

Civil Number A103211

In the Court of Appeal
of the State of California
FIRST APPELLATE DISTRICT
DIVISION ONE

Coordination Proceeding Special Title
(Rule 1550(b))

FIREARMS CASE

Including Actions:

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

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

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

Appeal From A Judgment of the Superior Court of the State of California,
County of San Diego, Judicial Council Coordination Proceeding No. 4095
Hon. Vincent P. DiFiglia, Judge

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MICHAEL J. ZOMCIK'S APPLICATION TO APPEAR AS COUNSEL *PRO HAC VICE*
FOR PHOENIX ARMS [RULE OF COURT 983]**

HAIGHT, BROWN & BONESTEEL, L.L.P.

Denis J. Moriarty (Bar No. 106064)

Eugenie Gifford Baumann (Bar No. 166680)

6080 Center Drive, Suite 800

Los Angeles, CA 90045-1574

Telephone: (310) 215-7100

Facsimile: (310) 215-7300

Attorneys for Phoenix Arms

I.

INTRODUCTION

This case involves claims against defendants/respondents concerning the manner in which firearms are designed, manufactured and distributed. Plaintiffs/petitioners contend the defendants' actions constitute unfair business practices and contribute to a public nuisance.

Phoenix Arms' local counsel are Denis Moriarty and Eugenie Gifford Baumann of Haight, Brown & Bonesteel, LLP. Phoenix Arms desires to have Michael J. Zomcik with the firm of Tarics & Branisa, P.C. admitted *pro hac vice* for the appeal. Mr. Zomcik's firm is Phoenix Arms' national counsel for firearms cases. Mr. Zomcik represented Phoenix Arms throughout the trial court proceedings of this case. He has been requested by Phoenix Arms to represent it on the appeal as well.

II.

MR. ZOMCIK SATISFIES THE REQUIREMENTS OF

RULE 983 OF THE CALIFORNIA RULES OF COURT

Mr. Zomcik satisfied all the requirements of Rule of Court 983. Rule 983 states in pertinent part:

A person who is not a member of the State Bar of California but who is a member in good standing of and eligible to practice before the bar of any United States court or of the highest court in any state, territory or insular possession of the United States, and who has been retained to appear in a particular cause pending in a court of this state, may in the discretion of such court be permitted upon written application to appear as counsel *pro hac vice*, provided that an active member of the State Bar of California is associated as attorney of record. No person is eligible to appear as counsel *pro hac vice* pursuant to this rule if (1) he is a resident of the State of California, or (2) he is regularly employed in the State of California, or (3) he is regularly engaged in substantial business, professional,

or other activities in the State of California. Absent special circumstances, repeated appearances by any person pursuant to this rule shall be a cause for denial of an application.

Mr. Zomcik is a resident of and practices law in Texas. He is an active member in good standing in the courts of Texas. In the past two years, Mr. Zomcik has not applied to appear as counsel *pro hac vice* in California. Mr. Zomcik's last *pro hac vice* application in California was in the trial court proceeding in this case, S.D. Superior Court No. JCCP 4095. That application was granted. Mr. Zomcik is not a resident of California, nor does he regularly engage in substantial business, professional or other activities in California. Mr. Zomcik meets all of the requirements of Rule 983.

Dated March 23, 2004

HAIGHT, BROWN & BONESTEEL, L.L.P.

By:

A handwritten signature in black ink, appearing to be "DM", written over a horizontal line.

Denis J. Moriarty
Eugenie Gifford Baumann
Attorneys for Phoenix Arms

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.:

A103211
Civil Number

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6080 Center Drive, Suite 800, Los Angeles, CA 90045-1574.

On March 23, 2004, I served on interested parties in said action the within:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MICHAEL J. ZOMCIK'S APPLICATION TO APPEAR AS COUNSEL *PRO HAC VICE*
FOR PHOENIX ARMS [RULE OF COURT 983]**

by placing a true copy thereof in sealed envelope(s) addressed as stated on the attached service list.

I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on March 23, 2004, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Ann Carpenter
(Type or print name)


(Signature)

MAILING LIST

1		
2		
3	Thomas Francis Casey	Michael S. Lawson
4	Office Of The County Counsel	Thompson, Lawson, LLP
5	400 County Center, 3rd Floor	1714 Franklin St., Ste. 350
6	Redwood City, CA 94063	Oakland, CA 94612
7	Alan Mayer Caplan	Lloyd William Pellman
8	Bushnell, Caplan & Fielding	Suite 648
9	221 Pine Street - Suite 600	500 West Temple St
10	San Francisco, CA 94104-2715	Los Angeles, CA 90012
11	Legrand Hardin Clegg	Manuela Albuquerque
12	2001 North Nestor	Office Of The City Attorney
13	Compton, CA 90222	2180 Milvia Street - 4th Floor
14		Berkeley, CA 94704
15	Richard Edward Winnie	William S. Lerach
16	Office of County Counsel	Milberg, Weiss, et al
17	1221 Oak Street - Suite 450	401 B. St., Suite 1700
18	Oakland, CA 94621	San Diego, CA 92101
19	Samuel Lloyd Jackson	Patrick J. Coughlin
20	Ofc City Attorney	Milberg Weiss Bershad Hynes & Lerach
21	980 9th St 10FL	100 Pine Street, Suite 2600
22	Sacramento, CA 95814	San Francisco, CA 94111
23	Rockard John Delgadillo	John Anthony Russo
24	Ofc City Attorney	Office of the Oakland City Attorney
25	200 N Main St 5th Fl.	One Frank H. Ogawa Pl., 6th Fl.
26	Los Angeles, CA 90012	Oakland, CA 94612
27	Robert J Nelson	Dennis Jose Herrera
28	Lieff, Cabraser, Heimann & Bernstein	Office of City Attorney
29	275 Battery Street, 30th Floor	City Hall - Room 234
30	San Francisco, CA 94111	San Francisco, CA 94102
31	Emmerline Foote	Charles Terrance McCue
32	Ofc City Attorney	2985 Reynard Way
33	1 Manchester Blvd #860	San Diego, CA 92103
34	Inglewood, CA 90301	
35	Susanne Nissen Caballero	Celia Elizabeth Francisco
36	Bingham McCutchen LLP	Office of the City Attorney
37	3 Embarcadero Ctr # 1800	205 S Willowbrook Ave
38	San Francisco, CA 94111	Compton, CA 90220
39	Carl Dawson	Craig Allen Livingston
40	Michel Trutanich & Michel LLP	Livingston Law Firm
41	407 North Harbor Boulevard	1600 South Main Street, Suite 380
42	San Pedro, CA 90731	Walnut Creek, CA 94596
43		

1 Jeff Gerard Harmeyer
McAtee Harmeyer LLP
2 401 W "A" St #1850
San Diego, CA 92101
3
4 Catherine A. Bledsoe
Gordon, Feinblatt et al.
233 East Redwood Street
5 Baltimore, MD 21202-3332
6 William M. Griffin, III
Jonann E. Coniglio
7 Friday Eldridge & Clark
2000 Regions Center
8 400 West Capitol
Little Rock, Arkansas 72201-3493
9
10 Friedrich Wolfgang Seitz
Murchison & Cumming
801 S Grand Ave 9th Fl
11 Los Angeles, CA 90017
12 Steven Allen Silver
83 E. Harrison Ave.
13 Porterville, CA 93257
14
15 Charles Coleman
Holland & Knight
50 California St., 28th Fl
16 San Francisco, CA 94111-4624
17 Frank Sandelmann
Gorry & Meyer LLP
18 2029 Century Park E #400
Los Angeles, CA 90067
19
20 Wayne Wolff
Sedgwick, Detert, Moran
One Embarcadero Center
21 16th Fl.,
San Francisco, CA 94111
22
23 Robert L. Joyce
Wilson, Elser et al.
3 Gannett Drive
24 White Plains, NY 10604
25 Jeffrey S. Nelson
Shook, Hardy & Bacon LLP
26 One Kansas City Place
1200 Main Street
27 Kansas City, MO 64114
28

Lawrence S. Greenwald
Gordon, Feinblatt et al.
233 East Redwood Street
Baltimore, MD 21202-3332

Office of Attorney General
455 Golden Gate Avenue - Suite 11000
San Francisco, CA 94102-7004

Mary Patricia Sullivan
Bowles & Verna
2121 N California Blvd #875
Walnut Creek, CA 94596

Robert Cressey Wright
Wright & L'Estrange
701 B St #1550
San Diego, CA 92101

John Anthony Gladych
Gladych & Associates
4400 MacArthur Boulevard, Suite 230
Newport Beach, CA 92660

Raymond Joseph Liddy
Selman Breitman LLP
402 W Broadway #400
San Diego, CA 92101

Susan Lauren Caldwell
Koletsy Mancini et al
3460 Wilshire Blvd 8th FL
Los Angeles, CA 90010

Robert Milton Anderson
Wilson Elser et al
1055 W 7th St #2700
Los Angeles, CA 90017

Edwin W Green
Allen Matkins Leck, et al.
555 S. Figueroa St., 7th Fl.
Los Angeles, CA 90071

Lawrence Jess Kouns
Luce Forward Hamilton et al
600 W Broadway #2600
San Diego, CA 92101

1 Judicial Council
 Carlotta Tillman
 2 Civil Case Coordination
 455 Golden Gate Ave., 6th Fl.
 3 San Francisco, CA 94102

4 Bradley T. Beckman
 Beckman & Associates
 5 Two Penn Center Plaza, Suite 910
 Philadelphia, PA 19102
 6

7 Robert C. Tarics
 Michael Branisa
 8 Michael J. Zomcik
 Tarics & Carrington
 9 5005 Riverway Drive, Suite 500
 Houston, TX 77056

10 C. D. Michel
 11 Trutanich – Michel
 Port of Los Angeles
 12 407 N. Harbor Blvd.
 San Pedro, CA 90731

13 Robert Wright
 14 Wright & L'Estrange
 701 B Street, Suite 1550
 15 San Diego, CA 92101-8103

16

17 John Russo
 Randolph W. Hall
 18 City Attorneys Office
 The Frank Ogawa Plaza, 6th Floor
 19 Oakland, CA 94612

20 D. Cameron Baker
 City and County of San Francisco
 21 One Dr. Carlton B. Goodlett Plaza
 San Francisco, CA 94102

22 Sayre Weaver
 23 Educational Fund to Stop Gun Violence
 1023 – 15th Street NW, Suite 600
 24 Washington, DC 20005

25 Clerk of the Court
 Supreme Court of California
 26 350 McAllister Street
 San Francisco, CA 94102-4783
 27
 28

Office of the District Attorney
 Appellate Division
 P.O. Box X-1011
 San Diego, CA 92112

John R. Renzulli
 John J. McCarthy
 Renzulli & Rutherford
 300 East 42nd Street
 New York, NY 10017

James P. Dorr
 James B. Vogts
 Wildman, Harrold, Allen & Dixon
 225 West Wacker Drive, Suite 3000
 Chicago, IL 60606-1229

Robert L. Joyce
 Wilson Elser Moskowitz
 150 East 42nd Street
 New York, NY 19917

Dennis S. Henigan
 Jonathan E. Lowy
 Brian J. Siebel
 Brady Center
 1225 Eye Street, NW, Suite 1100
 Washington, DC 20005

Richard S. Lewis
 Joseph M. Sellers
 Cohen Millstein Hausfeld
 1100 New York Ave., NW, Suite 500
 Washington, DC 20005-3964

David Kairys
 Law Offices of David Kairys
 1719 North Broad Street
 Philadelphia, PA 19122

Sayre Weaver
 Richards, Watson & Gershon
 P. O. Box 1059
 Brea, CA 92822-1059

Bill Lockyer
 Attorney General-State of California
 Department of Justice
 1300 I Street, 17th Floor
 Sacramento, CA 95814

1 Kamala Harris
San Francisco County District Attorney
2 Hall of Justice
330 W. Broadway
3 San Diego, CA 92101
4 Clerk of the Court
San Diego Superior Court
5 330 West Broadway
San Diego, CA 92101
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Bonnie M. Dumanis
San Diego County District Attorney
Hall of Justice
330 W. Broadway
San Diego, CA 92101