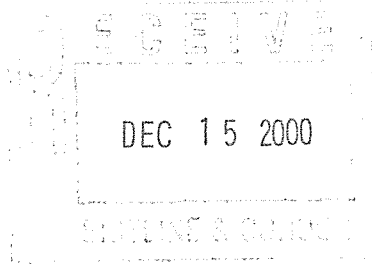


1 Lawrence J. Kouns, State Bar No. 095417  
Christopher J. Healey, State Bar No. 105798  
2 LUCE, FORWARD, HAMILTON & SCRIPPS LLP  
600 West Broadway, Suite 2600  
3 San Diego, California 92101-3391  
Telephone No.: (619) 236-1414  
4 Fax No.: (619) 232-8311



5 James P. Dorr  
James B. Vogts  
6 WILDMAN, HARROLD, ALLEN & DIXON  
225 West Wicker Drive  
7 Chicago, Illinois 60606  
Telephone No.: (312) 201-2000  
8 Fax No.: (312) 201-2555

9 Co-Liaison Counsel for Defendant Manufacturers

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SAN DIEGO  
13

14 Coordination Proceeding  
Special Title (Rule 1550 (b))

) JUDICIAL COUNCIL COORDINATION  
) PROCEEDING NO. 4095

15  
16 FIREARMS CASE

) MEMORANDUM OF POINTS AND  
) AUTHORITIES IN SUPPORT OF *EX*  
) *PARTE* MOTION FOR ORDER  
) COMPELLING PLAINTIFFS TO  
) DISCLOSE (1) ACCIDENTAL  
) DISCHARGE AND SUICIDE INCIDENTS  
) AND (2) PLAINTIFFS' APPROVAL AND  
) USE OF SPECIFIC FIREARMS

17  
18  
19 Including actions:

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

) San Francisco Superior Court No. 303753  
) Los Angeles Superior Court No. BC210894  
) Los Angeles Superior Court No. BC214794

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

) Date: December 19, 2000  
) Time: 8:30 a.m.  
) Dept.: 65

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

) Hon. Vincent P. DiFiglia

26  
27 Defendant Manufacturers (defendants) submit the following Memorandum of Points and  
28 Authorities in Support of their *Ex Parte* Motion for an Order Compelling Plaintiffs to Disclose (1)

1 the incidents of accidental discharge and suicide involving defendants' firearms which plaintiffs  
2 contend were the result of defendants' unfair, unlawful and fraudulent business practices under  
3 California Business and Professions Code § 17200 and (2) the specific firearms which plaintiffs  
4 have authorized and their law enforcement agencies have purchased for use in their communities.  
5 Defendants request that at the *ex parte* hearing the Court either order plaintiffs to provide the  
6 requested discovery by a date certain, or schedule a hearing on the motion for the earliest date  
7 available.

8 I.

9 ACCIDENTAL DISCHARGE AND SUICIDE INCIDENTS.

10 In their complaints, plaintiffs have alleged that:

11 1. "California residents have been and will continue to be killed or seriously injured"  
12 because "[d]efendants . . . have designed, manufactured, made or sold firearms that are defective  
13 because [they] lack basic safety features and contain inadequate warnings that result in

14 unintentional shootings." First Amended Complaint (Case No. 303753) ¶¶ 54 and 58; see also  
15 Complaint (Case No. BC214794) ¶ 111; First Amended Complaint (Case No. BC210894) ¶ 119;

16 2. "Many teen suicides and shootings by minors and other unauthorized users could be  
17 prevented had defendants implemented safer gun designs, including personalized handgun  
18 technology that would prevent an unauthorized user from being able to fire the handgun." First  
19 Amended Complaint (Case No. BC210894) ¶ 129; Complaint (Case No. BC214794) ¶ 120; see  
20 also First Amended Complaint (Case No. 303753) ¶ 62; and

21 3. Defendants' conduct is unfair, unlawful and fraudulent under § 17200 of the  
22 California Business and Professions Code. First Amended Complaint (Case No. 303753) ¶ 87;  
23 Complaint (Case No. BC214794) ¶ 143; First Amended Complaint (Case No. BC210894) ¶ 152.

24 Because of these allegations, defendants served discovery on plaintiffs seeking information  
25 on specific incidents<sup>1/</sup> of accidental discharge and suicide involving defendants' firearms in  
26 \_\_\_\_\_

27 <sup>1/</sup> The discovery requests defined "incident" as each occurrence or episode in which a firearm  
28 allegedly was used and/or was discharged intentionally or accidentally and which the plaintiffs  
claim entitle them to the relief requested in their complaints

1 plaintiffs' communities to which plaintiffs' allegations vaguely allude. Among the specific  
2 information sought by defendants is the date and location of each accidental discharge and suicide  
3 incident; an identification of the person injured; an identification by manufacturer, model and  
4 serial number of the firearm involved; an identification of the owner of the firearm; and specific  
5 information relevant to the allegations of product design defect and inadequate warnings. Sturm,  
6 Ruger Requests for Production Nos. 1, 2, 3 and 12; Sturm, Ruger Special Interrogatories Nos. 1,  
7 2, 4, 5, 6, 12 and 16-26.<sup>2/</sup> (These discovery requests are included in the plaintiffs' responses, copies  
8 of which are attached to the Defendants' Notice of Lodgment as Exhibits 8 and 9.)<sup>3/</sup>

9 Plaintiffs have objected to disclosure and production of any information reflecting the  
10 actual occurrence of any accidental discharge or suicide involving a defendant's firearm in their  
11 communities. Plaintiffs have principally objected on the bases that their claims for relief are not  
12 premised on specific occurrences involving the discharge of a firearm and that production of  
13 factual information substantiating their claims is unduly burdensome.<sup>4/</sup>

14 Plaintiffs cannot merely trumpet anonymous statistics and carefully selected anecdotes of  
15 accidental and suicidal shootings to substantiate their claims that defendants' firearms are defective  
16 and have caused injury to California residents. Questions of product defect and adequacy of  
17 warnings can only be presented and defended in the context of discrete factual events. Statistical  
18

---

19 <sup>2/</sup> Many of these discovery requests also seek to elicit information on the specific incidents of  
20 criminal acquisition, possession, sale and use in plaintiffs' communities which plaintiffs claim are  
21 the result of defendants' distribution, marketing, advertising and design practices. Plaintiffs have  
22 agreed to produce some information in their possession reflecting specific incidents of firearms  
23 crime in their communities by December 11, 2000. (Exhibit 3 to Notice of Lodgment.)

22 <sup>3/</sup> To minimize the amount of paper filed with the Court, defendants are lodging only the  
23 responses of the City and County of San Francisco to certain discovery. The responses of the  
24 other municipalities were identical.

24 <sup>4/</sup> Plaintiffs have also objected on the alleged basis that the information requested is  
25 privileged under Section 827 of the Welfare and Institutions Code. Section 827 addresses the  
26 confidentiality of juvenile records only. To the extent that accidental shootings and suicides do  
27 not involve juveniles, Section 827 does not apply. Moreover, the Section 827 prohibition against  
28 disclosure is not absolute. Relevant juvenile records can be obtained through civil discovery by  
court order and under the terms of a confidentiality order. If plaintiffs insist on keeping  
substantive and relevant factual information from defendants which may exonerate defendants  
from liability on specific claims or help establish defenses, plaintiffs should not be permitted to  
proceed with those claims.

1 summaries of accidental shootings and suicide cannot speak to any of the issues material to an  
2 analysis of a product, its characteristics and uses. Nor can those statistical summaries or anecdotes  
3 be cross-examined by defendants. The mere fact that a firearm has been accidentally fired does not  
4 in and of itself support a contention that the firearm was defectively designed or that its warnings  
5 were inadequate. An accidental discharge can be the result of the product's intended function,  
6 unreasonable product use, product alteration or comparative fault. Similarly, the simple fact that  
7 firearms are involved in suicides does not support plaintiffs' theories that defendants' firearms are  
8 defective. Under plaintiffs' own theory of liability, each suicide incident must be examined to  
9 determine whether the victim was the owner of the firearm or would have had authorized access to  
10 the firearm.

11 Defendants are also entitled to a specific description of the precise design defect allegedly  
12 responsible for each accidental discharge incident along with plaintiffs' contention as to what  
13 alternative design feature would have prevented the occurrence. Disclosure of this information  
14 will permit the parties to focus discovery on areas of actual dispute. Unfocused discovery in the  
15 area of product design which has no connection to any real incident is a waste of time and  
16 resources. For example, discovery by plaintiffs into whether the design of a defendant's firearm  
17 will preclude discharge when the firearm is dropped, is unnecessary if plaintiffs do not have  
18 evidence that a firearm manufactured by the defendant was dropped and discharged in their  
19 communities. Plaintiffs' objections to identifying the playing field on which their design and  
20 warning claims should be discovered are without merit.

21 Plaintiffs have alleged that "behind each statistic lies a personal tragedy." A set of facts  
22 also lies behind each statistic which either supports plaintiffs' claims or exonerates defendants.  
23 Plaintiffs should be compelled to come forward with complete evidence on the specific incidents  
24 of which they are aware.<sup>5/</sup> If plaintiffs are not aware of such incidents, they should disclose that

---

25  
26 <sup>5/</sup> Plaintiffs are made aware of accidental shootings and suicides involving firearms in their  
27 communities. California Penal Code § 11160 requires healthcare practitioners to report all injuries  
28 inflicted by firearms to a local law enforcement agency. One plaintiff – the City of Berkeley – has  
produced records revealing some but not all requested information regarding the occurrence of  
specific accidental discharge and suicide incidents. Notably, the law enforcement records

1 fact as well. Without the full disclosure of the specific incidents of accidental discharge and  
2 suicide which have occurred in plaintiffs' communities, defendants will be compelled to defend the  
3 design of their firearms and the adequacy of their warnings against anonymous and potentially  
4 misleading statistics and hypothetical attacks arising from imagined circumstances. Plaintiffs  
5 should be ordered to respond to all discovery addressing accidental shootings and firearm suicides  
6 without further delay.

## 7 II.

### 8 SPECIFIC FIREARMS AUTHORIZED AND USED BY PLAINTIFFS 9 AND THEIR LAW ENFORCEMENT AGENCIES

10 Plaintiffs have alleged that defendants' products are defectively designed and that  
11 defendants' warnings and instructions are inadequate. Specific allegations of alleged design defect  
12 include the alleged failure to incorporate "an effective 'loaded chamber indicator' that would warn a  
13 user when a bullet was in the firing chamber" and "a 'magazine-disconnect safety' that would  
14 prevent the gun from firing with the magazine removed." First Amended Complaint (Case No.  
15 303753) ¶ 55.

16 Each plaintiff in this case, through their law enforcement agencies, is a purchaser of  
17 firearms. Defendants believe that plaintiffs employ persons with sophisticated knowledge of  
18 firearms and available safety features and make informed decisions on the features desired on the  
19 firearms they purchase and use. These employees of plaintiffs most likely communicated with the  
20 manufacturers of the firearms purchased and used on a variety of topics germane to those firearms.  
21 Many of those firearms share the same features which plaintiffs contend in this case render the  
22 defendants' firearms defective.

23 Defendants served discovery seeking to learn the manufacturer, model and caliber of each  
24 firearm that has been approved, authorized and used by plaintiffs and their law enforcement

25  
26 produced by the City of Berkeley reveal the occurrence of only one accidental discharge incident  
27 in Berkeley from 1996-1999 and that incident reportedly involved a firearm manufactured by a  
28 non-defendant in these cases. Six of the eight suicide incidents in Berkeley involving a  
defendants' gun during the same time period involved victims who used their own lawfully  
registered guns to take their lives and were thus not "unauthorized users" as alleged by plaintiffs.  
(Exhibit 6 to the Notice of Lodgment.)

1 agencies. Smith & Wesson Special Interrogatory No. 1; Smith & Wesson Request for Production  
2 No. 1. (Exhibits 7 and 10 to Notice of Lodgment.) Defendants also seek to learn whether  
3 plaintiffs have ever communicated any complaints or criticisms of those firearms to their  
4 manufacturers regarding a lack of safety features or inadequate warnings. Smith & Wesson  
5 Special Interrogatories Nos. 2 and 3; Smith & Wesson Request for Production No. 2. (Exhibits 7  
6 and 10 to Notice of Lodgment.)

7 Plaintiffs have primarily objected to disclosure and production of this requested  
8 information because they claim it is irrelevant and not reasonably calculated to lead to the  
9 discovery of admissible evidence and that the information is already in defendants' control.

10 Plaintiffs' relevancy objection should be rejected. Plaintiffs' specification and purchase of  
11 firearms they claim to be defective sheds telling light on the credibility of their defective design  
12 claims. Likewise, plaintiffs' failure to offer any complaints or criticisms of those firearms and their  
13 warnings tends to show that the actual purchasers and the law enforcement users of those firearms  
14 in plaintiffs' communities do not find them defective or inadequate.

15 Plaintiffs' objection that some of the requested information may be within defendants'  
16 possession is equally groundless. A primary purpose of discovery is to simplify and narrow issues.  
17 Greyhound Corp. v. Superior Court, 56 Cal. 2d 355, 376 (1961). Plaintiffs' forthright responses to  
18 this discovery will constitute admissible evidence at trial which may preclude any further proof on  
19 these relevant subjects. Plaintiffs' failure to respond will necessitate defendants' identification of  
20 multiple witnesses on issues which may not even be in dispute. Moreover, all of the requested  
21 information may not be in defendants' possession. Specifications and criticisms by plaintiffs may  
22 not have been shared with the firearms' manufacturers. Plaintiffs' objections should be overruled.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

III.

CONCLUSION

Defendants request that plaintiffs' objections to defendants' discovery, outlined above, directed to accidental and suicide incidents, and to firearms purchased and used by plaintiffs, be overruled and that plaintiffs be ordered to respond in full to the discovery by a date certain.

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By:

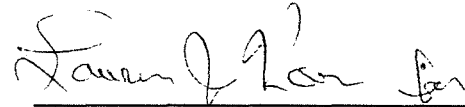


Lawrence J. Kouns

Co-Liaison Counsel for Defendant Manufacturers

WILDMAN, HARROLD, ALLEN & DIXON

By:



James B. Vogts

Co-Liaison Counsel for Defendant Manufacturers