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KOLETSKY, MANCINI, FELDMAN & MORROW  
Lawyers  
3460 Wilshire Blvd., Eighth Floor  
Los Angeles, CA 90010  
(213) 427-2350

1 ROY A. KOLETSKY, ESQ., SBN: 105938  
SUSAN L. CALDWELL, ESQ., SBN: 190421  
2 KOLETSKY, MANCINI, FELDMAN & MORROW  
3460 Wilshire Boulevard, Eighth Floor  
3 Los Angeles, California 90010  
Telephone: (213) 427-2350  
4

5 Attorneys for Defendants National Shooting Sports Foundation, Inc. (NSSF), Sporting Arms and  
Ammunition Manufacturers' Institute, Inc. (SAAMI), and American Shooting Sports Council, Inc.  
6 (ASSC)  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**  
10

11	Coordination Proceeding	)	JUDICIAL COUNCIL COORDINATION
12	Special Title (Rule 1550(b))	)	PROCEEDING NO. 4095
13	FIREARM CASES	)	SPORTING ARMS AND
14		)	AMMUNITION MANUFACTURERS'
15		)	INSTITUTE, INC.'S OPPOSITION TO
16	Coordinated Actions:	)	PLAINTIFFS' MOTION TO COMPEL
17		)	ANOTHER KNOWLEDGEABLE
18		)	CORPORATE DESIGNEE AND
19		)	FURTHER DOCUMENTS;
20		)	DECLARATION OF SUSAN L.
21		)	CALDWELL IN SUPPORT THEREOF
22		)	
23		)	[Filed concurrently with Opposition to
24		)	Plaintiffs' Separate Statement in Support
25		)	of Motion to Compel]
26		)	
27	PEOPLE OF THE STATE OF	)	San Francisco Superior Court Case
28	CALIFORNIA v. ARCADIA MACHINE	)	Number 303 753
	& TOOL, INC. et al.	)	
	PEOPLE OF THE STATE OF	)	Los Angeles Superior Court Case
	CALIFORNIA v. ARCADIA MACHINE	)	Number BC 210894
	& TOOL, INC. et al.	)	
	PEOPLE OF THE STATE OF	)	Los Angeles Superior Court Case
	CALIFORNIA v. ARCADIA MACHINE	)	Number BC 214794
	& TOOL, INC. et al.	)	
	DATE: October 13, 2000	)	DATE: October 13, 2000
		)	TIME: 1:30 p.m.
		)	DEPT.: 65

27 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:  
28 Defendant SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE,

10-2-00

1 INC., *specially appearing herein*, hereby submits the following memorandum of points and  
2 authorities in opposition to Plaintiffs' Motion to Compel another knowledgeable corporate designee  
3 and further documents for jurisdictional discovery.

4 **I. INTRODUCTION**

5 Jurisdictional discovery and the meet and confer process have been long, arduous, and  
6 expensive. Plaintiffs propounded over 90 vague, overlapping, and expansive discovery requests,<sup>1</sup>  
7 many of them patently unrelated to jurisdictional issues.<sup>2</sup> The Sporting Arms and Ammunition  
8 Manufacturers' Institute, Inc. (SAAMI) has produced several hundred pages of documents in  
9 response.<sup>3</sup> Its President and CEO, Robert T. Delfay was deposed. SAAMI (and the other Association  
10 defendants) received and responded to numerous meet and confer letters from a number of different  
11 plaintiffs' lawyers.<sup>4</sup>

12 While difficult, the meet and confer process has worked. Indeed, plaintiffs' motion  
13 demonstrates that fact.<sup>5</sup> The matters on which plaintiffs now seek this court's aid in compelling further  
14 discovery border on the trivial, and many of them were never mentioned in plaintiffs' meet and confer  
15 letters. California Code of Civil Procedure §2025(o).

16 ///

17 \_\_\_\_\_  
18 <sup>1</sup> Plaintiffs' First Request for Production, Plaintiffs' Second Request for Production, Plaintiffs'  
19 Special Interrogatories, and Plaintiffs' Form Interrogatories are attached as Exhibits A-D to the Declaration  
of Susan L. Caldwell.

20 <sup>2</sup> E.g., First Request for Production No. 36 ("All documents which constitute, reflect, refer to, or relate  
21 to any insurance policy or indemnification agreement that may provide coverage for any of the claims or  
22 causes of action asserted in this action...."); First Request for Production No. 39 ("All documents that  
23 constitute, reflect, or refer to, or relate to any of your year-end financial statements...."); Second Request for  
24 Production No. 9 ("All documents that constitute, reflect, refer to, or relate to your Board of Directors  
meeting minutes."); First Request for Production No. 16 ("All documents that constitute, reflect, refer to, or  
relate to the sale of firearms at gun shows."); First Request for Production No. 13 ("All documents that  
constitute, reflect, refer to, or relate to any press releases, communications with the media, and public  
statements made or issued by you regarding firearms.") attached as Exhibits A and B to the Declaration of  
Susan L. Caldwell.

25 <sup>3</sup> SAAMI's initial written response to discovery is attached as Exhibit E to the Declaration of Susan L.  
Caldwell.

26 <sup>4</sup> Plaintiffs' meet and confer letters are Exhibits 7, 9-14 to the Declaration of Ex Kano S. Sams II.  
SAAMI's meet and confer letters of January 14, 2000, January 25, 2000, April 6, 2000, April 13, 2000, June  
27 2, 2000, June 14, 2000, June 16, 2000, June 23, 2000, June 30, 2000, July 7, 2000, July 12, 2000, and August  
3, 2000, are Exhibits F-Q to the Declaration of Susan L. Caldwell.

28 <sup>5</sup> Formal Response outlining supplemental discovery of August 7, 2000, as Exhibit R to the  
Declaration of Susan L. Caldwell.

1 Plaintiffs complain that Mr. Delfay was not an adequate witness because he could not recall:

2 • The year in which Weatherby, Inc., SAAMI's sole California member, joined SAAMI  
3 (Pl. Memo at 5, 6; Separate Statement at 3, 6);

4 • Whether certain SAAMI pamphlets and videos had been ordered by and sent to  
5 California residents (Pl. Memo at 5, 6; Separate Statement at 3-4, 6-7); or

6 • Whether SAAMI public service ads had been placed in any NSSF periodicals (Pl.  
7 Memo at 6; Separate Statement at 5).

8 In addition, plaintiffs are dissatisfied with Mr. Delfay's response to a question on the  
9 SAAMI/ANSI voluntary industry standards (Pl. Memo at 6-7; Separate Statement at 8).

10 Plaintiffs' sole complaint with respect to SAAMI's document production is that SAAMI did not  
11 produce communications with certain of its members or their California litigation counsel in  
12 connection with a Proposition 65 lawsuit brought quite a few years ago by a private foundation against  
13 those members.

14 **II. ARGUMENT**

15 **A. Additional Depositions Are Not Warranted.**

16 Plaintiffs' motion to compel one or more additional depositions of SAAMI witnesses should be  
17 denied:

18 • Plaintiffs assert that Robert Delfay was an insufficient corporate designee of SAAMI for  
19 deposition but are unable to cite one California case to support this contention. California Code of  
20 Civil Procedure §2025(d)(6) states in pertinent part:

21 " If the deponent named is not a natural person, the deposition notice shall describe with  
22 reasonable particularity the matters on which examination is requested. In that event, *the*  
23 *deponent shall designate and produce at the deposition those of its officers, directors,*  
24 *managing agents, employees, or agents who are most qualified to testify on its behalf as to*  
25 *those matters to the extent of any information known or reasonably available to the deponent.*"

26 California Code of Civil Procedure §2025(d)(6) [emphasis added].

27 ///

28 ///

1 • Plaintiffs have confused the concept of the "person most knowledgeable" with the  
2 concept of the "all knowing witness." California Code of Civil Procedure §2025(d)(6) cannot  
3 reasonably be construed to require a witness to memorize detailed information of the type  
4 which plaintiffs complain of in their motion. Nor does it require a corporate entity to bring a  
5 parade of witnesses to testify on detailed factual matters that no management person could  
6 reasonably be expected to testify on from memory. Id.

7 • SAAMI's professional support staff consists of Mr. Delfay, James Chambers, hired as  
8 Executive Director in late 1998, Kenneth Green, Technical Director, and Nancy Coburn,  
9 Assistant Secretary and Treasurer.<sup>6</sup> As President of SAAMI and CEO of SAAMI since 1986,  
10 Robert Delfay is clearly the most knowledgeable person on SAAMI's small staff. None of  
11 these employees subordinate to Mr. Delfay could reasonably be expected to have as much  
12 knowledge as Mr. Delfay on the matters identified by plaintiffs to substantiate good cause to  
13 compel additional depositions. Liberty Mutual Insur. Co. v. Sup. Ct. (1992) 10 Cal.App.4th  
14 1282, 13 Cal.Rptr.2d 363.<sup>7</sup> Thus, Mr. Delfay is the most qualified person at SAAMI to testify  
15 with respect to California related activities and members and was produced accordingly.<sup>8</sup>

16 • Further depositions would not adduce factual information that would assist the court in  
17 deciding the pending motions to quash. Except for the date Weatherby joined SAAMI, *which*  
18 *was never previously request by plaintiffs*, SAAMI has provided plaintiffs all available  
19 information on the topics on which they seek additional depositions. Equally important, with  
20 the possible exception of the distribution of SAAMI publications in California, the subjects of  
21 Plaintiffs' motion are irrelevant to jurisdiction.

22 • SAAMI agreed, and made multiple offers, to provide further information with respect to

24 \_\_\_\_\_  
25 <sup>6</sup> Delfay Depo. At 28:3-20; 423:22; 124:1-5 as Exhibit S to the Declaration of Susan L. Caldwell.  
26 <sup>7</sup> Although involving depositions of "highest level" corporate management, the Liberty court held a plaintiff must  
27 show good cause that a proposed corporate deponent has "unique or superior knowledge of discovery information" prior to  
28 deposition or that discovery could not have been obtained through alternative channels. Herein, Mr. Delfay is the most  
knowledgeable at SAAMI, and plaintiffs have failed to identify information that has not already been produced for good  
cause.

<sup>8</sup> Further depositions of subordinate support staff will not only prove a fruitless fishing expedition, but  
are overly burdensome and harassing. California Code of Civil Procedure §2019(b).

1 specific questions asked of Mr. Delfay at time of deposition.<sup>9</sup> *Plaintiffs failed to provide any*  
2 *category of jurisdictional discovery, or even one question, where Mr. Delfay did not sufficiently*  
3 *respond and documents were not provided.* Without any supporting contention or rationale,  
4 and without a showing of good cause, plaintiffs simply demand more depositions of less  
5 informed individuals irrelevant to jurisdictional discovery.

6 • Three of the four subjects of plaintiffs' motion -- Weatherby's membership, public  
7 service ads, and SAAMI/ANSI standards -- were never referenced in meet and confer letters.  
8 Plaintiffs first address of these issues was by virtue of their motion to compel.

9 i. **California Membership**

10 Mr. Delfay was as definitive as could reasonably be expected in testifying that Weatherby is the  
11 only California member that SAAMI has had in its 75-year history.<sup>10</sup> Further, in a response to a  
12 specific request from plaintiffs' counsel, SAAMI confirmed that it had no record of any California  
13 member other than Weatherby.<sup>11</sup>

14 Nor should Mr. Delfay be faulted for not having memorized the dates on which each of  
15 SAAMI's 28 members nationwide joined SAAMI. SAAMI did not construe plaintiffs' meet and  
16 confer letters as requesting information on the date which Weatherby joined SAAMI as it was neither  
17 requested expressly nor by implication. Had SAAMI known that plaintiffs' desired that information, it  
18 would have been provided earlier. The date is June 4, 1985.<sup>12</sup>

19 Regardless, the date Weatherby joined SAAMI is irrelevant to the pending motion to quash. As  
20 noted by plaintiffs (Separate Statement at 3), Weatherby is a producer of high-end longarms --  
21 shotguns and rifles -- and accessories. It does not produce handguns at issue in the action herein. And  
22 it is not a defendant in the California suits.

23  
24  
25 <sup>9</sup> Letters of April 6, 2000, April 13, 2000, June 14, 2000 and August 3, 2000, Exhibits H, I, K, and Q  
to the Declaration of Susan L. Caldwell.

26 <sup>10</sup> Q: Historically have there been any other members from SAAMI from California that you are  
aware of?

27 A: I am not aware of any. I would doubt it. Delfay Depo. at 121:22, 122:1-2 as Exhibit S to the  
Declaration of Susan L. Caldwell.

28 <sup>11</sup> Exhibit F, P, and Y to the Declaration of Susan L. Caldwell.

<sup>12</sup> Exhibit T to the Declaration of Susan L. Caldwell.

1                   ii.     Ads in NSSF Periodicals

2             SAAMI advertisements in National Shooting Sports Foundation, Inc. (NSSF) publications were  
3 never referenced in plaintiffs' meet and confer letters. Once again, this issue is first raised in plaintiffs'  
4 motion to compel. However, Mr. Delfay testified that SAAMI never placed paid advertising in NSSF  
5 periodicals.<sup>13</sup> There is no documentation reflecting any SAAMI unpaid advertising in NSSF  
6 periodicals other than the periodicals themselves. NSSF produced all of its periodicals, over a  
7 significant period of time (Bates Nos. BN40-10,464, 6324-6599, 10330-10491). There is no basis for  
8 an argument that SAAMI's placement of public service ads in one or more of NSSF's national  
9 publications, even if it occurred, is relevant to personal jurisdiction. Boaz v. Boyle & Co. (1995) 40  
10 Cal.App.4th 700, 717, 46 Cal.Rptr2d 888, citing to Helicopteros Nacionales de Columbia, S.A. v. Hall  
11 (1984) 466 U.S.408, 416, Circus, Circus Hotels, Inc. v. Sup. Ct. (1981) 120 Cal.App.3d 546, 174  
12 Cal.Rptr. 885.

13                   iii.     Distribution of SAAMI Publications

14             Plaintiffs' concern that Mr. Delfay could not state whether specific SAAMI publications were  
15 sent to, and at the request of, California residents was cited in plaintiffs' meet and confer letters.  
16 However, plaintiffs' assumption that Mr. Delfay or any other staff member of SAAMI, even a  
17 mailroom clerk, would memorize specific shipments of nationally available publications and their  
18 California recipients, over a number of years, is inane.

19             SAAMI has produced all information necessary for plaintiffs to make this determination.  
20 Plaintiffs have the computer printout of mailroom records of shipments to California of SAAMI and  
21 NSSF literature from 1992 through October, 1999. (Bates Nos. N109-233.) Plaintiffs' counsel has  
22 been further provided with SAAMI and NSSF literature lists in this and other cases.<sup>14</sup> As explained in  
23 SAAMI's supplemental discovery responses of August 7, 2000, the lists produced by SAAMI, and the  
24 mailroom records, identify what SAAMI publications were sent to California residents.

25             Taking as an example the video "Sporting Ammunition and the Firefighter" (Item #250), cited

26  
27             <sup>13</sup> Q: Mr. Delfay, does SAAMI advertise in any NSSF publications?

A: If by advertising, you mean paid for the placement of advertising, no.

Delfay Depo. 146:11-14. Exhibit S to the Declaration of Susan L. Caldwell.

28             <sup>14</sup> Exhibit U to the Declaration of Susan L. Caldwell.

1 by plaintiffs in their motion (Pl. Separate Statement at 6-7), and the literature shipment records  
2 produced to plaintiffs for the period July, 1998 to December, 1998,<sup>15</sup> no California resident received  
3 that video. During that period, over 400 copies of the common sense booklet on firearms safety  
4 "Firearms Safety Depends Upon You" (Item #81), distributed by both SAAMI and NSSF, were  
5 ordered by and sent to California residents during the same period. Thus, SAAMI has already  
6 produced requested information which Mr. Delfay could not be expected to memorize.

7 **iv. SAAMI/ANSI Voluntary Standards**

8 SAAMI does not understand the basis for plaintiffs' complaint that Mr. Delfay "did not know  
9 the scope of the application of SAAMI's standards" or "whether or not such standards applied to  
10 California gun manufacturers." (Pl. Separate Statement at 8.) Plaintiffs have failed to identify what  
11 further information, if any, is sought.

12 As Mr. Delfay testified, and as the titles of the standards state,<sup>16</sup> American National Standards  
13 Institute (ANSI) standards are voluntary industry standards. Although Mr. Delfay used the words "I  
14 don't know", he fully answered the questions asked:

15 Q. Mr. Delfay, we were taking earlier about the SAAMI standards that are  
16 promulgated with ANSI. Is it SAAMI's intent that those standards apply  
just to its members as opposed to other entities or manufacturers that are  
nonmembers of SAAMI?

17 MR. KLIEVER: Objection as to form.

18 BY MR. SELBIN: (Resuming)

19 Q. Do you understand the question?

20 A. Yes, I understand the question. I don't know. SAAMI produces the  
21 standards in cooperation with the American National Standards Institute,  
22 and publishes them, makes them available to other manufacturers. And  
they can follow them if they wish.

23 Q. Does SAAMI, as part of its mission, intend or expect that non-member  
24 manufacturers will comply with those standards, understanding that  
they're voluntary standards?

25  
26 <sup>15</sup> Bates Nos. 122-28, Exhibit V to the Declaration of Susan L. Caldwell.

27 <sup>16</sup> E.g., ANSI/SAAMI Z299.5-1996: "American National Standard Voluntary Industry Performance  
28 Standards Criteria for Evaluation of New Firearms Designs Under Conditions of Abusive Mishandling for the  
Use of Commercial Manufacturers". Bates Nos. BS144-55 as Exhibit W to the Declaration of Susan L.  
Caldwell.

KOLETSKY, MANCINI, FELDMAN & MORROW  
Lawyers  
3460 Wilshire Blvd., Eighth Floor  
Los Angeles, CA 90010  
(213) 427-2350

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MR. KLIEVER: Objection as to form.

THE WITNESS: We don't have a statement of whether we expect or intend that non-members would adhere to the SAAMI standards or not. (Delfay Dep. 162:21-22, 163:1-18.)

It is clear from the testimony and documents produced that ANSI standards are voluntary, and may be used by any commercial manufacturer whether located in California or elsewhere. SAAMI has provided all information relating to ANSI and fails to understand what more plaintiffs want from a SAAMI witness.

**B. Further Production of Documents Relating to the Proposition  
65 Lawsuit Should Not Be Compelled**

Plaintiffs' Separate Statement in support of their motion to compel the production of documents cites numerous duplicative and overlapping requests for production of documents (as well as interrogatories). This discovery seeks documents relating to a suit brought against a number of firearms and ammunition manufacturers quite a few years ago, including some of SAAMI's members, by a private foundation (which the California Attorney General later joined) for alleged violation of Proposition 65 for failure to provide adequate warnings about lead exposure – Mateel Environmental Justice Foundation v. Accu-Tek. (Pl. Separate Statement at 9-14.)

SAAMI was not a party to this litigation. Despite this, SAAMI produced documents which fully describe SAAMI's role and actions in connection with the Consent Judgment entered in that case. As agent for the defendant manufacturers, SAAMI distributed to California firearms and ammunition retailers posters with warnings on exposure to lead approved by the Attorney General as complying with Proposition 65, placed public service ads and provided information to outdoor related publications on lead exposure, and prepared information on the subject for inclusion in the Attorney General's own firearms safety manual.<sup>17</sup>

Plaintiffs now want documents reflecting SAAMI's communications with the defendant manufacturers and the defendant manufacturers' litigation counsel, McKenna and Cuneo, during the negotiation and implementation of the Consent Judgment. Such former communications are irrelevant

<sup>17</sup> Bates Nos. S78-87 as Exhibit X to the Declaration of Susan L. Caldwell.



1 to jurisdiction and invade third party privacy rights. Roth v. Marguez (9<sup>th</sup> Cir. 1991) 942 F.2d 617,  
2 621, citing to FDIC v. British-American Ins. Co. (9<sup>th</sup> Cir. 1987) 828 F.2d 1439, 1441. SAAMI's  
3 documented role as a non-profit agent of the manufacturers in the litigation, following the direction  
4 of the Consent Judgment entered into and approved by the Attorney General, could not conceivably be  
5 the basis for general personal jurisdiction. As You Sow v. Crawford Laboratories (1996) 50  
6 Cal.App.4th 1859, 1867, 58 Cal.Rptr.2d 654. Activities in California related to Proposition 65 lead  
7 warnings are unrelated to plaintiffs' cause of action and, hence, could not be the basis for specific  
8 jurisdiction. Sonora Diamond Corp. v. Sup. Ct. (2000) 2000 Cal.App. LEXIS 695, 99 Cal.Rptr.2d 894,  
9 citing to AT&T Co. v. Compagnie Bruxelles Lambert (9<sup>th</sup> Cir. 1996) 94 F.3d 586, 588. Further,  
10 production of documents related to such communications do not bear on any other SAAMI activity in  
11 California as it relates to personal jurisdiction and would raise significant issues of privilege.

12 In light of the enormity of jurisdictional discovery propounded by plaintiffs on SAAMI, with  
13 good faith compliance by SAAMI, requests for further documentation *unrelated to personal*  
14 *jurisdiction* are oppressive, overly burdensome, and outside the scope of permissible discovery.  
15 Plaintiffs have entirely failed to establish good cause for production of documents unrelated to personal  
16 jurisdiction. California Code of Civil Procedure §2031.

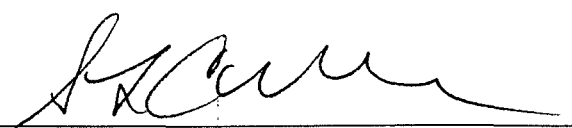
17 **III. CONCLUSION**

18 Defendant Sporting Arms and Ammunition Manufacturers' Institute, Inc. respectfully asserts  
19 that plaintiffs' motion is unfounded and fails to establish good cause. For the foregoing reasons,  
20 Sporting Arms and Ammunition Manufacturers' Institute, Inc. respectfully requests plaintiffs' motion  
21 to compel be denied.

22 Dated: October 2, 2000

Respectfully submitted,

KOLETSKY, MANCINI, FELDMAN & MORROW

24  
25 DOUGLAS E. KLIEVER, ESQ. By:   
26 Cleary, Gottlieb, Steen &  
Hamilton  
2000 Pennsylvania Ave., NW  
27 Suite 9000  
Washington, D.C. 20006

ROY A. KOLETSKY  
SUSAN L. CALDWELL  
Attorneys for Defendants SPORTING ARMS AND  
AMMUNITION MANUFACTURERS' INSTITUTE, INC.,  
NATIONAL SHOOTING SPORTS FOUNDATION, INC. and  
AMERICAN SHOOTING SPORTS COUNCIL, INC.