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4 Attorneys for Defendants
5 Andrews Sporting Goods, Inc.,
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7 and SG Distributing, Inc.

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10 Judicial Council Coordination Proceeding)
11 Special Title (Rule 1550(b)))

12 FIREARMS CASES)

13 Coordinated actions:)

14 THE PEOPLE OF THE STATE OF)
15 CALIFORNIA, by and through San)
Francisco City Attorney Louise H. Renne,)

16 v.)

17 ARCADIA MACHINE & TOOL, et al.,)

18 THE PEOPLE OF THE STATE OF)
19 CALIFORNIA, by and through JAMES K.)
20 HAHN, City Attorney of the City of Los)
Angeles, et al.,)

21 v.)

22 ARCADIA MACHINE & TOOL, et al.,)

23 THE PEOPLE OF THE STATE OF)
24 CALIFORNIA, ex rel. the County of Los)
25 Angeles, et al.,)

26 v.)

27 ARCADIA MACHINE & TOOL, et al.)
28

JUDICIAL COUNCIL COORDINATION
PROCEEDINGS NO. 4095

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

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

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

**REPLY BRIEF TO OPPOSITION TO
DEFENDANT ANDREWS SPORTING
GOODS' AND S.G. DISTRIBUTING'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Date: February 28, 2003

Time: 8:30 a.m.

Dept. 65

Hon. Vincent. P. DiFiglia

1 **INTRODUCTION**

2 Defendant Andrews Sporting Goods, Inc., dba Turners Outdoorsman and SG Distributing, Inc.
3 (collectively “Defendants”), hereby reply to Plaintiffs’ Memorandum of Points and Authorities in
4 Opposition to Andrews’ Motion for Judgment on the Pleadings (“Opposition”). Defendants are named in
5 two of the three coordinated Firearms Cases (the San Francisco First Amended Complaint (“FAC”) does
6 not name them). In the other cases, plaintiffs bring 26 claims: nine for public nuisance under Code of Civil
7 Procedure section 731 (“Section 731”); 12 for unfair business practices under Business and Professions
8 Code, section 17200 (“Section 17200”); and, five for false advertising under Business Practices under
9 Business and Professions Code, section 17500 (“Section 17500”). Of those 26 claims, Defendants
10 challenged 21, based on lack of standing. Plaintiffs, after informing this Court that “Andrews arguments
11 are without merit” (Opposition at p.1, line 12), have conceded, ignored, or backed away from 12 of those
12 claims. They are wrong on the rest.

13
14 **ARGUMENT**

15 **I. DEFENDANTS CONTEND, AND PLAINTIFFS CONCEDE, THAT DEFENDANTS ARE**
16 **NOT PARTIES TO THE SAN FRANCISCO COMPLAINT.**

17 Plaintiffs assert that Defendants “gloss over” the “fatal fact” that the San Francisco FAC does not
18 name them as defendants. (Opposition at p.2, lines 1-5) Defendants addressed that complaint by way of
19 footnotes, for the edification of this Court (which may consider the standing issues *sua sponte*) and other
20 defendants in this action who were improperly sued by some San Francisco plaintiffs who lack standing.
21 The fact that Defendants are not named in the San Francisco case is “fatal” to plaintiffs, not Defendants.

22
23 **II. PLAINTIFFS IN THE LOS ANGELES COUNTY COMPLAINT BROUGHT THEIR**
24 **PUBLIC NUISANCE ACTION PURSUANT TO SECTION 731, BUT FAILED TO**
25 **COMPLY WITH ITS STANDING PROVISIONS.**

26 Plaintiffs brought their public nuisance claims against Defendants pursuant to Code of Civil
27 Procedure Section 731, which provides, in pertinent part, as follows:

28 731 A civil action may be brought in the name of *the people of the State of California*
to abate a public nuisance, as the same is defined in section thirty-four hundred and eighty
of the Civil Code, *by the district attorney* of any county in which such nuisance exists, *or by*

1 *the city attorney* of any town or city in which such nuisance exists . . . (Code Civ. Proc., §
2 731)(emphasis added)

3 The cases cited in Defendants’ moving papers hold that the standing provisions for public nuisance
4 actions under Section 731 have been narrowly construed to include only those public officers listed, i.e.,
5 district attorneys and city attorneys. Plaintiffs have cited no case authority to the contrary, only argument.
6 Their arguments fail to overcome the plain meaning of the statute or the case law interpreting it.

7 **A. Plaintiffs Concede That The County And Its Supervisors Lack Standing to Bring a**
8 **Nuisance Action on Behalf of The General Public**

9 Plaintiffs evidently concede (and do not bother addressing) Defendants’ contention that neither Los
10 Angeles County nor its Supervisors can bring a public nuisance cause of action on behalf of the general
11 public because such actions must be brought in the name of the People of the State of California (CCP
12 § 731). The County (on one count) and its Supervisors fail to do so. Accordingly, the Court should enter
13 judgment in favor of Defendants on the four public nuisance causes brought by the County and Supervisors
14 Molina, Yaroslavsky and Burke, on behalf of the general public.

15 **B. The County, in Its Own Name, Lacks Standing to Bring a Public Nuisance Claim:**
16 **That Claim Must Be Brought Through The District Attorney**

17 Plaintiffs argue that the County has standing because County Counsel, although not listed in
18 Section 731, is nonetheless a proper party because of a general provision in the Los Angeles County
19 Charter giving county counsel authority over civil matters. This argument fails for at least the four reasons
20 discussed below. First, the County Counsel is not a party; the Complaint was brought in the name of the
21 County, only, not by any officer thereof. Second, as noted above, the County is not a person and cannot
22 bring this claim on behalf of the general public. Third, the County is not a proper “relator.” Finally, even if
23 the County had brought this claim by and through it’s County Counsel, County Counsel lacks standing
24 because this *general authority* under the Los Angeles County Charter to bring actions on behalf of the
25 County is subject to the *specific provisions* of Section 731, as well as cases interpreting that section.

26 **1. Los Angeles County Counsel Is Not a Party to this Action**

27 The Los Angeles County Counsel is not a party to this action, proper or otherwise. The complaint
28 is in the name of (1) People of the State of California, *ex rel.* the County of Los Angeles, and (2) County of

1 Los Angeles, on behalf of itself and the general public. The County failed to bring its action by or through
2 any County official (as other entities properly did, e.g., the City of Los Angeles by and through its City
3 Attorney). Thus, County Counsel is not a party; plaintiffs' reliance on that false premise are misplaced.

4 **2. The County Cannot Bring This Claim on Behalf of Itself or the General Public**

5 Under the plain terms of Section 731, the County cannot bring a public nuisance action in its own
6 name because "a county is neither a person, nor a corporation, nor a municipal corporation; it is a
7 subdivision of the state." (*Estate of Miller* (1936) 5 Cal.2d 588, 597 [55 P.2d 491].) It must bring its
8 nuisance claim by and through its District Attorney, on behalf of the People (not itself or the general
9 public), as mandated by Section 731.

10 **3. The County Is Not a Proper Relator**

11 Further, as noted in Defendants' moving papers, the county is not a proper relator (Motion at p. 5,
12 note 2). One has to search back to the 1800's and early 1900's to find cases wherein a County serves as the
13 relator ("*ex rel.*") for the State, i.e., to a time before the legislature enacted standing provisions such as
14 Section 731. Simply put, the proper plaintiff herein would be (at present) "The People of the State of
15 California, *ex rel.* Lloyd Pellman, County Counsel" similar to how the city fashioned its complaint: "The
16 People of the State of California by and through James K. Hahn, City Attorney." The City of Los Angeles
17 complied with Section 731, and Defendants acknowledge as much. On the other hand, Los Angeles
18 County failed to comply, and should therefore not be permitted to proceed with its public nuisance claim.

19 **4. Even If County Counsel Were a Party, He Lacks Standing Under the Specific**
20 **Provision of Section 731: Plaintiffs' Efforts to Avoid the Supreme Court's**
Holding in *Simpson* Are Unavailing

21 For the sake of argument, Defendants will address plaintiffs' assertion that County Counsel would
22 have standing to bring a public nuisance claim.¹ Because maintaining a public nuisance constitutes a
23 misdemeanor (Peal Code § 372) and an action to abate a public nuisance is brought in the name of the
24 People (Code Civ. Proc., § 731) the state legislature determined (and case law recognizes) that public
25 nuisance abatement is the province of public prosecutors, i.e., district and city attorneys, as outlined below.

26
27
28 ¹ Plaintiffs twice state that the Board of Supervisors "directed" County Counsel to "prosecute this nuisance action,"
citing Exhibit A to its Request for Judicial Notice. But Exhibit A only authorizes county counsel to "initiate appropriate
lawsuits" against the firearms industry. The words "public nuisance" are nowhere to be found.

1 The Los Angeles County Counsel gets his authority from the Los Angeles County Charter, not the
2 Government Code sections cited by and relied upon by plaintiffs. (*Board of Sup'rs of Los Angeles County*
3 *v. Simpson* (1951) 36 Cal.2d 671, 674 [227 P.2d 14] (“Apparently the county counsel of Los Angeles is
4 appointed pursuant to its charter . . . rather than the . . . Government Code. That being true, the provisions
5 of the Government Code relating to county counsel would not apply.”).) Moreover, that authority is
6 subject to specific state laws and cases interpreting those laws, which carve out an exception to a county
7 counsel’s general authority over civil actions when it comes to abating a public nuisance. (*Id.* at 673) As
8 the California Supreme Court held in *Simpson*:

9 **Thus, the particular duty with respect to abatement of public nuisances is that of the**
10 **district attorney.** That is a factor with some significance as a particular statutory provision
11 [Section 731] should prevail over a general one. (Civ. Code § 3534; Code Civ. Proc. §
12 1859) (*Id.* at 673) (emphasis added)

13 The above holding is unambiguous. Further, the Supreme Court did not limit its holding when it
14 went on to explain that “[e]ven if it be assumed that the provisions of the Government Code on county
15 counsel apply to the Los Angeles county counsel, still properly construed, the duty rests upon the district
16 attorney.” (*Id.* at 674) Thus, after holding that nuisance abatement was the province of public prosecutors,
17 the Court explained why that was particularly obvious in the context of the Red Light Abatement Act. The
18 Court did *not* limit the holding quoted above to Red Light Abatement cases, however, it simply found
19 *further* support for its holding under the circumstances.

20 Plaintiffs attempt to limit the unambiguous holding in *Simpson*, and cite a decidedly “off-point”
21 case for support. Plaintiffs state that “Not surprisingly, the court in *Rauber* described the holding of
22 *Simpson* as being limited to the district attorney having ‘the responsibility to bring civil red-light
23 abatement actions.’ 229 Cal.App.3d at 948.” (Opposition at p. 6, lines 4-6). It may not be surprising to
24 plaintiffs, but it would be to the *Rauber* court, because it neither analyzed nor limited *Simpson*. Rather, the
25 court in *Rauber*—a case which had nothing to do with public nuisance abatement or interpretation of
26 Section 731—simply cited *Simpson* as an example of a case where a district attorney engaged in “functions
27 not amounting to the prosecution of a criminal offense.” (*Rauber v. Herman* (1991) 229 Cal.App.3d 942,
28 948 [280 Cal.Rptr. 785].) The issue in *Rauber* was whether the district attorney had exceeded its authority
by representing the county in a hearing about plaintiffs’ alleged receipt of overpayments under certain

welfare programs (*Id.* at 945). In short, the passing reference to *Simpson* was in the nature of dicta, and did not “limit” the holding in *Simpson*. In any event, dicta in an appellate court decision regarding welfare abuse can hardly limit an unambiguous Supreme Court decision about which county officer is charged with abating public nuisances. Accordingly, plaintiffs’ reliance on *Rauber* is misplaced.

In contrast, *People v. Parmar* (2001) 86 Cal.App.4th 781[104 Cal.Rptr.2d 31], which plaintiffs summarily dismiss as “irrelevant,” did concern nuisance abatement, as well as the district attorney’s authority to bring an abatement action. The court spent nearly a full page (and under a separate heading) analyzing the nature of the district attorney’s office, public nuisance abatement actions, and the provisions of Section 731—the very issues considered here, and concluded in clear terms, as follows:

2. The nature of the district attorney's office

When county counsel is employed, most, but not all, of the district attorney's civil functions are performed by the county counsel. **However, the district attorney retains some civil law duties, including nuisance abatement.** (*Id.* at 798) (emphasis added)

Finally, plaintiffs fail even to address *Lamont Storm Water Dist. v. Pavich* (App.5 Dist. 2000) 78 Cal.App.4th 1081 [93 Cal.Rptr.2d 288], wherein the court found that the general statutory provisions allowing a public entity (the storm water district, in that case) to sue and be sued were subject to the specific provisions of Section 731 in matters of nuisance abatement. Citing Section 731, the court held that the district lacked standing to bring an abatement action on its own. (*Id.* at pp. 1084-1085.)

In sum, Los Angeles County cannot bring a nuisance claim in its own name, nor as a “relator” to the State, nor on behalf of the general public. Further, Los Angeles County Counsel is not a party to this action (one need only look at the caption on the Complaint to verify this point). Even if he were, he would not have standing to bring the public nuisance claim under Section 731, based on the plain language of the statute and the California Supreme Court’s holding in *Simpson*. Thus, if the County wishes to proceed with its nuisance claim, it must discuss the matter with District Attorney Steve Cooley. At this late date, and given that other plaintiffs in these coordinated Firearms Cases properly pled a nuisance cause of action, Defendants respectively request that this Court enter judgment against Los Angeles County and its three Supervisors on their defectively pled nuisance claims.

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1 **III. OF THE TWELVE PLAINTIFFS WHO BROUGHT BUSINESS AND PROFESSION**
2 **CODE SECTION 17200 ACTIONS AGAINST DEFENDANTS, ONLY ONE COMPLIED**
3 **WITH THE STANDING PROVISIONS OF SECTION 17204**

4 Plaintiffs inform this Court that Defendants' principal complaint here is that public officials cannot
5 bring a Section 17200 claim as "persons" on behalf of the general public. (Opposition at p. 7, lines 10-13.)
6 In reality, Defendants contend that only one of the seven plaintiffs in the Los Angeles City Complaint and
7 none of the plaintiffs in the Los Angeles County Complaint have standing. Only six of those are arguably
8 "persons" under the standing provisions of Section 17204: a city attorney, two mayors, and three
9 Supervisors. Plaintiffs either concede or ignore Defendants' standing objections, as outlined below.

10 **A. Plaintiffs Concede That City Attorneys for Compton, Inglewood, and West Hollywood**
11 **Lack Standing to Bring a Section 17200 Action**

12 Plaintiffs concede that city attorneys for Compton, Inglewood and West Hollywood lack standing
13 to bring claims under Section 17204 because they failed to obtain consent of the district attorney, as
14 required. Though plaintiffs represented they would obtain consent, they have yet to provide it. Plaintiffs
15 did submit a fax letter from a deputy district attorney in West Hollywood (see Exhibit E to Request for
16 Judicial Notice). Section 17204, however, calls for the consent of "the district attorney," not a deputy
17 district attorney nor anyone else from the district attorney's office. Thus, to date, *none* of the subject city
18 attorneys have standing, and judgment against them should be entered on their Section 17200 claims.

19 **B. Plaintiffs Fail to Address Los Angeles County's Lack of Standing**

20 As with its public nuisance claim, the County of Los Angeles attempts to bring—in its own name—its
21 Section 17200 action on behalf of the State, itself, and the general public. In doing so, the County fails to
22 comply with the specific standing provisions of Section 17204. As noted in Defendants' motion (and in
23 the standing statute, itself) only the Attorney General and, under certain conditions, district attorneys, city
24 attorneys, and county counsel can bring a Section 17200 action in the name of the People, and only
25 "persons" can bring such an action on behalf of the general public. The County is none of those things.

26 The County attempts to gloss over the fact that it did not bring this action "by or through" its
27 County Counsel or any other county official, asserting in its Opposition (without explanation) that County
28 Counsel is the named plaintiff. Even if the County had brought this claim through its County Counsel,
however, the pleadings are still defective because the County fails to allege that its County Counsel

1 obtained authorization "by agreement with the district attorney" in an action "involving violation of a
2 county ordinance," as required under Section 17204(3). Other counties did, Los Angeles County did not.
3 Consequently, Los Angeles County lacks standing to bring the action as pled, or even through its County
4 Counsel, as it mistakenly claims it did in its Opposition.²

5 **C. Plaintiffs' Claim That Public Officials Are "Persons" under Section 17204 Negates the**
6 **Remaining Provisions of That Section**

7 Plaintiffs contend, erroneously, that Defendants cite no authority to support their position that
8 government entities lack standing to bring an action under Section 17200, and that only certain government
9 officials, i.e., those named in that section, have standing. On the contrary, Defendants cite, and plaintiffs
10 fail to refute, *Santa Monica Rent Control Bd. v. Bluvshstein* (1991) 230 Cal.App.3d 308, which holds that a
11 government agency is not a "person" authorized to *bring a suit* under Section 17200. Defendants also cite
12 Witkin's analysis of this topic, and incorporate the cases cited therein. Because plaintiffs dismiss this as
13 some "loose language in Witkin," Defendants include it here, in full:

14 Based on its analysis, Witkin concludes that neither government entities nor government officials
15 are "persons" under Section 17204, and can neither sue or be sued under Section 17200, as set forth below:

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

17 (1) *In General.* The Unfair Competition Law (UCL) expressly authorizes the Attorney
18 General, district attorneys, city prosecutors, and county counsel to bring actions for
injunctions and other relief (B. & P.C. 17204) and actions to impose civil penalties (B. &
P.C. 17206, 17207) for violations.

19 Whether other individuals or entities may sue or be sued for violations depends on whether
20 they qualify as a "person" within the meaning of the statute. That term is defined as
"natural persons, corporations, firms, partnerships, joint stock companies, associations, and
21 other organizations of persons." (B. & P.C. 17201; see B. & P.C. 17203 ["person" engaging
in unfair competition may be enjoined]; B. & P.C. 17204 ["person" acting for itself or
22 general public may enjoin unfair competition]; . . .

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

24 (a) A county was not a "person" subject to suit under the Act for its hospital's allegedly
25 unfair practice in competing with private hospitals for paying patients. In the absence of
26

27 ² An example of a properly pled action on behalf of a county through its county counsel can be seen in the San
28 Francisco case, where County Counsel for San Mateo County alleged authorization by the District Attorney and specifically
cited to a county ordinance violation. (San Francisco FAC ¶¶ 4 and 47) This has been brought to Los Angeles County's attention
on several occasions, yet it continues to ignore this defect and, impliedly, asks this Court to do the same.

1 express words to the contrary, neither the state nor its subdivisions are included within the
2 general words of a statute, if to do so would infringe on sovereign governmental powers. In
3 the context of a county-operated hospital, guarding the public health was within the county's
4 sovereign powers. (*Community Memorial Hosp. of San Buena Ventura v. Ventura* (1996)
5 50 Cal.App.4th 199, 209, 56 C.R.2d 732.)

6 (b) The California State Lottery Commission, as a governmental entity, was not a "person"
7 under the Act, and thus could not be sued for unfair competition based on operating and
8 promoting a game subsequently found to be illegal. (*Janis v. California State Lottery Com.*
9 (1998) 68 Cal.App.4th 824, 831, 80 C.R.2d 549; *Trinkle v. California State Lottery* (1999)
10 71 Cal.App.4th 1198, 1202, 84 C.R.2d 496.)

11 (c) The University of California is a governmental entity, not a person, under the Act. Thus,
12 it could not be sued for unfair competition by anesthesiologists at a medical center acquired
13 by the university based on the university's decision to restrict anesthesia services to
14 university faculty members. (*California Med. Assn. v. Regents of Univ. of Calif.* (2000) 79
15 Cal.App.4th 542, 550, 94 C.R.2d 194.)

16 (d) A city rent control board, as a governmental agency, did not satisfy the statutory
17 definition of person, and thus could not sue owners of a residential building for unfair
18 competition based on violation of laws relating to tract maps and to permits to withdraw
19 rental units from the market. (*Santa Monica Rent Control Bd. v. Bluvshstein* (1991) 230
20 Cal.App.3d 308, 318, 281 C.R. 298.) (11 Witkin, Summary 9th (2002 supp.) Equity, § 95A,
21 p. 450)(underline added).

22 In sum, Defendants find support for their arguments in the plain language of the standing
23 provisions (e.g., why impose specific limitations on which public officials can use tax dollars to bring a
24 Section 17200 action on behalf of the People, if *any* public official can circumvent those provisions, and
25 still avail itself of tax payer funds, by claiming to act on behalf of the general public?), in case law on point
26 (e.g., *Santa Monica Rent Control Board*, holding that government agencies are not "persons" under
27 Section 17204), and in well-reasoned analysis of the leading secondary authority on California law.

28 In stark contrast, plaintiffs have offered no specific statutory language, case law, or secondary
29 authority to support their position that public entities, such as Los Angeles County, or public officials, such
30 as City Attorneys, Mayors, and Supervisors, can bring a Section 17200 action as "persons" under Section
31 17204. Their argument can be summed up as follows: "Some other plaintiffs did it and their defendants
32 didn't object." These Defendants do object. The fact that defendants in two other cases did not has
33 absolutely no precedential value, and should be disregarded by this Court. It is irrelevant; the issue at hand
34 was not considered by those courts.³

35 ³ Plaintiffs also assert that public "officers" can sue on behalf of the general public, citing language in 17204 (in italics,
36 below) that provides standing "with the consent of the district attorney, BY a city attorney in any city and county in the name of

Accordingly, Defendants respectfully request that judgment be entered against all plaintiffs in the Los Angeles County Complaint and the Los Angeles City FAC on the Section 17200 claims, with the exception of the claim properly brought by the Los Angeles City Attorney.

IV. PLAINTIFFS CONCEDE THAT PENALTIES UNDER SECTION 17206, IF ANY, ARE AVAILABLE ONLY TO THE CITY OF LOS ANGELES

Although plaintiffs inexplicably state that their complaints are properly pled regarding civil penalties, they nonetheless concede that none of the Los Angeles County plaintiffs, and only one Los Angeles City plaintiff (the Los Angeles City Attorney), have standing to seek such penalties under Section 17206. Because plaintiffs concede this point, Defendants will not address their “properly pled” assertion.

V. PLAINTIFFS POSITION ON THEIR SECTION 17500 CLAIMS IS UNCLEAR; THEY APPEAR TO WITHDRAW MOST CLAIMS, OR ASSERT THEY NEVER BROUGHT THEM IN THE FIRST INSTANCE

The Los Angeles City First Amended Complaint does not contain a Section 17500 claim. All plaintiffs in the Los Angeles County Complaint, however, purport to bring such an action (See Los Angeles County Complaint, caption and ¶ 12). Curiously, plaintiffs’ position, however, is that the Supervisors in the Los Angeles County Complaint have not brought such actions. Plaintiffs conclude that “the city attorneys in the City of Los Angeles action, No. BC 210894, and the County Counsel in the County of Los Angeles action, have standing to bring this action.” (Opposition at p. 11, lines 1-4)⁴ Because only the Los Angeles County plaintiffs brought Section 17500 claims against Defendants, Defendants will limit their discussion to those claims.

Plaintiffs seem to bring a Section 17500 claim (see Complaint at ¶ 12, the Third Cause of Action at

the people of the State of California upon their own complaint or *upon the complaint of any board, officer, person, corporation or association* or **BY** any person acting for the interests of itself, its members or the general public.” (Opposition at p. 9, line 19 to p. 10, line 4) But the “officers” plaintiffs refer to must have their complaints brought “by a city attorney . . . in the name of the people.” In other words, they are subject to the provisions following the first “by,” not the second “by,” in the above-quoted text (as noted in bold caps). Plaintiffs would like the italicized phrase to come after the second “by,” thus permitting their claims in the name of the general public, but it does not, as a matter of statutory construction.

⁴ Defendants will assume that plaintiffs simply confused the Los Angeles City FAC with the San Francisco City FAC. The city attorneys and county counsel in the latter complaint properly pled Section 17500 claims on behalf of the People.

¶¶ 157-159, and Prayer for Relief), but apparently never intended to do so, or now withdraw those claims. Ironically, plaintiffs contend that Los Angeles County Counsel—who is not a party—is the only plaintiff now bringing a claim under Section 17500. (Opposition at p. 11, lines 1-4) plaintiffs have not, however, formally dismissed the 17500 claims made in the Los Angeles County Complaint and, accordingly, Defendants incorporate herein the arguments stated above in Section III and their contention that neither the County, in its own name, nor the Supervisors have standing to bring a Section 17500 claim.

CONCLUSION

Based on the analysis above, Defendants respectfully ask this Court to grant their motion and enter judgment against the following plaintiffs on the claims listed below (defects underlined):

NUISANCE CAUSE OF ACTION:

Los Angeles County Suit:

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

UNFAIR BUSINESS PRACTICE, SECTION 17200:

Los Angeles County Suit:

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

Los Angeles City Suit:

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

FALSE ADVERTISING, SECTION 17500:

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

Dated: February 24, 2003

TRUTANICH • MICHEL, LLP

C. D. Michel
C. D. Michel,
Attorney for Defendants
Andrews Sporting Goods, Inc.
and S.G. Distributing, Inc.

1 **PROOF OF SERVICE**

2
3 STATE OF CALIFORNIA

4 COUNTY OF LOS ANGELES

5 I, Haydee Villegas, declare:

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

9 2. On February 24, 2003, I served the foregoing document(s) described as **REPLY BRIEF TO**
10 **OPPOSITION TO DEFENDANT ANDREWS SPORTING GOODS' AND S.G.**
11 **DISTRIBUTING'S MOTION FOR JUDGMENT ON THE PLEADINGS** on the interested
12 parties in this action by JusticeLink Electronic filing on all persons appearing on the Service List.

13 I declare under penalty that the foregoing is true and correct. Executed this 24th day of February,
14 2003, at San Pedro, California.

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16 Haydee Villegas

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Division/Courtroom: N/A
Case Class: Civil
Case Type: Coordination Proceeding
Case Number: JCCP4095
Case Name: Firearms Case (JCCP)

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	Reply	Defendants Andrews Sporting Goods and S.G. Distributings Reply to Plaintiffs Opposition to Defendant Andrews Motion to Strike Pursuant to Code of Civil Procedure Section 425.16	1537194	Main	Public	\$0.00	13		Pending	
	Order (Proposed)	[Proposed] Order for Defendants Andrews Sporting Goods and S.G. Distributings Motion to Strike Pursuant to Code of Civil Procedure Section 425.16	1537224	1537194	Public	\$0.00	3		Pending	
	Reply	Reply Brief to Opposition to Defendant Andrews Sporting Goods and S.G. Distributings Motion for Judgment on the Pleadings	1537382	Main	Public	\$0.00	13		Pending	
	Order (Proposed)	[Proposed] Order for Defendant Andrews Sporting Goods and S.G. Distributings Motion for Judgment on the Pleadings	1537399	1537382	Public	\$0.00	4		Pending	

Filing Parties Sorted by PartyView by ☐ Firm ☐ Attorney ☒ Party

Firm	Attorney	Attorney Type	Party	Party Type
Trutanich Michel LLP C D Michel	Attorney in Charge	Andrews Sporting Goods	Defendant	
Trutanich Michel LLP C D Michel	Attorney in Charge	S G Distributing Co	Defendant	

Service/Notice List Sorted by Delivery Option then PartyView By ☐ Firm ☐ Attorney ☒ Party 1 thru 50 of 93 [Next>>](#)

Delivery Option	Firm	Attorney	Party	Party Type	Delivered	Method
Service	Koletsy Mancini Feldman & Morrow	Susan Caldwell	American Shooting Sports Council Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Mayberry Law Firm	Harold Mayberry	American Shooting Sports Council Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Jacobson, Burton C	Burton C Jacobson	B & B Group Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Bruinsma & Hewitt	Michael C Hewitt	B L Jennings Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Gordon Feinblatt Rothman	Lawrence S Greenwald	Beretta USA Corp	Defendant	Feb 24 2003 6:16PM ET	Online
Service	McAtee Harmeyer LLP	Jeff G Harmeyer	Beretta USA Corp	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Schnader Harrison Segal & Lewis LLP-San Francisco	Craig A Livingston	Beretta USA Corp	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Akin Gump Strauss Hauer & Feld LLP-Los Angeles	Robert N Tafoya	Browning Arms Co	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Arter & Hadden LLP-Irvine	Mark T Palin	Browning Arms Co	Defendant	Feb 24 2003	Online

					6:16PM ET	
Service	Friday Eldredge & Clark	William Mell Griffin	Browning Arms Co	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Bruinsma & Hewitt	Michael C Hewitt	Bryco Arms	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Murchison & Cumming-Los Angeles	Friedrich W Seitz	Carl Walther GmbH	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Wright & L Estrange	Robert C Wright	Colts Manufacturing Co Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Madory Zell & Pleiss PC	Stephen H Zell	Davis Industries	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Drinker Biddle & Reath	Alan J Lazarus	Ellett Brothers	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Silver, Steven A	Steven Allen Silver	Excel Industries Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Gordon Feinblatt Rothman	Lawrence S Greenwald	Fabbrica d'Armi Pietro Beretta SpA	Defendant	Feb 24 2003 6:16PM ET	Online
Service	McAtee Harmeyer LLP	Jeff G Harmeyer	Fabbrica d'Armi Pietro Beretta SpA	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Schnader Harrison Segal & Lewis LLP-San Francisco	Craig A Livingston	Fabbrica d'Armi Pietro Beretta SpA	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Budd Lerner Gross Rosenbaum Greenberg & Sade PC-Atlanta	Timothy A Bumann	Forjas Taurus SA	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Haight Brown & Bonesteel LLP-Santa Monica	Denis James Moriarty	Forjas Taurus SA	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Akin Gump Strauss Hauer & Feld LLP-Los Angeles	Robert N Tafoya	Glock GMBH	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Akin Gump Strauss Hauer & Feld LLP-Los Angeles	Robert N Tafoya	Glock Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Arter & Hadden LLP-Irvine	Mark T Palin	Glock Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Renzulli Piscioti & Renzulli LLP	John Joseph McCarthy	Glock Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Akin Gump Strauss Hauer & Feld LLP-Los Angeles	Robert N Tafoya	H & R 1871 Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Arter & Hadden LLP-Irvine	Mark T Palin	H & R 1871 Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Renzulli Piscioti & Renzulli LLP	John Joseph McCarthy	H & R 1871 Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Jacobson, Burton C	Burton C Jacobson	Hawthorne Distributors	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Schrieffer & Downey LLP-San Diego	Peter M Downey	Hawthorne Distributors	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Schrieffer & Downey LLP-West Covina	Ian ~ Feldman	Hawthorne Distributors	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Holland & Knight LLP-San Francisco	Charles Lagrange Coleman	Heckler & Koch Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Akin Gump Strauss Hauer & Feld LLP-Los Angeles	Robert N Tafoya	Hi Point Firearms	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Arter & Hadden LLP-Irvine	Mark T Palin	Hi Point Firearms	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Renzulli Piscioti & Renzulli LLP	John Joseph McCarthy	Hi Point Firearms	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Atwood, Timothy G	Timothy G~ Atwood	Interarms Industries Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Liddy, Raymond J	Raymond J Liddy	Interarms Industries Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Atwood, Timothy G	Timothy G~ Atwood	International Armament Corp	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Liddy, Raymond J	Raymond J Liddy	International Armament Corp	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Chair Judicial Council of California	Coordination Attorney	Judicial Council of California	Interested Party		U.S. Mail
Service	Akin Gump Strauss Hauer & Feld LLP-Los Angeles	Robert N Tafoya	Kel Tec C N C Industries Inc	Defendant	Feb 24 2003 6:16PM ET	Online

Service	Arter & Hadden LLP-Irvine	Mark T Palin	Kel Tec C N C Industries Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Renzulli Piscioti & Renzulli LLP	John Joseph McCarthy	Kel Tec C N C Industries Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Drinker Biddle & Reath	Alan J Lazarus	M K S Supply	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Gorry & Meyer LLP	Frank Sandelmann	National Gun Sales	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Cleary Gottlieb Steen & Hamilton	Douglas E~ Kliever	National Shooting Sports Foundation Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Koletsy Mancini Feldman & Morrow	Susan Caldwell	National Shooting Sports Foundation Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Lynberg & Watkins PC	Wendy E Schultz	Navegar Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Beckman & Associates	Bradley T Beckman	North American Arms Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Gladych & Associates	John ~ Gladych	North American Arms Inc	Defendant	Feb 24 2003 6:16PM ET	Online

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Filing Receipt Report

Report Created: Monday, February 24, 2003
3:06:24 PM





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Filing ID: 1447822
Filed by: Michel, C D
 Trutanich Michel LLP
Authorized by: Michel, C D
 Trutanich Michel LLP
Filing Option: File and Serve
Authorized: 02/24/2003 03:15 PM PT
Court: CA Superior Court County of San Diego
Division/Courtroom: N/A
Case Class: Civil
Case Type: Coordination Proceeding
Case Number: JCCP4095
Case Name: Firearms Case (JCCP)

Filing Documents List

Access documents or clerk review information by clicking the link or icon in the appropriate column:

Document Title to view PDF—Original File to view, print, or download original file—Review Status to see review history.

Linked Doc	Filing Type	Document Title	Document ID	Main	Access Type	Filing Fee	Pages	Original File	Review Status	Judicial Action
	Reply	<u>Defendants Andrews Sporting Goods and S.G. Distributings Reply to Plaintiffs Opposition to Defendant Andrews Motion to Strike Pursuant to Code of Civil Procedure Section 425.16</u>	1537194	Main	Public	\$0.00	13		<u>Pending</u> 2/24/2003 6:15:33 PM	
	Order (Proposed)	<u>[Proposed] Order for Defendants Andrews Sporting Goods and S.G. Distributings Motion to Strike Pursuant to Code of Civil Procedure Section 425.16</u>	1537224	1537194	Public	\$0.00	3		<u>Pending</u> 2/24/2003 6:15:33 PM	
	Reply	<u>Reply Brief to Opposition to Defendant Andrews Sporting Goods and S.G. Distributings Motion for Judgment on the Pleadings</u>	1537382	Main	Public	\$0.00	13		<u>Pending</u> 2/24/2003 6:15:33 PM	
	Order (Proposed)	<u>[Proposed] Order for Defendant Andrews Sporting Goods and S.G. Distributings Motion for Judgment on the Pleadings</u>	1537399	1537382	Public	\$0.00	4		<u>Pending</u> 2/24/2003 6:15:33 PM	

Filing Parties Sorted by Party

View by ☐ Firm ☐ Attorney ☒ Party

Firm	Attorney	Attorney Type	Party	Party Type
Trutanich Michel LLP	C D Michel	Attorney in Charge	Andrews Sporting Goods	Defendant
Trutanich Michel LLP	C D Michel	Attorney in Charge	S G Distributing Co	Defendant

Service/Notice List Sorted by Delivery Option then Party

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Delivery Option	Firm	Attorney	Party	Party Type	Delivered	Method
Service	Haight Brown & Bonesteel LLP-Santa Monica	Denis James Moriarty	Phoenix Arms	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Tarics & Carrington PC	Michael J Zomcik	Phoenix Arms	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Bingham McCutchen LLP	Susanne Caballero	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Brady Center to Prevent Gun Violence	Brian Siebel	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Bushnell Caplan & Fielding LLP	Alan M Caplan	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	City Attorneys Office-Berkeley	Matthew J Orebic	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	City Attorneys Office-Compton	Celia Elizabeth Francisco	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	City Attorneys Office-Inglewood	Charles E~Dickerson	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online

Service	City Attorneys Office-Los Angeles	Don Kass	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	City Attorneys Office-Oakland	R Manuel Fortes	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	City Attorneys Office-Sacramento	Samuel L Jackson	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	City Attorneys Office-San Francisco	Owen James Clements	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Cohen Milstein Hausfeld & Toll PLLC-Seattle	Steven J~ Toll	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Cohen Milstein Hausfeld & Toll PLLC-Washington DC	Richard S Lewis	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Cooley Godward LLP-San Francisco	Theresa J Fuentes	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	County Attorneys Office-Alameda	Kristen J Thorsness	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	County Counsel-San Mateo	Thomas F~ Casey	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Educational Fund to Stop Gun Violence	Sayre Weaver	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Hays, Shawn M	Shawn ~ Hays	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Kairys, David	David Kairys	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Lieff Cabraser Heimann & Bernstein LLP	Robert J Nelson	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Lieff Cabraser Heimann & Bernstein LLP-New York	Paulina do~ Amaral	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Los Angeles County Counsel	Lawrence Lee Hafetz	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	McCue, Charles T	Charles Terrance McCue	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Milberg Weiss Bershad Hynes & Lerach LLP-San Diego	Ex Kano Sams	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Milberg Weiss Bershad Hynes & Lerach LLP-San Diego	Michael J Dowd	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Thompson Lawson LLP	Michael S~ Lawson	Plaintiff	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Sedgwick Detert Moran & Arnold-San Francisco	Wayne A Wolff	R S R Wholesale Guns	Defendant	Feb 24 2003 6:16PM ET	Online
Service	City Attorneys Office-San Francisco	Kristine Poplawski	San Francisco City Attorney	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Thelen Reid & Priest LLP-San Francisco	Kent Jonas	San Francisco City Attorney	Plaintiff	Feb 24 2003 6:16PM ET	Online
Service	Wilson Elser Moskowitz Edelman & Dicker LLP-Los Angeles	Robert M Anderson	Sigarms Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Wilson Elser Moskowitz Edelman & Dicker LLP-New York	Robert Laurent Joyce	Sigarms Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Allen Matkins Leck Gamble & Mallory LLP-Los Angeles	Edwin W Green	Smith & Wesson Corp	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Shook Hardy & Bacon LLP-Kansas City	Jeffrey S Nelson	Smith & Wesson Corp	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Drinker Biddle & Reath	Alan J Lazarus	Southern Ohio Gun Distributors	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Lucio Bronstein Garbett & Stiphany PA	Phillip M Hudson	Southern Ohio Gun Distributors	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Koletsky Mancini Feldman & Morrow	Susan Caldwell	Sporting Arms & Ammunition Manufacturers Institute Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Luce Forward Hamilton & Scripps LLP-San Diego	Lawrence J Kouns	Sturm Ruger & Co Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Wildman Harrold Allen & Dixon	James B Vogts	Sturm Ruger & Co Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Budd Larner Gross Rosenbaum Greenberg & Sade PC-Atlanta	Timothy A Bumann	Taurus International Manufacturing Inc	Defendant	Feb 24 2003 6:16PM ET	Online
	Budd Larner Gross Rosenbaum	Christina Fichera	Taurus International		Feb 24 2003	

Service	Greenberg & Sade PC-Short Hills	Dente	Manufacturing Inc	Defendant	6:16PM ET	Online
Service	Haight Brown & Bonesteel LLP-Santa Monica	Denis James Moriarty	Taurus International Manufacturing Inc	Defendant	Feb 24 2003 6:16PM ET	Online
Service	Crew, James Leonard	James L Crew	Trader Sports Inc	Defendant	Feb 24 2003 6:16PM ET	Online

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