

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
WILLIAM S. LERACH (68581)
FRANK J. JANECEK, JR. (156306)
MICHAEL J. DOWD (135628)
STEPHEN P. POLAPINK (177489)
JONAH H. GOLDSTEIN (193777)
600 West Broadway, Suite 1800
San Diego, CA 92101
Telephone: 619/231-1058

- and -

PATRICK J. COUGHLIN (111070)
EX KANO S. SAMS II (192936)
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545

Attorneys for The People of the State of California, et al.

[Additional counsel appear on signature page.]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule
1550(b))

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO. 4095

FIREARM CASE

Including actions:

*People, et al. v. Arcadia Machine & Tool, Inc.,
et al.*

) San Francisco Superior Court No. 303753

*People, et al. v. Arcadia Machine & Tool, Inc.,
et al.*

) Los Angeles Superior Court No. BC210894

*People, et al. v. Arcadia Machine & Tool, Inc.,
et al.*

) Los Angeles Superior Court No. BC214794

) DATE: November 21, 2000

TIME: 8:30 a.m.

DEPT: 65

PLAINTIFFS' RESPONSE AND OPPOSITION TO DEFENDANT
MANUFACTURERS' EX PARTE MOTION TO ADOPT PROTECTIVE ORDER

1 **I. INTRODUCTION**

2 Despite the fact that at the October 13, 2000 hearing, the Court considered and rejected the
3 provision in defendants' proposed protective order prohibiting disclosure of highly confidential
4 information to expert witnesses who are presently affiliated with a competitor of the producing party,
5 defendants now propose a new limitation on plaintiffs' right to develop expert testimony.
6 Defendants' latest proposal requiring plaintiffs to provide 10 days notice of their intent to divulge
7 such information to these experts and to provide defendants with a description of the documents to
8 be provided should be rejected.

9 First, this Court should not even consider defendants' latest proposal because no new facts
10 or changed circumstances exist. In addition, defendants are afforded more than sufficient protection
11 under the Court's ruling at the October 13, 2000 hearing. Plaintiffs are obligated to use reasonable
12 efforts to find experts who are not affiliated with a competitor and both plaintiffs and their experts
13 are required to sign an acknowledgment subjecting themselves to punishment by the Court should
14 they fail to abide by the terms of the protective order. Finally, defendants' latest attempt to suppress
15 the access of plaintiffs' experts to information critical to the prosecution of this case will result in
16 undue delay and infringe upon plaintiffs' work product by allowing defendants to monitor the
17 information which plaintiffs provide to their experts. This Court should adopt the protective order
18 attached hereto which accurately reflects the Court's ruling at the October 13, 2000 hearing.

19 **II. ARGUMENT**

20 **A. This Court Should Refuse to Consider Defendants' Proposal**

21 At the October 13, 2000 status hearing, defendants urged the Court to adopt the provision
22 in their proposed protective order which prohibited plaintiffs from disclosing highly confidential
23 information to any expert who is presently affiliated with a competitor of the party producing the
24 information (hereafter "competitor-affiliated expert"). Hearing Transcript at p. 164-66 (Statement
25 of James B. Vogts, Esq.). The Court expressly rejected defendants' attempt to limit plaintiffs' ability
26 to develop expert testimony and adopted plaintiffs' proposal, which allows disclosure of highly
27 confidential information to a competitor-affiliated expert only to the extent reasonably necessary and
28 provided that plaintiffs' counsel will use reasonable efforts to find experts who are not competitors

1 of the producing party. *Id.* at 169. Despite the Court's clear and unequivocal ruling, defendants now
2 move to amend the protective order to include their newest and latest proposal which requires
3 plaintiffs to provide defendants 10 days written notice of plaintiffs' intent to provide highly
4 confidential information to a competitor-affiliated expert and provide defendants with the
5 information that plaintiffs intend to show the expert. Because defendants cannot cite to any new
6 facts or changed circumstances which warrant reconsideration, this Court should deny their request
7 to modify the protective order.

8 Prior to the Court's rejection of defendants' proposal at the October 13, 2000 hearing,
9 defendants, in negotiations between the parties, in their brief filed in support of the protective order,
10 and during their oral argument, maintained an absolute position against permitting plaintiffs to
11 disclose highly confidential information to a competitor-affiliated expert. Not once did defendants
12 propose any type of provision requiring plaintiffs to provide defendants notice of plaintiffs' intent
13 to disclose highly confidential information to such experts and identify the highly confidential
14 documents to be provided. Only after the Court rejected their proposal, did defendants formulate
15 a new proposition to again attempt to limit plaintiffs' ability to effectively develop expert testimony
16 and prosecute this case.¹ Having chosen to maintain a steadfast position against disclosure which
17 the Court expressly considered and rejected, defendants should not be permitted after the fact to
18 proffer a new provision which essentially nullifies the Court's ruling.

19 Defendants cannot cite to any new facts or circumstances which even warrant consideration
20 of their latest proposal. The arguments asserted in Defendant Manufacturers' Ex Parte Motion to
21 Adopt Protective Order ("Defendants' Motion") are identical to those which the Court already
22 expressly considered and rejected. Furthermore, defendants have not, and cannot, point the Court
23 to any occasion where plaintiffs or their experts have failed to honor their obligations such that the
24

25
26 ¹ At the October 13, 2000 hearing, the parties agreed to collectively draft the protective order
27 to *accurately* reflect the Court's rulings. Defendants, however, refused to draft the protective order
28 to include the Court's rejection of defendants' proposal regarding disclosure to competitor-affiliated
experts. Instead, defendants drafted the order to include their new proposal, which was neither
discussed nor ruled upon by the Court, and now improperly utilize the ex parte process to revisit an
issue on which the Court has already affirmatively ruled.

1 Court should modify the protective order. Defendants should not be allowed a second bite at the
2 apple merely because their first attempt failed.

3 **B. Defendants' New Proposal Is Unnecessary Because Sufficient**
4 **Safeguards Already Exist to Prevent Disclosure of Highly**
5 **Confidential Information**

6 Not only is defendants' latest proposal improperly raised, it is also unnecessary. Defendants
7 argue that the proposed notice provision should be adopted in order to limit the risk of injury
8 resulting from disclosure of highly confidential material. Defendants' claim lacks merit.

9 In adopting paragraphs 11(c), (d) and 12(c) of plaintiffs' proposed protective order, the Court
10 recognized that these provisions provide sufficient protection against the unauthorized disclosure
11 of highly confidential information. Hearing Transcript at p. 165. First, plaintiffs are obligated to
12 use reasonable efforts to find experts who are not competitor-affiliated experts, and may disclose
13 highly confidential information to competitor-affiliated experts only to the extent necessary to enable
14 such expert to assist in the preparation and/or trial of this case. *See* protective order, ¶¶11(c) and
15 12(c). Plaintiffs take these obligations seriously and intend to honor them in good faith. Second,
16 any expert utilized by plaintiffs would be bound by the protective order and be required to sign an
17 acknowledgment prohibiting disclosure of any information derived from access to confidential
18 material. *See* Exhibit A to protective order. If defendants contend that plaintiffs or their experts are
19 not fulfilling their obligations, defendants can move the Court for a modification of the protective
20 order. Protective order, ¶22. Because sufficient protections against the unauthorized disclosure of
21 information are already in place, defendants' latest proposal is unnecessary.

22 **C. Defendants' Proposal Is Designed to Perpetuate Delay and Obstruct**
23 **Plaintiffs' Prosecution of This Case**

24 Defendants claim that requiring plaintiffs to provide 10 days notice of their intent to disclose
25 highly confidential information and to provide a description of the highly confidential information
26 to be produced provides a "pragmatic and limited" solution to the alleged problem of unauthorized
27 disclosure. Defendants' Motion at 3. To the contrary, these provisions are designed to allow
28 defendants to delay and ultimately prevent plaintiffs' experts from gaining access to information
crucial to the prosecution of this case, and to allow defendants to infringe on plaintiffs' work product

1 by monitoring when, in what order, and how often plaintiffs provide highly confidential documents
2 to their experts.

3 First, defendants' proposal essentially requires that any time plaintiffs want to show a
4 competitor-affiliated expert highly confidential information, they must wait 10 days plus the time
5 it takes for the Court to rule on defendants' motion. Defendants are not required to produce all
6 highly confidential information at once and will likely produce such information throughout the
7 course of this case. Thus, any time plaintiffs wish to show an expert any additional highly
8 confidential document, plaintiffs must wait another 10 days. Because the notice provision would
9 subject plaintiffs to undue delay and hinder their ability to effectively develop expert testimony, it
10 should be rejected.

11 Second, requiring plaintiffs to specify the documents which they intend to provide the
12 competitor-affiliated expert blatantly infringes on plaintiffs' work product. This requirement allows
13 defendants to learn not only which documents plaintiffs are providing to their experts, but also
14 allows defendants to discover the order and frequency in which plaintiffs show their experts such
15 highly confidential information. While defendants assert that this requirement "serves the valuable
16 purposes of enabling the affected manufacturer and then the Court to evaluate the potential impact
17 of the proposed disclosure" (Defendant's Motion at 4 n.1), the true "valuable" purpose of the
18 requirement is obvious: to allow defendants to prevent plaintiffs' experts from accessing crucial
19 information, and also to gain insight into plaintiffs' case preparation and strategy.

20 Implicitly recognizing the impropriety of their latest proposal requiring plaintiff to identify
21 the documents they intend to present to a competitor-affiliated expert, defendants request, that "if
22 the Court believes that provision would require plaintiffs to reveal too much information ... the Court
23 [should] at least require plaintiffs to provide a general notice of intended disclosure." Defendants'
24 Motion at 4 n.1. At the same time, defendants claim that their proposal does not require plaintiffs
25 to identify the name of the competitor-affiliated expert to whom they seek disclosure. Because
26 defendants, under this alternative proposal, would have neither the expert's name nor the proposed
27 documents, it would effectively result in defendants automatically filing a motion to bar disclosure
28 each and every time plaintiffs want to show highly confidential information to such an expert.

1 Again, given the fact that highly confidential information will likely be produced throughout the
2 course of this litigation, this proposal would result in delay every time plaintiffs want to show their
3 experts such information. Because this alternative proposal serves no purpose other than to
4 perpetuate delay and prohibit plaintiffs' experts from accessing crucial information, it should be
5 denied.

6 **III. CONCLUSION**

7 Plaintiffs request that the Court adopt the protective order attached hereto which, unlike
8 defendants' proposed protective order, accurately reflects the rulings made by this Court at the
9 October 13, 2000 hearing. Defendant Manufacturers' Ex Parte Motion to Adopt Protective Order
10 should be denied.

11 DATED: November 17, 2000

LOUISE H. RENNE
San Francisco City Attorney
OWEN J. CLEMENTS
Chief of Special Litigation
D. CAMERON BAKER
INGRID M. EVANS
Deputy City Attorneys
1390 Market Street, 6th Floor
San Francisco, CA 94102-5408
Telephone: 415/554-3800

JAMES K. HAHN
City Attorney
CARMEL SELLA
Special Asst. City Attorney
DON KASS
Deputy City Attorney
MARK FRANCIS BURTON
Deputy City Attorney
200 N. Main Street
1600 City Hall East
Los Angeles, CA 90012
Telephone: 213/485-4515

LLOYD W. PELLMAN
Los Angeles County Counsel
LAWRENCE LEE HAFETZ
Senior Deputy County Counsel
500 West Temple Street, Suite 648
Los Angeles, CA 90012
Telephone: 213/974-1876

1 MILBERG WEISS BERSHAD
2 HYNES & LERACH LLP
3 WILLIAM S. LERACH
4 FRANK J. JANECEK, JR.
5 MICHAEL J. DOWD
6 STEPHEN P. POLAPINK
7 JONAH H. GOLDSTEIN

8 
9 JONAH H. GOLDSTEIN

10 600 West Broadway, Suite 1800
11 San Diego, CA 92101
12 Telephone: 619/231-1058

13 MILBERG WEISS BERSHAD
14 HYNES & LERACH LLP
15 PATRICK J. COUGHLIN
16 EX KANO S. SAMS II
17 100 Pine Street, Suite 2600
18 San Francisco, CA 94111
19 Telephone: 415/288-4545

20 LIEFF, CABRASER, HEIMANN
21 & BERNSTEIN, LLP
22 RICHARD M. HEIMANN
23 ROBERT J. NELSON
24 BARRY R. HIMMELSTEIN
25 PIERCE GORE
26 MICHAEL W. SOBOL
27 275 Battery Street, 30th Floor
28 San Francisco, CA 94111-9333
Telephone: 415/956-1000

SAMUEL L. JACKSON
Sacramento City Attorney
GLORIA ZARCO
Deputy City Attorney
980 9th Street, 10th Floor
Sacramento, CA 95814
Telephone: 916/264-5346

MANUEL ALBUQUERQUE
Berkeley City Attorney
MATTHEW J. OREBIC
Deputy City Attorney
1947 Center Street, 1st Floor
Berkeley, CA 94704

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THOMAS F. CASEY, III
San Mateo County Counsel
BRENDA B. CARLSON
Deputy County Counsel
Office of the County Counsel
400 County Center
Redwood City, CA 94063
Telephone: 650/363-4760

RICHARD E. WINNIE
Alameda County Counsel
KRISTEN J. THORSNESS
Deputy County Counsel
Office of Alameda County Counsel
1221 Oak Street, Room 463
Oakland, CA 94612-4296
Telephone: 510/272-6700

JAYNE W. WILLIAMS
Oakland City Attorney
RANDOLPH W. HALL
Assistant City Attorney
JOYCE M. HICKS
R. MANUEL FORTES
J. PATRICK TANG
Deputy City Attorneys
One Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
Telephone: 510/238-3601

THOMPSON, LAWSON LLP
MICHAEL S. LAWSON
East Palo Alto City Attorney
1600 Broadway, Suite 250
Oakland, CA 94612
Telephone: 510/835-1600

LEGRAND H. CLEGG II
Compton City Attorney
CELIA FRANCISCO
Deputy City Attorney
P.O. Box 5118
205 South Willowbrook Avenue
Compton, CA 90200
Telephone: 310/605-5582

CHARLES E. DICKERSON III
Inglewood City Attorney
One Manchester Blvd., Suite 860
Inglewood, CA 90301
Telephone: 310/412-5372

1 MICHAEL JENKINS, ESQ.
2 City Attorney
3 City of West Hollywood
4 333 South Hope Street, 38th Floor
5 Los Angeles, CA 90071
6 Telephone: 213/626-8484

7 RICHARDS, WATSON & GERSHON
8 SAYRE WEAVER
9 Deputy City Attorney
10 City of West Hollywood
11 P.O. Box 1059
12 Brea, CA 92822-0901
13 Telephone: 714/990-0901

14 CENTER TO PREVENT HANDGUN VIOLENCE
15 DENNIS A. HENIGAN
16 BRIAN J. SIEBEL
17 JONATHAN E. LOWY
18 Legal Action Project
19 1250 Eye Street, N.W., Suite 802
20 Washington, DC 20005
21 Telephone: 202/289-7319

22 BUSHNELL, CAPLAN & FIELDING, LLP
23 ALAN M. CAPLAN
24 PHILIP NEUMARK
25 PAUL R. HOEBER
26 221 Pine Street, Suite 600
27 San Francisco, CA 94104-2715
28 Telephone: 415/217-3800

McCUE & McCUE
JONATHAN D. McCUE
CHARLES T. McCUE
600 West Broadway, Suite 930
San Diego, CA 92101
Telephone: 619/338-8136

COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.
RICHARD S. LEWIS
JOSEPH M. SELLERS
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, DC 20005-3964
Telephone: 202/408-4600

DAVID KAIRYS, ESQ.
1719 North Broad Street
Philadelphia, PA 19122
Telephone: 215/204-8959

Attorneys for The People of the State of California,
et al.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule)	JUDICIAL COUNCIL COORDINATION
1550(b))	PROCEEDING NO. 4095
FIREARM CASE	
Including actions:	
<i>People, et al. v. Arcadia Machine & Tool, Inc., et al.</i>	San Francisco Superior Court No. 303753
<i>People, et al. v. Arcadia Machine & Tool, Inc., et al.</i>	Los Angeles Superior Court No. BC210894
<i>People, et al. v. Arcadia Machine & Tool, Inc., et al.</i>	Los Angeles Superior Court No. BC214794

PROTECTIVE ORDER

The following order ("Protective Order") is entered pursuant to Cal. Code Civ. Pro. §§2025(i), 2030(e), 2031(f) and 2033(e) and Civ. Code §3426.5 for the protection of trade secrets, confidential research, development and commercial information, and other information whose confidentiality is otherwise protectable under applicable law that may be produced or otherwise disclosed during the course of this action.

DEFINITIONS

1. The following definitions apply to this Order:

(a) The term "document" or "documents" shall include all writings discoverable under California Code of Civil Procedure §2031.

(b) "Confidential Information" refers to information, documents or other material that the designating party reasonably and in good faith believes constitutes or reflects (i) a Trade Secret or (ii) information whose confidentiality is otherwise protectable under applicable law.

(c) "Highly Confidential Information" refers to Confidential Information concerning the following: (a) development of products or technologies; (b) current or prospective marketing plans and methods; (c) current or prospective business planning and financial documents, but only when any of the above types of information are so competitively sensitive that their disclosure is highly likely to cause competitive injury to the Designating Party.

(d) The term "Trade Secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

PURPOSE

2. This Protective Order shall govern the use and dissemination of all information, documents or materials that are produced by the parties or other persons in the Action and designated as Confidential or Highly Confidential in accordance with the terms of this Protective Order. This Protective Order is not intended to address or govern claims of work product or privilege that may be asserted by any of the parties, except as otherwise provided in this Order.

DESIGNATION AND TREATMENT

3. Any party to this action or other person who produces or supplies information, documents or other materials in this action (hereinafter the "Designating Party") may designate as "Confidential Information" or "Highly Confidential Information" any information, document or material that meets the definitions in ¶1(b) or (c) of this Protective Order. The designations "Confidential Information" and "Highly Confidential Information" shall be made by affixing on the document or material containing such information, and upon each page so designated if practicable, words that in substance state, "**CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**" or "**HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**," respectively. Any material, document or information for which it is impracticable to affix such a legend may be designated by written notice to that effect with a reasonable description of the material in question.

4. At the option of the Designating Party, and to facilitate prompt discovery by allowing inspection or review before formal designation in the manner specified above, all information, material or documents produced in response to a subpoena or discovery request shall be treated as Confidential Information or Highly Confidential Information pending inspection and copying. Subject to ¶16 of this Order, copies of information, material, and documents selected for copying and reproduced for the inspecting party will lose their status as Confidential Information or Highly Confidential Information unless delivered with the necessary legend.

5. All persons having access to Confidential Information and Highly Confidential Information shall maintain it in a safe and secure manner to ensure compliance with this Order. Any summary, extract, paraphrase, quotation, restatement, compilation, notes or copy containing Confidential Information or Highly Confidential Information, or any electronic image or database containing Confidential Information or Highly Confidential Information, shall be subject to the terms of this Order to the same extent as the material or information from which such summary, extract, paraphrase, quotation, restatement, compilation, notes, copy, electronic image, database is derived.

6. A Designating Party may in good faith redact non-responsive and/or irrelevant Confidential Information or Highly Confidential Information from any document or material. However, unredacted copies of such documents shall be maintained by the Designating Party.

1 Designated attorneys for a Discovering Party and, if necessary, qualified Experts under ¶11(c)
2 retained by them, may have access to the unredacted versions of the documents at a place of the
3 Designating Party's choosing but only for the purpose of ascertaining the appropriateness of any
4 redactions.

5 7. This Protective Order shall not be construed to protect from production or to permit
6 the designation of any document that the party has not made reasonable efforts to keep confidential,
7 of any document that has been produced in any other action or proceeding without confidentiality
8 protection, except inadvertently produced documents, of any document that has been lawfully
9 obtained by and from another source, or of any document that has been denied confidential treatment
10 in any other action or proceeding by a final order as to which all appeals and other opportunities to
11 challenge have been exhausted or for which the time for appealing or otherwise challenging has
12 expired.

13 **LIMITATIONS ON USE**

14 8. Except to the extent expressly authorized by this Order, Confidential Information and
15 Highly Confidential Information shall not be used or disclosed for any purpose other than the
16 preparation and trial of this case and in any appeal taken from any judgment herein. Nothing
17 designated as Confidential Information or Highly Confidential Information shall be used for any
18 commercial, business, marketing, competitive, personal, or other purposes whatsoever.

19 **LIMITATIONS ON DISCLOSURE**

20 9. Except with the prior written consent of the Designating Party, or as expressly
21 authorized by this Order, no person receiving Confidential Information or Highly Confidential
22 Information may disclose it to any other person. Nothing in this Order, however, shall be deemed
23 to restrict in any manner the Designating Party's use of its own Confidential Information or Highly
24 Confidential Information. Each party may disclose its own Confidential Information or Highly
25 Confidential Information without regard to this Order, unless otherwise prohibited from doing so.

26 10. Any person to whom Confidential Information or Highly Confidential Information
27 may be disclosed pursuant to this Order, except this Court and its personnel, first shall have an
28 opportunity to read a copy of this Protective Order and shall agree in writing to the non-disclosure

1 terms of the Confidentiality Acknowledgment annexed hereto as Exhibit A ("Confidentiality
2 Acknowledgment A"). Counsel for the party obtaining a person's signature on the Confidentiality
3 Acknowledgment shall retain the original signed acknowledgment until such time as the identity of
4 the signatory is disclosed or until good cause for earlier disclosure of the acknowledgment is shown.

5 11. Access to Confidential Information shall be limited to:

6 (a) Counsel of record, including staff persons employed by such counsel;
7 (b) Representatives of each plaintiff provided, however, that representatives of
8 plaintiffs other than City and County Attorneys of record and their staffs shall not be permitted to
9 make or retain photocopies or summaries of Confidential or Highly Confidential documents or
10 information;

11 (c) Any consultant, investigator or expert (collectively, "Expert") who is assisting
12 in the preparation and/or trial of the Action, but only to the extent reasonably necessary to enable
13 such Expert to render such assistance and provided, however, that counsel for plaintiffs will use
14 reasonable efforts to find Experts who are not competitors of the Producing Party;

15 (d) Any deponent or witness who is reasonably believed to be or to have been
16 eligible to have access to Confidential Information by virtue of his or her employment or other
17 affiliation with the Designating Party;

18 (e) Court reporters and videographers involved in rendering professional services
19 in the action; and

20 (f) The Court and its personnel, subject to the provisions of ¶16 of this Order.

21 12. Access to Highly Confidential Information shall be limited to:

22 (a) Individual Attorneys of record who have filed notices of appearance and who
23 are representing plaintiffs and staff persons of such attorneys. Plaintiffs will in good faith endeavor
24 to keep to the minimum necessary to prosecute this action the number of attorneys of record and staff
25 persons to whom such information is disclosed.

26 (b) Three (3) attorneys and two (2) staff persons from each firm of record
27 representing each co-defendant, absent further order of the Court upon good cause shown and after
28

1 notice and opportunity for hearing, who shall be identified to the Designating Party before or
2 contemporaneously with disclosure;

3 (c) Any consultant, investigator or expert (collectively, "Expert") who is assisting
4 in the preparation and/or trial of the Action, but only to the extent reasonably necessary to enable
5 such Expert to render such assistance and provided, however, that counsel for plaintiffs will use
6 reasonable efforts to find Experts who are not competitors of the Producing Party;

7 (d) Any deponent or witness who is reasonably believed to be or to have been
8 eligible to have access to the Highly Confidential Information by virtue of his or her employment
9 or other affiliation with the Designating Party;

10 (e) Court reporters and videographers involved in rendering professional services
11 in the action; and

12 (f) The Court and its personnel, subject to the provisions of ¶16 of this Order.

13 13. If a party or other person receiving Confidential Information or Highly Confidential
14 Information pursuant to this Order thereafter receives a subpoena or order to produce such
15 information in any other action or proceeding before any other court or agency, such party or person
16 shall, if there are fewer than 10 days to comply, within 2 days, if possible, or immediately, if not,
17 or if there are more than 10 days, at least 7 court days prior to the due date of compliance, notify the
18 Designating Party of the pendency of the subpoena, public records request or order in writing. To
19 give the Designating Party an opportunity to obtain such relief, the party or person from whom the
20 information is sought shall not make the disclosure before the actual due date of compliance set forth
21 in the subpoena or order.

22 **DEPOSITIONS INVOLVING CONFIDENTIAL OR HIGHLY**
23 **CONFIDENTIAL INFORMATION**

24 14. Portions of a deposition or depositions in their entirety may be designated
25 Confidential Information or Highly Confidential Information by counsel for the deponent or the
26 Designating Party, with respect to documents or information that it has produced, by indicating that
27 fact on the record at the deposition or in writing no later than 10 days after the date of the deposition.
28 While it is not intended that this Order shall permit wholesale designation of deposition transcripts

1 as confidential, this Order shall permit temporary designation of an entire transcript as Confidential
2 Information or Highly Confidential Information where less than all of the testimony in that transcript
3 would fall into those categories, subject to the following procedure. The court reporter shall include
4 on the cover page a clear indication that the deposition has been so designated. Once designated,
5 any deposition transcript in which Confidential Information or Highly Confidential Information is
6 discussed, and any exhibits containing Confidential Information or Highly Confidential Information,
7 shall be treated as such. Within 10 court days of receipt of the final, unsigned deposition transcript
8 by counsel for the Designating Party, such counsel shall advise the court reporter of the pages, lines
9 and exhibits (if such exhibits are not otherwise so designated) in which Confidential Information or
10 Highly Confidential Information appears. The transcript shall be supplemented to indicate such
11 designation. Failure to particularize a designation in this manner after a temporary designation of
12 the deposition in its entirety shall result in the loss of any designation and shall entitle recipients of
13 the deposition to treat the transcript as non-confidential.

14 15. No one may attend, or review the transcripts of, the portions of any depositions at
15 which Confidential or Highly Confidential information is shown or discussed, other than persons
16 authorized to receive access to Confidential or Highly Confidential Information.

17 **FILING OR USE OF CONFIDENTIAL OR HIGHLY CONFIDENTIAL**
18 **INFORMATION AS EVIDENCE**

19 16. Where any Confidential Information or Highly Confidential Information or
20 information derived therefrom is included in any court filing, such filing shall be marked
21 "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" and shall be placed in a sealed
22 envelope marked with the caption of the case and held under seal, provided, however, that when any
23 such materials are filed with the Court in pretrial proceedings, counsel shall also file unsealed
24 redacted versions of any briefs, applications, or other filings that contain or set forth Confidential
25 Information or Highly Confidential Information. The redacted versions of any documents shall be
26 served on all counsel of record within 10 days after the date that the sealed documents are filed in
27 Court. The unsealed redacted documents shall not be filed with the Court until 15 calendar days
28 following the service on counsel of record.

OBJECTIONS TO DESIGNATIONS

17. Any party may, after production of material designated under this Protective Order, until 60 days prior to the Trial Readiness Conference, object to its designation by notifying the Designating Party in writing of that objection and specifying the designated material to which the objection is made. The parties shall confer within 15 days of service of any written objection. If the objection is not resolved, the Designating Party shall, within (15) days of the conference, file and serve a motion to resolve the dispute and shall bear the burden of proof on the issue. In doing so, the Designating Party shall follow the procedures of ¶16 of this Order, if applicable. If no such motion is filed within the stated time period, the material shall cease to be treated as confidential or highly confidential information. If a motion is filed, information subject to dispute shall be treated consistently with its designation until further order of the Court. With respect to any material which is redesignated or ceases to be subject to the protection of this Protective Order, the Designating Party shall, at its expense, provide to each party which so requests additional copies thereof from which all confidentiality legends affixed hereunder have been adjusted to reflect the redesignation or removed as appropriate.

INADVERTENT WAIVER

18. Inadvertent failure to designate any information pursuant to this Protective Order shall not constitute a waiver of any otherwise valid claim for protection, so long as such claim is asserted within 15 days of the discovery of the inadvertent failure. At such time, arrangements shall be made for the Designating Party to substitute properly labeled copies. However, until the receiving party is notified that the information is designated as Confidential Information or Highly Confidential Information, the receiving parties shall be entitled to treat the material as non-confidential.

19. In the interest of expediting discovery in these proceedings and avoiding unnecessary costs: (1) inadvertent disclosure in this litigation of privileged information and/or work product shall not constitute a waiver of any otherwise valid claim of privilege, immunity, or other protection; and (2) failure to assert a privilege and/or work product in this litigation as to one document or communication shall not be deemed to constitute a waiver of the privilege, immunity, or protection

1 as to any other document or communication allegedly so protected, even involving the same subject
2 matter. In the case of inadvertently produced privileged and/or work product documents, upon
3 request of the Producing Party, the documents together with all copies thereof and any notes made
4 therefrom shall be returned forthwith to the party claiming privilege and/or work product immunity.
5 Any party may, within 5 court days after notification of inadvertent disclosure under this Paragraph,
6 object to the claim of inadvertence by notifying the Designating/Producing Party in writing of that
7 objection and specifying the designated/produced material to which the objection is made. The
8 parties shall confer within 15 days of service of any written objection. If the objection is not
9 resolved, the Designating Party shall, within 15 days of the conference, file and serve a motion to
10 resolve the dispute and shall bear the burden of proof on the issue. If a motion is filed, information
11 subject to dispute shall be treated consistently with the Designating/Producing Party's most recent
12 designation until further order of the Court.

13 **NON-TERMINATION**

14 20. Any information or documents designated as Confidential Information or Highly
15 Confidential Information shall continue to be treated as such until such time as (a) the Designating
16 Party expressly agrees in writing that the information, documents, testimony or other materials in
17 question are no longer Confidential or Highly Confidential or (b) there is a finding by the Court that
18 the information or documents are not the proper subject of protection under this order. Issues
19 regarding the protection of Confidential and Highly Confidential Information during trial may be
20 presented to the Court as each party deems appropriate.

21 21. The obligations and protections imposed by this Order shall continue beyond the
22 conclusion of this action, including any appeals, or until the Court orders otherwise. Within 60 days
23 after receipt of a request from the Designating Party, made after this action has concluded and the
24 time for possible appeal has been resolved, Confidential Information or Highly Confidential
25 Information (other than exhibits at the official court of record) shall be returned to the appropriate
26 Designating Party or, at the sole option of the Designating Party, shall be destroyed. Counsel for
27 any party or third party receiving Confidential Information or Highly Confidential Information in
28

1 this action shall make written certification of compliance with this provision and shall deliver the
2 same to counsel for each Designating Party within 180 days after such request.

3 **CONTINUING JURISDICTION**

4 22. Any party may petition the Court for a modification of the terms of this Protective
5 Order for good cause shown, after notice and opportunity for a hearing. This Court shall have
6 continuing jurisdiction to modify, amend, enforce, interpret or rescind this Protective Order
7 notwithstanding the termination of this action.

8 * * *

9 **ORDER**

10 The foregoing is made the order of this Court.

11
12 DATED: _____

13 VINCENT P. DiFIGLIA
14 JUDGE OF THE SUPERIOR COURT
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A
TO PROTECTIVE ORDER
CONFIDENTIALITY AGREEMENT

The undersigned hereby acknowledges and agrees:

1. I am aware that a Protective Order (the "Order") has been entered in the above-captioned action. I have had the opportunity to read the Order and understand that my willful disclosure of Confidential or Highly Confidential Information may constitute contempt of court, and agree to submit to this Court's jurisdiction for purposes of enforcement of the Order.

2. I will not disclose or discuss any Confidential Information or Highly Confidential Information with any person except those persons specifically listed in the Order under the procedures therein specified.

Name: _____

Address: _____

Telephone No.: _____

Dated: _____

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 600 West Broadway, Suite 1800, San Diego, California 92101.

2. That on November 17, 2000, declarant served the **PLAINTIFFS' RESPONSE AND OPPOSITION TO DEFENDANT MANUFACTURERS' EX PARTE MOTION TO ADOPT PROTECTIVE ORDER** by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of November, 2000, at San Diego, California.


VERONICA RIVERA

COUNSEL FOR PLAINTIFF(S)

Alan M. Caplan
Philip Neumark
Paul R. Hoeber
BUSHNELL, CAPLAN & FIELDING,
LLP
221 Pine Street, Suite 600
San Francisco, CA 94104-2715
415/217-3800
415/217-3820 (fax)

Patrick J. Coughlin
Ex Kano S. Sams II
MILBERG WEISS BERSHAD HYNES &
LERACH LLP
100 Pine Street, Suite 2600
San Francisco, CA 94111
415/288-4545
415/288-4534 (fax)

Louise H. Renne
D. Cameron Baker
Owen J. Clements
CITY AND COUNTY OF SAN
FRANCISCO
Fox Plaza, 6th Floor
1390 Market Street
San Francisco, CA 94102-5408
415/554-3932
415/554-3837 (fax)

Dennis S. Henigan
Jonathan E. Lowy
Brian J. Siebel
CENTER TO PREVENT HANDGUN
VIOLENCE (LEGAL ACTION PROJECT)
1250 Eye St., N.W., Suite 802
Washington, DC 20005
202/289-7319
202/408-9748 (fax)

Charles E. Dickerson III
CITY ATTORNEYS OFFICE
One Manchester Blvd., Suite 860
Inglewood, CA 90301
310/412-5372
310/412-8865 (fax)

Jonathan D. McCue
Charles McCue
MCCUE & MCCUE
600 West Broadway, Suite 930
San Diego, CA 92101
619/338-8136
619/338-0322 (fax)

Jonathan Selbin
Paulina do Amaral
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
780 Third Avenue, 48th Floor
New York, NY 10017-2024
212/355-9500
212/355-9592 (fax)

James K. Hahn
Carmel Sella
Don Kass
CITY ATTORNEYS OFFICE
200 N. Main Street
1600 City Hall East
Los Angeles, CA 90012
213/485-4515
213/847-3014 (fax)

Legrand H. Clegg II
Celia Francisco
CITY ATTORNEYS OFFICE
205 South Willowbrook Avenue
Compton, CA 90220
310/605-5582
310/763-0895 (fax)

Michael Jenkins
CITY ATTORNEYS OFFICE (WEST
HOLLYWOOD)
333 South Hope Street
38th Floor
Los Angeles, CA 90071
213/626-8484
213/626-0078 (fax)

COUNSEL FOR PLAINTIFF(S)

Sayre Weaver
RICHARDS, WATSON & GERSHON
P.O. Box 1059
Brea, CA 92822-1059
714/990-0901
714/990-6230 (fax)

Samuel L. Jackson
Shana Faber
CITY ATTORNEYS OFFICE
980 9th Street, 10th Floor
Sacramento, CA 95814
916/264-5346
916/264-7455 (fax)

Thomas F. Casey III
Brenda B. Carlson
OFFICE OF THE COUNTY COUNSEL
400 County Center
Redwood City, CA 94063
650/363-4760
650/363-4034 (fax)

R. Manuel Fortes
DEPUTY CITY ATTORNEYS
One Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
510/238-3601
510/238-6500 (fax)

Lloyd W. Pellman
Lawrence Lee Hafetz
Judy Whitehurst
LOS ANGELES COUNTY COUNSEL
500 West Temple Street
Suite 648
Los Angeles, CA 90012
213/974-1876
213/626-2105 (fax)

Richard S. Lewis
Joseph M. Sellers
COHEN, MILSTEIN, HAUSFELD &
TOLL, P.L.L.C.
1100 New York Ave., N.W.
Suite 500
Washington, DC 20005-3964
202/408-4600
202/408-4699 (fax)

David Kairys
LAW OFFICE OF DAVID KAIRYS
1719 North Broad Street
Philadelphia, PA 19122
215/204-8959
215/248-6282 (fax)

Manuela Albuquerque
Matthew J. Orebic
CITY ATTORNEYS OFFICE
1947 Center Street, 1st Floor
Berkeley, CA 94704
510/644-6380
510/644-8641 (fax)

Richard E. Winnie
Kristen J. Thorsness
OFFICE OF ALAMEDA COUNTY
COUNSEL
1221 Oak Street, Room 463
Oakland, CA 94612-4296
510/272-6700
510/272-5020 (fax)

Michael S. Lawson
East Palo Alto City Attorney
THOMPSON, LAWSON LLP
1600 Broadway, Suite 250
Oakland, CA 94612
510/835-1600
510/835-2077 (fax)

Frank J. Janeczek, Jr.
Michael J. Dowd
Stephen P. Polapink
MILBERG WEISS BERSHAD HYNES &
LERACH LLP
600 West Broadway, Suite 1800
San Diego, CA 92101-5050
619/231-1058
619/231-7423 (fax)

Richard M. Heimann
Robert J. Nelson
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
415/956-1000
415/956-1008 (fax)

COUNSEL FOR DEFENDANTS

Jeff Nelson
SHOOK, HARDY & BACON, L.L.P.
1200 Main Street, 27th Floor
Kansas City, MO 64105-2118
816/474-6550
816/421-5547 (fax)

Douglas Kliever
CLEARY GOTTLIEB STEEN &
HAMILTON
2000 Pennsylvania Avenue, N.W.
9th Floor
Washington, DC 20036
202/974-1500
202/974-1999 (fax)

Michael John Bonesteel
Steven L. Hoch
Carolyn Trokey
HAIGHT BROWN & BONESTEEL LLP
1620 - 26th Street
Suite 4000 North
Santa Monica, CA 90404
310/449-6000
310/829-5117 (fax)

James P. Dorr
James B. Vogts
WILDMAN, HARROLD, ALLEN & DIXON
225 West Wacker Drive
Suite 3000
Chicago, IL 60606-1229
312/201-2000
312/201-2555 (fax)

Robert C. Gebhardt
Craig A. Livingston
SCHNADER, HARRISON, SEGAL &
LEWIS LLP
601 California St., Suite 1200
San Francisco, CA 94108
415/364-6700
415/364-6785 (fax)

*Diane T. Gorczyca
SEDGWICK, DETERT, MORAN &
ARNOLD
One Embarcadero Center
16th Floor
San Francisco, CA 94111-3765
415/781-7900
415/781-2635 (fax)

Edwin W. Green
Kimberly A. Donlon
ALLEN, MATKINS, LECK, GAMBLE &
MALLORY, LLP
515 South Figueroa Street
7th Floor
Los Angeles, CA 90071-3398
213/622-5555
213/620-8816 (fax)

William M. Griffin III
FRIDAY, ELDREDGE & CLARK
2000 First Commercial Bldg.
400 West Capitol
Little Rock, AR 72201
501/376-2011
501/376-2147 (fax)

R. Dewitt Kirwan
Robert N. Tafoya
AKIN, GUMP, STRAUSS, HAUER &
FELD, LLP
2029 Century Park East
Suite 2600
Los Angeles, CA 90067
310/229-1000
310/229-1001 (fax)

Steven A. Silver
LAW OFFICES OF STEVEN A. SILVER
1077 West Morton Avenue, Suite C
Porterville, CA 93257
559/782-1552
559/782-0364 (fax)

COUNSEL FOR DEFENDANTS

Timothy A. Bumann
BUDD LARNER GROSS ROSENBAUM
GREENBERG & SADE
127 Peachtree Street, N.E.
Suite 715
Atlanta, GA 30303
404/688-3000
404/688-0888 (fax)

John F. Renzulli
John J. McCarthy
RENZULLI & RUTHERFORD, LLP
300 East 42nd Street
New York, NY 10017
212/599-5533
212/599-5162 (fax)

E. Gordon Haesloop
BARTLETT MCDONOUGH BASTONE &
MONAGHAN
300 Old Country Road
Mineola, NY 11501
516/877-2900
516/877-0732 (fax)

David R. Gross
BUDD LARNER GROSS ROSENBAUM
GREENBERG & SADE, P.C.
150 JFK Parkway
Short Hills, NJ 07078
973/379-4800
973/379-7734 (fax)

Timothy G. Atwood
LAW OFFICE OF TIMOTHY ATWOOD
273 Canal Street
Shelton, CT 06484
203/924-4464
203/924-1359 (fax)

Charles L. Coleman
HOLLAND & KNIGHT LLP
44 Montgomery Street, Suite 4050
San Francisco, CA 94104-4801
415/743-6900
415/743-6910 (fax)

Robert M. Anderson
WILSON ELSEER MOSKOWITZ EDELMAN
& DICKER, LLP
1055 West 7th Street, Suite 2700
Los Angeles, CA 90017
213/624-3044
213/624-8060 (fax)

James R. Branit
BOLERO & CARTON, CHTD.
200 N. La Salle Street
Suite 2500
Chicago, IL 60601
312/831-1000
312/831-0647 (fax)

Scott L. Braum
Thomas P. Whelley, II
CHERNESKY, HEYMAN & KRESS,
P.L.L.
10 Courthouse Plaza S.W.
Suite 1100
Dayton, OH 45401-2849
937/449-2849
937/449-2836 (fax)

Burton C. Jacobson
LAW OFFICE OF BURTON C.
JACOBSON
424 South Beverly Drive
Beverly Hills, CA 90212-4414
310/553-8533
310/286-2819 (fax)

COUNSEL FOR DEFENDANTS

Wendy E. Schultz
Norman J. Watkins
LYNBERG & WATKINS, P.C.
888 S. Figueroa Street
16th Floor
Los Angeles, CA 90017
213/624-8700
213/892-2763 (fax)

Lawrence S. Greenwald
GORDON FEINBLATT ROTHMAN
HOFFBERGER & HOLLANDER, LLC
223 East Redwood Street
Baltimore, MD 21202
410/576-4000
410/576-4246 (fax)

Henry N. Jannol
LAW OFFICES OF HENRY N. JANNOL
1875 Century Park East
Suite 1400
Los Angeles, CA 90067
310/552-7500
310/552-7552 (fax)

Carmen Trutanich
Timothy Lignoul
TRUTANICH - MICHEL, LLP
Port of Los Angeles
407 N. Harbor Blvd.
San Pedro, CA 90731
310/548-3816
310/548-4813 (fax)

Robert L. Joyce
WILSON ELSER MOSKOWITZ EDELMAN
& DICKER, LLP
150 East 42nd Street
New York, NY 19917
212/490-3000
212/490-3038 (fax)

*Ray Koletsky
Susan L. Caldwell
KOLETSKY, MANCINI, FELDMAN &
MORROW
3460 Wilshire Blvd., 8th Floor
Los Angeles, CA 90010
213/427-2350
213/427-2366 (fax)

Bradley T. Beckman
BECKMAN & ASSOCIATES
1601 Market Street, Suite 2330
Philadelphia, PA 19103
215/569-3096
215/569-8769 (fax)

Timothy Gorry
Frank Sandelmann
GORRY & MEYER
2029 Century Park East
Suite 400
Los Angeles, CA 90067
310/277-5967
310/277-5968 (fax)

James Leonard Crew
Jack Leavitt
LAW OFFICES
18 Crow Canyon Court, Suite 380
San Ramon, CA 94583-1669
925/831-0834
925/831-8483 (fax)

Paul K. Schrieffer
Ian R. Feldman
SCHRIEFFER NAKASHIMA & DOWNEY,
LLP
100 N. Barranca Avenue
Suite 1100
West Covina, CA 91791
626/858-2444
626/974-8403 (fax)

COUNSEL FOR DEFENDANTS

Harold R. Mayberry, Jr.
The American Shooting Sports
Council
MAYBERRY LAW FIRM
2010 Corporate Ridge
Seventh Floor
McLean, VA 22102
703/714-1554
703/783-8532 (fax)

Jeff G. Harmeyer
MCATEE HARMEYER LLP
401 West "A" Street, Suite 1850
San Diego, CA 92101
619/231-9800
619/234-3800 (fax)

Phillip Hudson III
GUNSTER, YOAKLEY, VALDEZ-FAULI
& STEWART
One Biscayne Tower, Suite 3400
2 South Biscayne Blvd.
Miami, FL 33131
305/376-6000
305/376-6010 (fax)

David A. Robinson
Raymond L. Liddy
ENTERPRISE COUNSEL GROUP
Five Park Plaza, Suite 450
Irvine, CA 92614
949/833-8550
949/833-8540 (fax)

Lawrence J. Kouns
Christopher J. Healey
LUCE, FORWARD, HAMILTON &
SCRIPPS
600 West Broadway, Suite 2600
San Diego, CA 92101-3391
619/236-1414
619/645-5359 (fax)

Robert C. Tarics
Michael Branisa
Michael J. Zomcik
TARICS & CARRINGTON, P.C.
5005 Riverway Drive, Suite 500
Houston, TX 77056
713/629-4777
713/227-0701 (fax)

Michael C. Hewitt
BRUINSMA & HEWITT
380 Clinton Avenue, Unit C
Costa Mesa, CA 92626
714/755-0194
714/755-0195 (fax)

Terry F. Moritz
Roger Lewis
GOLDBERG, KOHN, BELL, BLACK,
ROSENBLOOM & MORITZ, LTD.
55 East Monroe Street
Suite 3700
Chicago, IL 60603-5802
312/201-4000
312/332-2196 (fax)

Michael P. Verna
Mary P. Sullivan
BOWLES & VERNA
2121 N. California Blvd.
Suite 875
Walnut Creek, CA 94596
925/935-3300
925/935-0371 (fax)

Robert Wright
WRIGHT & L'ESTRANGE
701 B Street, Suite 1550
San Diego, CA 92101-8103
619/231-4844
619/231-6710 (fax)

COUNSEL FOR DEFENDANTS

Vernon I. Zvoleff
Alan J. Lazarus
Christopher L. Lebsock
PREUSS, WALKER & SHANAGHER, LLP
225 Bush Street, 15th Floor
San Francisco, CA 94104
415/397-1730
415/397-1735 (fax)

* Indicates service via facsimile.