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

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

15 FIREARMS CASE

16 Including actions:

17 People, et. al. v. Arcadia Machine & Tool, Inc., et.
18 al.

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

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

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO. 4095

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

) **STURM, RUGER'S OPPOSITION TO**
) **PLAINTIFFS' EX PARTE**
) **APPLICATION FOR ORDER**
) **COMPELLING PRODUCTION OF**
) **DOCUMENTS AND RESPONSES TO**
) **INTERROGATORIES**

) Date: March 6, 2001
) Time: 8:30 a.m.
) Dept: 65

) Hon. Vincent P. DiFiglia

3-2-01

I

INTRODUCTION

Sturm, Ruger's association with others and its efforts to influence governmental action are activities protected by the First Amendment. Discovery of those activities is permissible only to serve a compelling state interest which outweighs the impairment to First Amendment rights and only when the least intrusive means are used to discover highly relevant information. Plaintiffs have a heightened burden to justify discovery and intrusion into Sturm, Ruger's exercise of First Amendment rights. They have not come close to satisfying that burden.

Plaintiffs' interrogatories and document requests concerning Sturm, Ruger's revenues and profits are also improper. Plaintiffs contend they are entitled to the information simply because their complaints plead for civil penalties. Yet, they ignore Civil Code section 3295 which protects defendants from pretrial discovery of their profits and financial condition until plaintiffs properly demonstrate there is a substantial probability they will prevail on the claims for which they seek the financial discovery. Plaintiffs have made no attempt to meet this burden. Therefore, their motion seeking Sturm, Ruger's financial information must be denied.

II

THE FIRST AMENDMENT PROTECTS FROM
DISCOVERY DOCUMENTS CONCERNING
STURM, RUGER'S LOBBYING EFFORTS

Plaintiffs seek to discover information evidencing Sturm, Ruger's exercise of its First Amendment rights to associate^{1/} and to petition the government.^{2/} Plaintiffs' stated purpose in seeking this information is to discover "efforts made to thwart or defeat proposed legislation which would increase regulation of defendants' distribution practices." Pltfs.' *Ex Parte* App., p. 4,

¹ Special Interrogatory No. 46: Identify every association to which you, a director, officer or management level employee of yours has provided any financial support, including the amount, purposes and dates of all such support.

² Request for Production No. 10: All documents that constitute, reflect, refer to or relate to any lobbying conducted or supported by you related to the marketing, distribution, sale or use of firearms. (Plaintiffs have defined the term lobbying as "any attempt to influence any public official to act in a manner favorable to your interests.")

1 lines 17-19. Plaintiffs' expressed purpose is fundamentally improper and cannot serve as the basis
2 to compel disclosure of protected First Amendment activities.

3 The right to petition the government is a fundamental right protected by the First Amendment
4 of the United States Constitution. Civil liability cannot be based on evidence of activity consistent
5 with the exercise of that right. Eastern Railroad Presidents Conference v. Noerr Motor, Inc., 365 U.S.
6 127 (1961); United Mineworkers of America v. Pennington, 381 U.S. 657 (1965). This principle has
7 come to be known as the "Noerr-Pennington" doctrine. It applies to all branches of government and
8 provides that liability for petitioning the government can only be established where attempts to
9 influence are a mere sham motivated by some purpose other than to influence the government. Hi Top
10 Steel Corp. v. Lehrer, 24 Cal. App. 4th 570, 577 (1994) (alleged use of the governmental process solely
11 to impose costs and burdens on a competitor's entry into the market). A successful effort to influence
12 government action cannot be considered a sham. Professional Real Estate Investors, Inc. v. Columbia
13 Pictures Industries, Inc., 508 U.S. 49, 58 (1993).^{3/}

14 Plaintiffs clearly acknowledge that their purpose in seeking discovery of Sturm, Ruger's
15 petitioning activities is only to learn whether Sturm, Ruger has attempted to influence the outcome
16 of political process. Plaintiffs have not claimed that Sturm, Ruger's petitioning activities have been
17 motivated by some other purpose amounting to a mere sham. Moreover, while acknowledging the
18 existence of the heightened burden they must satisfy when seeking discovery which infringes on First
19 Amendment rights, plaintiffs have made no effort to meet that burden. See Adolph Coors Co. v.
20 Wallace, 570 F. Supp. 202 (N.D. Cal. 1983) (a heightened showing of relevancy is demanded once
21 a constitutional challenge for withholding information has been lodged).

22
23
24 ³ Under California Code of Civil Procedure section 425.16, plaintiffs cannot use evidence that
25 Sturm, Ruger has attempted to influence the legislative process in support of their claims. Any
26 "cause of action against a person arising from any act of that person in furtherance of the
27 person's right of petition or free speech under the United States Constitution in connection
28 with a public issue shall be subject to a special motion to strike" The legislature has
expressly found that "there has been a disturbing increase in lawsuits brought primarily to chill
the valid exercise of the constitutional rights of freedom of speech and petition for the redress
of grievances" and that "it is in the public interest to encourage continued participation in
matters of public significance, and that this participation should not be chilled through the
abuse of the judicial process." Cal. Code Civ. P. § 425.16(a).

1 In Britt v. Superior Court, 20 Cal. 3d 844 (1978), the California Supreme Court articulated the
2 standard to be applied to discovery requests which infringe on First Amendment rights. In Britt,
3 defendants sought discovery into the associational activities of a group of plaintiffs who brought suit
4 against the owner and operator of Lindberg Field for compensation from the airport's
5 operation. Among other things, defendants sought disclosure of relationship in various
6 organizations as well as financial contributions to those organizations. The court held that the First
7 Amendment right of association is "presumptively immune from the government
8 bears a "particularly heavy" burden to justify any impairment. 20 Cal. 3d at 855. The
9 Court further held that:

10 To justify any impairment, there must be a
11 interest which justifies the substantial infringement of First
12 Amendment rights. It is basic that no showing merely of a rational
13 relationship to some colorable state interest would suffice; in this
highly sensitive constitutional area only the gravest abuses,
endangering paramount interests, give occasion for permissible
limitations.

14 Id. citing Huntley v. Public Util. Comm., 69 Cal. 2d 67, 74 (1968).

15 The disclosure of activities protected by the First Amendment must also be pursued by the
16 least intrusive means which do not "broadly stifle fundamental personal liberties when the end can be
17 more narrowly achieved." 20 Cal. 3d at 855-56 citing Shelton v. Tucker, 364 U.S. 479, 488 (1960).
18 Under these tests, the court in Britt held that a trial court order compelling disclosure of private
19 associational activities was not justified by a compelling state interest and unconstitutionally infringed
20 on plaintiffs' First Amendment rights. 20 Cal. 3d at 861-62.

21 In Australia/Eastern U.S.A. Shipping Conference v. United States, 537 F. Supp. 807 (D.C.
22 Dist. 1982), the court used a nearly identical analysis to the one articulated in Britt and held that the
23 government's stated interest in discovering efforts by the defendants to influence administrative
24 agency decisions was outweighed by the chilling effect the disclosure would have on First
25 Amendment rights. The court stated:

26 Although the balance has been struck differently in different situations,
27 there is no doubt that the overwhelming weight of authority is to the
28 effect that forced disclosure of First Amendment activities creates a
chilling effect which must be balanced against the interests in obtaining
the information.

1 537 F. Supp. at 810. A factual showing of actual chilling is not necessary to prevent disclosure. 537
2 F. Supp. at 811. The court recognized that "self-censorship is inherently difficult to verify
3 objectively" and that,

4 [F]irst amendment analysis has always embraced a healthy scrutiny of
5 governmental action, and protected against possible misuse of
6 government power to take reprisals against political activity or
expression. Self-censorship due to fear of possible reprisal is assumed
in some circumstances.

7 537 F. Supp. at 812.^{4/}

8 Plaintiffs have failed to articulate any purpose behind their attempt to discover Sturm, Ruger's
9 protected associational and petitioning activities other than the impermissible purpose of discovering
10 attempts to defeat proposed legislation. Without a clear articulation of a proper purpose, this Court
11 cannot assess plaintiffs' claimed need for discovery and whether that need serves a compelling state
12 interest. Nor can this Court balance the claimed need for the information against the harm to Sturm,
13 Ruger's First Amendment rights or assess whether the information can be obtained through less
14 intrusive means which do not substantially infringe on those fundamental rights.

15 Plaintiffs, as representatives of the government, must meet their burden before using the
16 judicial process to chill private citizens' rights to associate and lawfully influence the course of
17 government action. Governmental intrusion into the fundamental civil liberty in place to guard
18 against the misuse of governmental authority must be carefully scrutinized with tremendous deference
19 to preservation of that liberty. Plaintiffs' arguments do not withstand that scrutiny. Their request for
20 an order compelling discovery should be denied.

21
22 ⁴ The court in Australia/Eastern distinguished North Carolina Electric v. Carolina Power, 666
23 F.2d 50 (4th Cir. 1981), relied on by the plaintiffs in this case, as resting on "unique facts" and
24 not holding that forced disclosure of protected activities should not be weighed against the
25 harm to First Amendment values. 537 F. Supp. at 809. Other cases relied on by plaintiffs
26 involved focused discovery seeking information on discrete factual matters relevant to the
27 litigation. See Associated Container Transportation v. United States, 705 F.2d 53 (2d Cir.
28 1983) (discovery of defendants' misrepresentations in gaining government approval of
shipping agreement); United States v. Conservation Chemical Co., 1986 U.S. Dist. LEXIS
29722 (W.D. Mo.) (discovery into defendants' understanding of the term "occurrence" as used
in insurance policies in issue); In re Brand Name Prescription Drugs Antitrust Litigation, 1995
WL509666 (N.D. Ill.) (discovery to show that non-protected activities had an unlawful
purpose or character).

III

**PLAINTIFFS HAVE FAILED TO MAKE THE
REQUISITE SHOWING TO OBTAIN STURM,
RUGER'S FINANCIAL INFORMATION**

Plaintiffs request information and documents concerning Sturm, Ruger's gross annual revenues in California, Nevada, Arizona and the United States. Plaintiffs also request information and documents concerning Sturm, Ruger's profits derived from those revenues in California and the United States.

Plaintiffs contend they are entitled to this discovery merely because they seek civil penalties for their 17200 and 17500 claims. As support for their argument, plaintiffs rely exclusively on People v. Superior Court, 35 Cal.App.3d 710 (1973). Pltfs.' *Ex Parte* App., p. 5 lines 13-17. That case held that civil penalties are sufficiently similar to punitive damages so as to permit discovery of the defendant's financial condition. It also held that the trial judge has a great deal of discretion in determining what discovery should be permitted and when. 35 Cal. App. 3d at 714.

People v. Superior Court was decided in 1973. In 1979, the California Legislature enacted Civil Code § 3295. Section 3295(c) expressly prohibits pretrial discovery of a defendants' financial condition or profits without a court order. This statute was designed to prevent plaintiffs from filing spurious punitive damage claims in order to access information concerning defendants' financial condition and then using the financial information as a weapon to exact a settlement. Rawnsley v. Superior Court 183 Cal.App.3d 86, 90 (1986). As stated by the Rawnsley court: "Under [3295], the plaintiff's right to pretrial discovery of the defendant's financial status is severely limited. It prevents 'fishing expeditions' by a plaintiff . . ."

Although this is not a punitive damages case, the rationale for prohibiting entirely or at least deferring financial discovery applies equally here. Plaintiffs have not met the prerequisites to discovering the financial information they seek by demonstrating a substantial probability that they will prevail at trial. Until they do so, the information is protected by Section 3295.

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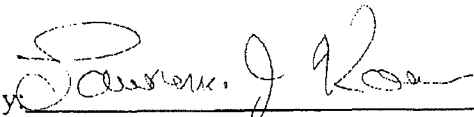
IV

CONCLUSION

For all of the foregoing reasons, plaintiffs' motion to compel Sturm, Ruger to produce responsive documents and further respond to the subject interrogatories should be denied.

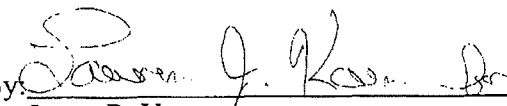
Respectfully submitted,

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DECLARATION OF SERVICE

In re Firearms Case

JCCP No. 4095

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

San Francisco Superior Court No. 303753

Los Angeles Superior Court No. BC210894

Los Angeles Superior Court No. BC214794

I, Geralynn D. Vidmar, declare:

1. I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action, and I am employed in the County of San Diego, State of California. My business address is Luce, Forward, Hamilton & Scripps LLP, 600 West Broadway, Suite 2600, San Diego, California 92101; telephone number (619) 236-1414; facsimile number (619) 645-5389.

2. On March 2, 2001, I served the following document(s):

**STURM, RUGER'S OPPOSITION TO PLAINTIFFS' *EX PARTE*
APPLICATION FOR ORDER COMPELLING PRODUCTION OF
DOCUMENTS AND RESPONSES TO INTERROGATORIES**

**NOTICE OF LODGMENT OF NON-CALIFORNIA AUTHORITY
IN SUPPORT OF STURM, RUGER'S OPPOSITION TO PLAINTIFFS'
EX PARTE APPLICATION FOR ORDER COMPELLING DISCOVERY**

by JusticeLink Electronic filing on all persons appearing on the Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 2, 2001 in San Diego, California.

Geralynn D. Vidmar

Geralynn D. Vidmar