a public nuisance action. The
8 Board responded with a petition for writ of mandamus. (*Id.* at 672) In that case, the putative reason
9 District Attorney Simpson declined to bring the action was that it was the duty of county counsel to do so.
10 (*Ibid.*) It is not difficult to imagine, however, a district or city attorney’s office disagreeing with their
11 respective government entities about filing an action for any number of reasons, e.g., if the action were
12 frivolous, raised nonjusticiable claims, or was being brought for improper purposes.

13 Similarly, the Los Angeles County Board of Supervisors, some of whose members are named
14 plaintiffs herein,³ can direct the district attorney to abate a public nuisance under Section 731, but their
15 failure to do so is not necessarily insignificant. Again, the district attorney might have concerns about the
16 merits of this case, and might object to direction from the Board.

17 In any event, under the unambiguous provisions of Section 731, none of the plaintiffs bringing a
18 cause of action for public nuisance in the Los Angeles County Suit have standing to do so. Accordingly,
19 judgment should be entered against them on those causes.

20
21 ² The County of Los Angeles purports to be the “relator” on behalf of the State in this statutory action, rather
22 than the district attorney or county counsel (who signed the pleading). Even if county counsel (rather than the
23 County) were attempting to bring this public nuisance action on behalf of the People of the State of California, it
24 nonetheless fails because the county counsel is not authorized to bring such an action under Section 731, only district
25 attorneys and city attorneys may do so.

26 ³ It appears that Supervisors Gloria Molina, Zev Yaroslavsky, and Yvonne Brathwaite Burke are not
27 bringing an action to abate a public nuisance in their individual capacities, based on repeated references within the
28 complaint to these plaintiffs as Supervisors of Los Angeles County. Where it is doubtful in what capacity a party
sues or is sued, reference may be had to the entire complaint. (*Boland v. Cecil* (Super. 1944) 65 Cal.App.2d Supp.
832 [150 P.2d 819].) In the unlikely event that these Supervisors intended to sue in their individual capacities, they
nonetheless lack standing because, as individuals, they have not alleged any harm specific to them in their complaint,
let alone any injury different from that allegedly suffered by the public in general. (See *Venuto v. Owens-Corning
Fiberglas Corp.* (1971) 22 Cal. App. 3d. 116, 124 [99 Cal.Rptr. 350].)

1
2 **B. Los Angeles City Suit: As City Attorneys, Four Plaintiffs in This Action Arguably Have Standing.**

3 Four of the seven plaintiffs in the Los Angeles City Suit brought a cause of action for public
4 nuisance against defendants (Los Angeles City Complaint, ¶ 23). Each of those plaintiffs is a city attorney
5 acting on behalf of the People of the State of California, as required by Section 731. Therefore, these
6 plaintiffs pass the threshold test regarding standing under Section 731.⁴

7
8 **C. Conclusion: The Court Should Enter Judgment Against Seven Plaintiffs on Their Public Nuisance Claims Because Plaintiffs Lack Standing.**

9 The following Plaintiffs in the FIREARMS CASES alleged a public nuisance cause of action, but
10 failed to comply with the mandatory standing provisions of Section 731, thus rendering their claims
11 defective (defects underlined)⁵:

12 **Los Angeles County Suit:**

- 13 (1) People of the State of California, *ex rel.* County of Los Angeles;
14 (2) Los Angeles County on behalf of itself and the general public;
15 (3) Supervisor Gloria Molina on behalf of the general public;
16 (4) Supervisor Zev Yaroslavsky on behalf of the general public; and
17 (5) Supervisor Yvonne Brathwaite Burke on behalf of the general public.

18 Accordingly, these claims should be dismissed.

19
20 **IV. SEVENTEEN PLAINTIFFS FAILED TO MEET THE STATUTORY STANDING REQUIREMENTS OF SECTIONS 17204 & 17206.**

21 Business and Professions Code section 17200, et seq., (hereinafter, the Unfair Competition Law, or
22 “UCL”) defines unfair competition to include “any unlawful, unfair or fraudulent business act or practice
23

24 ⁴ This analysis, of course, does not address whether plaintiffs’ public nuisance claims are valid or whether
25 the issues are justiciable; Defendants contend they are neither.

26 ⁵ **San Francisco Action:** According to paragraph 4 of San Francisco’s First Amended Complaint (hereinafter
27 referred to as “FAC”), San Mateo County Counsel, Thomas F. Casey III; and Alameda County Counsel, Richard E.
28 Winnie brought public nuisance claims in their capacity as county counsel and, therefore, lack standing. (See *Board of Sup’rs of Los Angeles County v. Simpson, supra*, 36 Cal.2d at p. 673.) Alameda County Counsel Richard E. Winnie is listed as a plaintiff in paragraph 4 of San Francisco City’s First Amended Complaint, suing on behalf of the People of the State of California. But based on the caption and paragraph 5 of the First Amended Complaint, he appears to be representing only Alameda County suing on behalf of the general public, pursuant to Section 17204. Regardless of whether he represents the State and/or the general public, County Counsel Winnie still lacks standing to bring a public nuisance action under Section 731 because he is not a district or city attorney.

1 and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing
2 with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.” (Cal. Bus. & Prof.
3 Code § 17200.) "California's statutory law of unfair competition . . . authorizes actions for injunctive relief
4 . . . by certain state and local officers and persons acting for the interests of themselves or the general
5 public." (*Freeman v. Time, Inc.* (Cal.App.9 (Cal.)1995) 68 F.3d 285, 288.)(case citations omitted).

6 As with the public nuisance causes of action discussed above, Plaintiffs’ claims under the UCL
7 cannot be raised unless Plaintiffs meet specific statutory standing provisions. These provisions are found in
8 Section 17204.⁶ Section 17204 provides that: “Actions for *any relief* . . . *shall be prosecuted exclusively* . .
9 . by (1) the *Attorney General* or (2) any *district attorney* or by (3) any *county counsel* authorized by
10 agreement with the district attorney in actions involving violation of a county ordinance, or (4) any *city*
11 *attorney* of a city, or city and county, having a *population in excess of 750,000*, and, (5) with the consent of
12 the district attorney, by a *city prosecutor* in any city having a full-time city prosecutor or, (6) with the
13 consent of the district attorney, by a *city attorney* in any city and county.” (Bus. & Prof. Code,
14 § 17204)(emphasis added) Such actions shall be brought exclusively by such prosecutors “in the name of
15 the people of the State of California.” (*Ibid.*)

16 The final clause of Section 17204 provides standing for private parties, i.e., “any person” acting on
17 behalf of “itself, its members or the general public.” The term “person” is defined in Section 17201 as
18 "natural persons, corporations, firms, partnerships, joint stock companies, associations and other
19 organizations of persons.” The plain language of the statute indicates that “person,” in the context of the
20 UCL, excludes public entities or officials. Section 17204 provides counties and cities with the means to
21 bring UCL actions only through district attorneys, city attorneys and city prosecutors. (See *Santa Monica*
22 *Rent Control Bd. v. Bluvshstein* (1991) 230 Cal.App.3d 308, 318 [281 Cal.Rptr. 298, 303] (“Appellant is a
23

24 ⁶ Business and Professions Code section 17204 Provides: “Actions for any relief pursuant to this chapter
25 shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or
26 by any county counsel authorized by agreement with the district attorney in actions involving violation of a county
27 ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the
28 consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent
of the district attorney, by a city attorney in any city and county in the name of the people of the State of California
upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any
person acting for the interests of itself, its members or the general public.”

1 government agency; it is none of the things included in the definition of person. Therefore, it has no
2 standing to bring an action for an injunction pursuant to the Unfair Practices Act.”.) If it did not, then the
3 specific and exclusive list of public officials, and the parties on whose behalf they may act, would be
4 rendered meaningless by the general language of the section’s final clause. Under basic statutory
5 construction rules (e.g., *ejusdem generis*), the specific list of government officials who can bring actions
6 under the standing requirements of Sections 17204 (and 17535, discussed below) indicates that the general
7 term, “person,” was not meant to include other, unnamed government officials or entities, but rather applies
8 to private parties.

9 The canon [*Ejusdem generis*] presumes that if the Legislature intends a general word to be
10 used in its unrestricted sense, it does not also offer as examples peculiar things or classes of
11 things since those descriptions then would be surplusage. (*Kraus v. Trinity Management
Services* (2000) 23 Cal.4th 116, 141 [96 Cal.Rptr.2d 485].)

12 In addition, B. E. Witkin’s Summary of California Law provides an in depth analysis of proper
13 parties to actions under California’s unfair competition laws, along with references to supporting case law,
14 as set forth below. Witkin’s review of the UCL and case law reveals that “persons” for the purposes of the
15 UCL applies only to private parties:

16 **b-1. [§ 95A] (New) Parties to Actions.**

17 (2) *Government Officers or Entities as Parties.* With the exception of the government
18 attorneys expressly authorized to bring actions under the UCL, government officers or
entities generally may not sue or be sued.

19 (See 11 Witkin, Summary 9th (2002 supp.) Equity, § 95A, p. 450.)(See cases cited therein.)

20 In sum, only the government attorneys listed in Section 17204, as limited by the conditions set forth
21 therein, may bring an action under the UCL. Public entities and officers (with the exception of those listed)
22 are not proper parties; they cannot sue or be sued under the UCL. (11 Witkin, Summary 9th (2002 supp.)
23 Equity, § 95A, p. 450) Further, while private parties also may bring an action, apparently none of the
24 Plaintiffs herein is suing as a private party. Consequently, as shown below, seventeen Plaintiffs failed to
25 meet the statutory standing requirements to bring an action under the UCL.

26 **A. Los Angeles County Suit: None of the Plaintiffs Have Standing to Bring an Action**
27 **Under California’s Unfair Competition Law.**

28 According to paragraph 12 of the complaint filed in the Los Angeles County Suit, all plaintiffs

1 therein seek injunctive relief under the UCL, pursuant to Section 17204, as follows:

- 2 (1) People of the State of California, *ex rel.* Los Angeles County;
- 3 (2) On behalf of itself and the general public, Los Angeles County;
- 4 (3) On behalf of the general public, by Los Angeles County Supervisor Gloria Molina;
- 5 (4) On behalf of the general public, by Los Angeles County Supervisor Zev Yaroslavsky;
- 6 (5) On behalf of the general public, by Los Angeles County Supervisor Yvonne Burke.

7 The first two UCL claims are brought by the County of Los Angeles, one on behalf of the People of
8 the State of California, and the other on behalf of itself and the general public. As noted above, counties are
9 not proper parties, and have no standing to bring a UCL claim.⁷

10 County Supervisors are not among the public officers specifically listed in Section 17204 and,
11 therefore, cannot bring an action under the UCL in their public capacity. Further, there is nothing in the
12 complaint to suggest that any Supervisor plaintiffs therein brought their claims as a private party, or
13 “person,” under the last clause of Section 17204, and therefore they cannot sue in their private capacity on
14 behalf the general public. Thus, Supervisors Molina, Yaroslavsky, and Burke have no standing.

15
16 **B. Los Angeles City Suit: Only One Plaintiff Arguably Has Standing to Seek Injunctive**
17 **Relief Under the UCL.**

18 All seven plaintiffs in the Los Angeles City Suit brought a cause of action under the UCL against all
19 defendants (Los Angeles City Complaint ¶¶ 23 and 24), as follows:

- 20 (1) James K. Hahn, City Attorney of Los Angeles, on behalf of the People;
- 21 (2) Legrand H. Clegg II, City Attorney of Compton, on behalf of the People;
- 22 (3) Charles E. Dickerson III, City Attorney of Inglewood, on behalf of the People;
- 23 (4) Michael Jenkins, City Attorney of West Hollywood, on behalf of the People;
- 24 (5) Legrand H. Clegg II, City Attorney of Compton, on behalf of the general public;
- 25 (6) Roosevelt Dorn, Mayor of Inglewood, on behalf of the general public; and
- 26 (7) John Heilman, Mayor of West Hollywood, on behalf of the general public.

27 The first four plaintiffs filed as city attorneys acting on behalf of the “People of the State of
28 California” and, thus, are among the government attorneys considered by Section 17204. Only one, the Los
29 Angeles City Attorney, is from a city with a population exceeding 750,000. Under the standing provisions,

30
31 ⁷ Even assuming, *arguendo*, that the claims are being brought by county counsel, the subject complaint lacks
32 any allegation that Los Angeles County Counsel’s UCL claims are “authorized by agreement with the district attorney
33 in actions involving violation of a county ordinance,” as required (and as was done in the proper pleading by San
34 Mateo’s County Counsel, see discussion below, section IV, subsection “C”). Absent such allegations, the Los
35 Angeles County Counsel lacks standing to bring the subject claims.

1 the remaining city attorneys had to obtain and allege the consent of their respective district attorneys to
2 have standing. They did not. Consequently, they lack standing.

3 The remaining three plaintiffs are identified in the FAC as public officials, yet purport to bring UCL
4 actions as “persons” on behalf of the “general public.” As discussed above, the definition of “person” does
5 not include municipalities, public entities, or public officials. Consequently, as public officials they lack
6 standing. The two Mayors’ claims suffer from an additional defect, inasmuch as Mayors, like County
7 Supervisors, are not among the public officials listed in Section 17204, and lack standing on that basis.
8 Finally, City Attorney Clegg cannot evade the “district attorney consent” requirement by bringing his claim
9 on behalf of the general public rather than the People of the State of California. Thus, only the Los
10 Angeles City Attorney arguably complied with the standing requirements. The other six plaintiffs lack
11 standing, and judgment should be entered against them.

12
13 **C. Conclusion: The Court Should Dismiss All UCL Causes of Action Except those**
14 **Brought by the City Attorneys of Los Angeles and San Francisco and the County**
15 **Counsel for San Mateo County.**

16 Each plaintiff herein that brought a claim under UCL did so pursuant to the standing
17 provisions of Section 17204. The California legislature amended Section 17204 in 1993, inserting the word
18 “shall” for “may” and adding the word “exclusively” when designating those government attorneys who
19 could bring a UCL action, so that the section now begins: “Actions for **any relief** pursuant to this chapter
20 **shall be prosecuted exclusively . . . by the Attorney General . . .**” (West’s Ann. Cal. Bus. & Prof. Code §
21 17204 (West 2002)[Historical and Statutory Notes](emphasis added).) Accordingly, plaintiffs should be
22 required to plead based on the specific language in that section—it is mandatory, exclusive, and was altered
23 to that effect by a recent amendment. In short, the legislative intent is clear.

24 Based on the above analysis, only the City Attorneys for Los Angeles and San Francisco ⁸ complied

25 ⁸ **San Francisco Action:** As discussed above, the definition of “person” for purposes of Section 17204 does
26 not include municipalities, nor public entities. Thus, the Cities of Berkeley, Oakland, and East Palo Alto, and the
27 County of Alameda lack standing since no other provision grants cities or counties standing. Sacramento Mayor Joe
28 Serna, Jr., also sues on behalf of the general public, presumably under the provision allowing suits by “persons.” The
Mayor, however, has not alleged a claim in his individual capacity and, therefore, does not come within the definition
of “person” for purposes of this action. Accordingly, Defendants Motion for Judgment on the Pleadings should be
granted as to the UCL claims brought by the above identified San Francisco City Suit plaintiffs.

1 with the specific provisions of Section 17204, by qualifying as “a city attorney of a city ...having a
2 population in excess of 750,000.” County Counsel for San Mateo also complied with the standing
3 provisions. The other city attorney plaintiffs represent cities with lesser populations, and did not obtain or
4 allege the “consent of the district attorney,” as required. The remaining plaintiffs improperly filed on behalf
5 of the general public and/or were not public officials listed in Section 17204. Each of these plaintiffs lacks
6 standing, and judgment should be entered against them on their UCL causes of action. The plaintiffs that
7 lack standing are listed below (with defects underlined):

8 **Los Angeles County Suit:**

- 9 (1) People of the State of California, *ex rel.* Los Angeles County;
10 (2) On behalf of itself and the general public, Los Angeles County;
11 (3) On behalf of the general public, by Los Angeles County Supervisor Gloria Molina;
12 (4) On behalf of the general public, by Los Angeles County Supervisor Zev Yaroslavsky;
13 (5) On behalf of the general public, by Los Angeles County Supervisor Yvonne Burke;

14 **Los Angeles City Suit:**

- 15 (6) Legrand H. Clegg II, City Attorney of Compton, on behalf of the State [<750,000];
16 (7) Charles E. Dickerson III, City Attorney of Inglewood, on behalf of the State [<750,000];
17 (8) Michael Jenkins, City Attorney of West Hollywood, on behalf of the State [<750,000];
18 (9) Legrand H. Clegg II, City Attorney of Compton, on behalf of the general public;
19 (10) Roosevelt Dorn, Mayor of Inglewood, on behalf of the general public;
20 (11) John Heilman, Mayor of West Hollywood, on behalf of the general public;

21 **D. Only Plaintiffs Bringing a UCL Claim in the Name of the “People of the State of
22 California” May Have Standing to Recover Civil Penalties, Under Section 17206.**

23 While plaintiffs’ lack of standing to bring a UCL action in the first instance precludes any associated
24 claims for relief, it should be noted that most plaintiffs who seek civil penalties under UCL claims lack
25 standing to do that, as well, due to the separate standing requirements for that particular relief. Standing
26 requirements for plaintiffs seeking civil penalties are set forth in Section 17206,⁹ which provides standing
27 exclusively to certain government attorneys, and only for actions brought in the name of the “People of the
28 State of California.”

29 ⁹Business and Professions Code section 17206 provides: “...civil penalties...shall be assessed and recovered in
30 a civil action brought in the name of the people of the State of California by the Attorney General, by any district
31 attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a
32 county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with
33 the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the
34 consent of the district attorney, by a city attorney in any city and county.

1 The standing provisions for civil penalties track those of Section 17204, discussed above, with one
2 notable exception: they do not include any provision for private parties or “persons.” By the statutes plain
3 terms, civil penalties may be recovered only by public law enforcement officials, not private litigants. In
4 such cases, the real party in interest is the State of California. (*People v. Steelcase, Inc.* (C.D.Cal. 1992)
5 792 F.Supp. 84, 86; *see also Brown v. Allstate Ins. Co.* (S.D.Cal.1998) 17 F.Supp.2d 1134, 1140 (private
6 individuals cannot seek damages on statutory claim for unfair business practices; private remedies are
7 limited to equitable relief, and civil penalties are recoverable only by specified public officers).)

8 Consequently, it is axiomatic that the same parties who lack standing to bring a UCL action for
9 injunctive relief (listed above in section “C”) also lack standing for civil penalties.

10

11 **V. FIVE PLAINTIFFS FAILED TO MEET THE STATUTORY STANDING**
12 **REQUIREMENTS OF SECTION 17535 AND THUS CANNOT BRING AN ACTION FOR**
13 **FALSE ADVERTISING.**

14 Plaintiffs in the Los Angeles County Suit and San Francisco City Suit claim violations of Section
15 17500, et seq., alleging that Defendants engaged in false and misleading advertising. The standing
16 provisions for injunctive relief and civil penalties for such claims are found in Business and Professions
17 Code sections 17535 (“Section 17535”) and 17536 (“Section 17536”) respectively.

18 Section 17535 provides:

19 . . . Actions for injunction under this section may be prosecuted by the Attorney General or
20 any district attorney, county counsel, city attorney, or city prosecutor in this state in the
21 name of the people of the State of California upon their own complaint or upon the
22 complaint of any board, officer, person, corporation or association or by any person acting
23 for the interests of itself, its members or the general public.

24 This provision is broader than Section 17204 in that it does not place restrictions on the government
25 attorneys listed, other than that they bring their false advertising actions in the name of the People of the
26 State of California. The restrictions as to “persons” bringing actions on behalf of the “general public,”
27 however, remain the same: only private parties can do so. The definition of “person” for purposes of
28 Section 17535 is: “all natural persons, corporations, firms, partnerships, joint stock companies, associations
and other organizations of persons.” (Cal. Bus. & Prof. Code §17506) “Government entities...are not
included in this definition of person.” (*Janis v. California State Lottery Com.* (1998) 68 Cal.App.4th 824,
831.)

1 As discussed above regarding Section 17204, government officials, such as Mayors, Supervisors,
2 and County Counsel suing in their official capacities also cannot be included within the category of
3 “persons” who can bring an action on behalf of the ‘general public,’ for that would conflict with the other
4 standing requirements within the section and would permit such officials to circumvent the standing
5 requirements therein.

6 Further, Witkin’s analysis of “person” for UCL actions, discussed above, should apply equally here,
7 inasmuch as the statutory definition of “person” is identical. (*cf.* Bus. & Prof. Code §§ 17201 and 17506.)
8

9 In sum, while there is arguably more latitude given to the government officials *listed* in Section
10 17535 than in Section 17204, the analysis regarding those plaintiffs bringing actions as “persons” on behalf
11 of themselves or the “general public” remains the same: they do not have standing under Section 17535 to
12 bring such claims because they apparently are not bringing them as private parties. The plaintiffs who lack
13 standing because they are not among the government officials listed, or because they are not proper
14 “persons” under Section 17535 are as follows (defects underlined):¹⁰
15

16 **A. Los Angeles County Suit: None of the Plaintiffs Have Standing to Bring an Action**
Under California Section 17500, et seq., for False Advertising.

17 All plaintiffs in the Los Angeles County Suit lack standing to bring an action under Section 17500,
18 et seq., for the same reasons they lacked standing under Section 17200. Briefly, none are among the
19 government officials who have exclusive standing to bring such actions, and none qualify as private parties,
20 or “persons.” The Los Angeles County plaintiffs who brought Section 17500 actions, but lack standing to
21 do so, are listed below (defects underlined):

- 22 (1) People of the State of California, *ex rel.* Los Angeles County;
23 (2) On behalf of itself and the general public, Los Angeles County;
24 (3) On behalf of the general public, by Los Angeles County Supervisor Gloria Molina;
25 (4) On behalf of the general public, by Los Angeles County Supervisor Zev Yaroslavsky;
26 (5) On behalf of the general public, by Los Angeles County Supervisor Yvonne Brathwaite Burke;

27 ¹⁰**San Francisco Action:** The San Francisco plaintiffs bringing an action under Section 17535 in this suit
28 (i.e., the plaintiffs listed in ¶ 4 of the FAC) are government officials listed in that section, and all have brought their
actions on behalf of the People of the State of California, as required. Therefore, they arguably have standing under
Section 17535.

1 The Los Angeles City FAC plaintiffs did not bring a separate action under Section 17535.

2
3
4 **B. Civil Penalties Under Section 17536 are Recoverable Only by Those Public Officers**
5 **Listed in that Section.**

6 There are additional and separate standing requirements for a plaintiff to recover civil penalties
7 under Section 17500 actions. Standing requirements for plaintiffs seeking civil penalties are set forth in
8 Section 17536.¹¹ As with the civil penalties available under Section 17206, discussed above, civil penalties
9 under Section 17536 are limited to the public officers listed therein. (*Chern v. Bank of America* (1976) 15
10 Cal.3d 866, 875 [127 Cal.Rptr. 110] (“private relief is limited to the filing of an action for an injunction, and
11 civil penalties are recoverable only by specified *public* officers.”)(emphasis in original).) Counties and
12 County Supervisors are not “public officers” listed in Section 17536 and thus lack standing to recover civil
13 penalties (even assuming they could bring a false advertising claim in the first instance).

14 In sum, none of the plaintiffs in the Los Angeles County Suit have standing to recover civil
15 penalties. The Los Angeles City Suit plaintiffs did not seek civil penalties under Section 17536.

16 **VI. SUMMARY**

17 To summarize, as a matter of law, the parties without standing to bring any of the causes of actions
18 should be dismissed.¹² Those parties are:

19 **L. A. County Suit:** (All plaintiffs lack standing on all causes of action):

- 20 (1) The People of the State of California, *ex rel.* the County of Los Angeles;
21 (2) Los Angeles County, on behalf of itself and the general public;
22 (3) Gloria Molina, Supervisor of Los Angeles County, on behalf of the general public;
23 (4) Zev Yaroslavsky, Supervisor of Los Angeles County, on behalf of the general public;
24 (5) Yvonne Brathwaite Burke, Supervisor of Los Angeles County, on behalf of the general public.

25 **Los Angeles City Suit:** (Plaintiffs in ¶ 24 of their FAC lack standing on all causes):

26
27 ¹¹Business and Professions Code section 17536 provides that: ... civil penalties... shall be assessed and
28 recovered in a civil action brought in the name of the people of the state of California by the Attorney General or by
any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

¹² **San Francisco Action:** The San Francisco City Suit Plaintiffs in ¶ 5 of their FAC that lack standing on all
causes include: (1) Sacramento Mayer Joe Serna, Jr., on behalf of the general public; (2) City of Berkeley, on behalf
of the general public; (3) City of Oakland, on behalf of the general public; (4) City of East Palo Alto, on behalf of
the general public; and (5) County of Alameda, on behalf of the general public.

- (6) Legrand H. Clegg II, City Attorney of Compton, on behalf of the general public;
(7) Roosevelt Dorn, Mayor of Inglewood, on behalf of the general public;
(8) John Heilman, Mayor of West Hollywood, on behalf of the general public

The Los Angeles City plaintiffs listed below have standing as to some claims. However, judgment should be entered against them on individual causes of action¹³, as follows: The City Attorney of Compton, City Attorney of Inglewood, and the Mayor of West Hollywood (i.e., the plaintiffs listed in paragraph 24 of the FAC) lack standing to bring a UCL cause of action on behalf of the general public, because they are not private parties.

VII. CONCLUSION

Plaintiffs in the coordinated FIREARMS CASES have filed three separate causes of action against Defendants, each of which requires compliance with statutory standing provisions. Defendants asks this Court to enforce the statutory standing provisions and dismiss those plaintiffs identified herein who lack standing to bring *any* of the causes of action alleged, and therefore are not proper parties to this case. As to the remaining plaintiffs, judgment should be entered against them on individual causes of action for which they lack standing.

As a practical matter, Defendants respectfully submit that there will be ample parties and lawyers remaining to fully air the issues of fact and law as to each cause of action alleged in these coordinated cases, even with the departure of those parties that lack standing. In addition, not all defects noted herein are curable. And some that may be cured in theory, may not be cured in fact, especially in those situations where current “improper” parties require consent from experienced and objective prosecutors before they can attain standing to proceed.

For the reasons stated, Defendants asks that this Court grant this Motion for Judgment on the Pleadings as to the individual causes of action for which plaintiffs herein lack standing, as identified above and listed in summary form in Exhibit A (“Statutory Standing Chart”).

Dated: January 3, 2003

TRUTANICH • MICHEL, LLP

¹³ **San Francisco Action**: San Mateo County Counsel, Thomas F. Casey III, on behalf of the People of the State of California, has no standing to bring a cause of action to abate a public nuisance under Section 731 because he is not a district attorney or city attorney; Nor does Alameda County Counsel, Richard E. Winnie, for the same reason.

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/s/ C. D. Michel
C. D. Michel, Attorneys for Defendant,
Andrew's Sporting Goods, Inc., dba Turner's
Outdoorsman and SG Distributing, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Haydee Villegas, declare:

That I am employed in the City of San Pedro, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 407 North Harbor Boulevard, San Pedro, California 90731.

On January 3, 2003, I served the foregoing document(s) described as **DEFENDANT ANDREWS SPORTING GOODS, INC., dba TURNERS OUTDOORSMAN'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT ANDREWS SPORTING GOODS, INC.'S MOTION FOR JUDGMENT ON THE PLEADINGS** on the interested parties in this action by JusticeLink Electronic filing on all persons appearing on the Service List.

I declare under penalty that the foregoing is true and correct. Executed this 3rd day of January, 2003, at San Pedro, California.

Haydee Villegas




Haydee Villegas

EXHIBIT A

STATUTORY STANDING CHART FOR FIREARMS CASE JCCP 4095

LOS ANGELES COUNTY COMPLAINT

PLAINTIFFS	Public Nuisance: Injunction CCP §731	Unfair Practices: Injunction B&P §17204	Unfair Practices: Penalties B&P §17206	False Ad: Injunction B&P §17535	False Ad: Penalties B&P §17536
Los Angeles County in the name of the People of the State of California	No	No	No	No	No
Los Angeles County on behalf the general public.	No	No	No	No	No
Supervisor G. Molina on behalf of the general public.	No	No	No	No	No
Supervisor Z. Yaravslavsky on behalf of the general public.	No	No	No	No	No
Supervisor Y. Brathwaite-Burke on behalf of the general public.	No	No	No	No	No

Key	
	Did not bring this cause of action
	Fails to meet the statutory standing provisions for this cause of action.
	Satisfies the statutory standing provisions for this cause of action.

EXAMPLE EXPLANATION OF CHART
Example 1: Los Angeles County Plaintiffs do not have standing under any cause of action.

STATUTORY STANDING CHART FOR FIREARMS CASE JCCP 4095

CITY OF LOS ANGELES COMPLAINT

PLAINTIFFS	Public Nuisance: Injunction CCP §731	Unfair Practices: Injunction B&P §17204	Unfair Practices: Penalties B&P §17206	False Ad: Injunction B&P §17535	False Ad: Penalties B&P §17536
City Attorney of San Francisco in the name of the People of the State of California	Yes	Yes	Yes	Yes	Yes
City Attorney of Berkeley in the name of the People of the State of California	Yes			Yes	Yes
City Attorney of Sacramento in the name of the People of the State of California	Yes			Yes	Yes
County Counsel for San Mateo in the name of the People of the State of California	No			Yes	Yes
Alameda County Counsel in the name of the People of the State of California	No			Yes	Yes
City Attorney of Oakland in the name of the People of the State of California	Yes			Yes	Yes
City of Oakland on behalf of the general public.		No	No		
Alameda County on behalf of the general public.		No	No		
City of East Palo Alto on behalf of the general public.		No	No		
Sacramento Mayor J. Serna, Jr. on behalf of the general public.		No	No		
City of Berkeley on behalf of the general public.		No	No		

EXAMPLE EXPLANATION OF CHART

Example 2: City of San Francisco has met all statutory requirements for all causes of action. However, City of Oakland on behalf of the general public has failed to meet the statutory standing requirements for its only cause of action, B&P §17200 et seq.

STATUTORY STANDING CHART FOR FIREARMS CASE JCCP 4095

CITY AND COUNTY OF SAN FRANCISCO COMPLAINT

PLAINTIFFS	Public Nuisance: Injunction CCP §731	Unfair Practices: Injunction B&P §17204	Unfair Practices: Penalties B&P §17206	False Ad: Injunction B&P §17535	False Ad: Penalties B&P §17536
City Attorney of Los Angeles in the name of the People of the State of California	Yes	Yes	Yes		
City Attorney of Compton in the name of the People of the State of California	Yes	No	No		
City Attorney of Inglewood in the name of the People of the State of California	Yes	No	No		
City Attorney of West Hollywood in the name of the People of the State of California	Yes	No	No		
City Attorney of Compton L. H. Clegg II on behalf of the general public.		No	No		
Mayor of Inglewood R. Dorn on behalf of the general public.		No	No		
Mayor of West Hollywood J. Heilman on behalf of the general public.		No	No		

EXAMPLE EXPLANATION OF CHART

Example 3: City Attorney of Los Angeles in the name of the People of the State of California satisfies the statutory standing requirements for the three causes of actions it alleges; however, City Attorney of West Hollywood in the name of the People of the State of California fails to satisfy the statutory standing requirements for its B&P 17200 et seq. claims.

