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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule 1550(b))) JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4095
FIREARM CASE) PLAINTIFFS' OBJECTION AND OPPOSITION TO DEFENDANTS' EX PARTE MOTION FOR ORDER COMPELLING PLAINTIFFS TO DISCLOSE (1) ACCIDENTAL DISCHARGE AND SUICIDE INCIDENTS AND (2) PLAINTIFFS' APPROVAL AND USE OF SPECIFIC FIREARMS
Including actions:)
<i>People, et al. v. Arcadia Machine & Tool, Inc., et al.</i>) San Francisco Superior Court No. 303753) Los Angeles Superior Court No. BC210894) Los Angeles Superior Court No. BC214794
<i>People, et al. v. Arcadia Machine & Tool, Inc., et al.</i>) DATE: December 19, 2000) TIME: 8:30 a.m.) DEPT: 65
<i>People, et al. v. Arcadia Machine & Tool, Inc., et al.</i>)
) Hon. Vincent P. DiFiglia

1 **I. INTRODUCTION**

2 Plaintiffs object to the filing of defendants' *Ex Parte* Motion for Order Compelling Plaintiffs
3 to Disclose (1) Accidental Discharge and Suicide Incidents and (2) Plaintiffs' Approval and Use of
4 Specific Firearms ("motion" or "application"). As explained in more detail below, defendants' "*ex*
5 *parte*" motion is actually a substantive motion to compel and, therefore, improperly filed. Under this
6 Court's rules, defendants must move *ex parte* to seek leave to file a motion to compel – they need
7 to justify to the Court the need for such a motion. Defendants circumvented this procedure and
8 simply filed a motion to compel, on shortened time and without obtaining leave or an order
9 shortening time. This left plaintiffs *three days* to respond to a motion to compel; this is hardly fair
10 – and plaintiffs actually received less than the proper time because defendants filed and served their
11 *ex parte* application late.

12 Further, plaintiffs have already provided certain responsive data – much of which defendants
13 had not reviewed before filing this motion. To the extent plaintiffs have not produced discovery, it
14 is either irrelevant, protected or material which is too burdensome to retrieve. Indeed, if plaintiffs
15 were given the proper amount of time to file an opposition to defendants' motion to compel, the
16 recent deposition testimony regarding some of these burdens would likely be available. Plaintiffs
17 will address these issues in detail in an opposition to a motion to compel, if this Court grants
18 defendants leave to file such a motion. Plaintiffs simply request that a reasonable briefing schedule
19 be established.

20 **A. Defendants' "Ex Parte" Motion Is Actually a Motion to Compel and,**
21 **Therefore, Improperly Before This Court Which Requires that a**
22 **Party Seeks Leave to File Such a Motion**

23 This Court has a specific rule regarding discovery motions: "Prior to the filing of ANY
24 discovery motion, the moving party is required to appear *ex parte* in this Department to seek leave
25 to file such motion." (Dept. 65 Policies and Procedures, Ex. 1 to Declaration of Stephen P. Polapink
26 in Support of Plaintiffs' Objection and Opposition to Defendants' Ex Parte Motion for Order
27 Compelling Plaintiffs to Disclose (1) Accidental Discharge and Suicide Incidents and (2) Plaintiffs'
28 Approval and Use of Specific Firearms) ("Polapink Decl."). Defendants are aware of this – they said

1 so in their December 8, 2000 letter.¹ They just decided to skip this step and go directly to filing their
2 motion to compel. This is obviously improper and – leaving only three days to respond – highly
3 unfair since it does not afford plaintiffs adequate time to respond properly.

4 Further, defendants' attempt to characterize their substantive motion as an *ex parte*
5 application circumvents the normal notice requirements pursuant to the California Code of Civil
6 Procedure. Section 1005(b) provides that "[u]nless otherwise ordered or specifically provided by
7 law, all moving and supporting papers shall be served and filed at least 21 calendar days before the
8 hearing." As the California Supreme Court stated, "[t]he general rule is that notice of motion must
9 be given whenever the order sought may affect the rights of an adverse party." *McDonald v. Severy*,
10 6 Cal. 2d 629, 631 (1936).

11 Finally, plaintiffs have provided deposition witnesses who testified specifically about the
12 maintenance of records pertaining to firearm suicides and accidental discharges. Most of these
13 depositions took place during the last week of November, 2000. Thus, plaintiffs have not even
14 received the majority of the deposition transcripts (or had time to allow the witnesses to check the
15 transcripts for accuracy). The testimony from these depositions, when available, will demonstrate
16 the burden involved with producing certain responsive materials.² With such short notice, plaintiffs
17 should not be expected to respond to a *substantive motion* to compel. If defendants wish to file a
18 motion to compel, they must move *ex parte* and seek leave to file such a motion. Polapink Decl.,
19 Ex. 1. Then, this Court should approve a briefing schedule which allows plaintiffs adequate time
20 to properly respond to such a motion.

26 ¹ Defendants' December 8, 2000 letter acknowledges that "Judge DiFiglia's court rules require
27 an *ex parte* hearing before a discovery motion can be calendared." (Ex. 2).

28 ² Indeed, plaintiffs suspect that one of defendants' motivations for getting an expedited Court
order is to preclude this Court from reviewing this highly relevant testimony.

1 **B. Plaintiffs Have Already Produced Witnesses, Data and Other**
2 **Materials; Otherwise Plaintiffs Have Made Sound Objections that**
3 **Can Be Fully Briefed if This Court Finds that Is Necessary at This**
4 **Time**

5 To date, plaintiffs have provided ten deposition witnesses – some of whom have offered
6 relevant testimony regarding the burdens associated with producing the underlying incident reports
7 pertaining to firearm suicides and incidents of accidental discharge. Once available, this testimony
8 will be instructive. Indeed, if this Court allows defendants to proceed with a motion to compel,
9 plaintiffs, with the aid of this testimony, will demonstrate how the burden of producing this
10 discovery far outweighs any benefits that might be gained.

11 Plaintiffs have also provided defendants with specific firearm data regarding all the firearms
12 seized in plaintiffs' jurisdictions between 1996-1999. This, itself, was burdensome to compile; and
13 it does contain certain data pertaining to firearm suicides and accidental discharges. Oddly,
14 defendants had not even reviewed this material before filing their motion.³

15 Defendants are also seeking information regarding plaintiffs' use and approval of firearms.
16 Plaintiffs have objected to producing this material because it is confidential and sensitive. Certainly,

17 ³ In addition to the specific firearm data which plaintiffs have already provided, plaintiffs have
18 also provided substantial information regarding accidental shootings and suicides which have
19 occurred within California. For instance, in an abstract of a study produced entitled "*Unintentional*
20 *Firearm Deaths in California*," the authors studied 688 unintentional firearm deaths of California
21 residents occurring between 1977 and 1983 and concluded that "[a]t least 40% of child deaths in this
22 study appeared in part to be attributable to defects in firearm performance or current firearm design
23 practices, suggesting that improvements should be sought and mandated." PLTF 0006952.
24 Similarly, in another abstract of a study produced entitled "*When Children Shoot Children: 88*
25 *Unintended Deaths in California*," the authors concluded that "[e]asy accessibility to guns, the
26 resemblance of guns to toys, and gun malfunctions were all contributing factors" to the deaths of 88
27 California children 14-years-old and younger who were unintentionally shot and killed. PLTF
28 0006953. Additionally, in an abstract of a study produced entitled "*The Choice of Weapons in*
 Firearm Suicides," the authors reported that there were "firearms used in 235 suicides in Sacramento
 County, California, during 1983-85." PLTF 0006949. Plaintiffs also produced an article entitled
 "*Mortality Among Recent Purchasers of Handguns*," where the authors compared mortality among
 238,292 people who purchased a handgun in California in 1991 with that of the general adult
 population of the state and concluded that "[t]he purchase of a handgun is associated with a
 substantial increase in the risk of suicide by firearm and by any method." PLTF 0006950. Plaintiffs
 also produced abstracts of studies entitled "*Suicide in the Home in Relation to Gun Ownership*,"
 "*The Presence and Accessibility of Firearms in the Homes of Adolescent Suicides: A Case-Control*
 Study," "*Risk Factors For Adolescent Suicide: A Comparison of Adolescent Suicide Victims with*
 Suicidal Inpatients," "*The Association Between the Purchase of a Handgun and Homicide or*
 Suicide," and "*Gun Ownership as a Risk Factor for Homicide in the Home*." PLTF 0006941-6955.
 Again, defendants admitted that they never saw these documents before they decided to file their
 motion.

1 the interest of plaintiffs' law enforcement officers far outweighs defendants' unidentified need for
2 this information. Plaintiffs, on this topic, did produce the following abstract: "*Homicide, Handguns,*
3 *and the Crime Gun Hypothesis: Firearms Used in Fatal Shootings of Law Enforcement Officers,*
4 *1980 to 1989*" (PLTF 0006964), and, if required, will further brief this issue and demonstrate how
5 the public interest in protecting this information – in the interest of its law enforcement officers –
6 far outweighs defendants' interest in exposing it. *See, e.g.,* Cal. Evid. Code §1040(b) ("A public
7 entity has a privilege to refuse to disclose official information, and to prevent another from
8 disclosing official information, if the privilege is claimed by a person authorized by the public entity
9 to do so and: (2) Disclosure of the information is against the public interest because there is a
10 necessity for preserving the confidentiality of the information that outweighs the necessity for
11 disclosure in the interest of justice." *See also, e.g.,* *Shepherd v. Superior Court*, 17 Cal. 3d 107
12 (1976); *Rubin v. City of Los Angeles*, 190 Cal. App. 3d 560 (1987).

13 **C. Defendants Not Only Filed the Wrong Motion, They Also Missed the**
14 **Deadline for Filing an Ex Parte Application**

15 The August 30, 2000 Case Management Order No. 1 explains the deadline for filing an *ex*
16 *parte* application: "All supporting papers and proposed orders shall be served by facsimile or hand
17 delivery and filed by *noon* five (5) court days before any *ex parte* hearing." (emphasis added). On
18 the due date for defendants' motion, plaintiffs' counsel was served at 3:15 p.m. (and only after calling
19 to inquire about whether defendants had decided not to file). The noon deadline is not arbitrary, but
20 deliberately set forth because the time to respond is already so short.⁴

21 Thus, even if this Court were to accept defendants' motion to compel as a proper *ex parte*
22 motion, it was late – which is simply an additional reason for this Court to afford plaintiffs time to
23 file a proper response. Plaintiffs are willing to agree to a reasonable briefing schedule – but not less
24 than three days.

25
26
27 ⁴ Though defendants – admitting they were late – offered to give plaintiffs additional time to
28 respond, plaintiffs rejected this offer because this solution left little time for the Court to review
plaintiffs' response. Plaintiffs proposed that defendants, instead, move the hearing date to the next
appropriate date, January 2, 2001; defendants rejected this proposal.

For the foregoing reasons, plaintiffs request that this Court either deny defendants leave to file a motion to compel or, in the alternative, set an appropriate briefing schedule for such a motion.

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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 December 15, 2000, declarant served the **PLAINTIFFS' OBJECTION AND OPPOSITION TO DEFENDANTS' EX PARTE MOTION FOR ORDER COMPELLING PLAINTIFFS TO DISCLOSE (1) ACCIDENTAL DISCHARGE AND SUICIDE INCIDENTS AND (2) PLAINTIFFS' APPROVAL AND USE OF SPECIFIC FIREARMS** 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 15th day of December, 2000, at San Diego, California.


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