

1 Charles L. Coleman, III (CSB 65496)
2 Lauren M. Terk (CSB 136234)
3 HOLLAND & KNIGHT LLP
4 50 California Street, 28th Floor
5 San Francisco, California 94111
6 Telephone: (415) 743-6900
7 Facsimile (415) 743-6910

8 Attorneys for Defendant Heckler & Koch, Inc.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO

11 Coordination Proceeding
12 Special Title (Rule 1550 (b))

13 FIREARMS CASE

14 Including actions:

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

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

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

**DECLARATION OF LAUREN M. TERK
IN SUPPORT OF CERTAIN
DEFENDANTS' MOTION FOR AN
ORDER PRECLUDING EVIDENCE
THAT DEFENDANTS' ALLEGED
CONDUCT HAS CAUSED ACQUISITION
OF FIREARMS BY CRIMINALS AND
OTHER PROHIBITED PERSONS**

DATE: July 19, 2002
TIME: 8:30 a.m.
DEPT.: 65
TRIAL DATE: April 23, 2003

Hon. Vincent P. DiFiglia

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7/19/2002

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1 I, Lauren M. Terk, declare as follows:

2 1. I am an attorney, licensed to practice before all Courts of the State of California
3 and am one of the attorneys of record for Defendant Heckler & Koch, Inc. in the above captioned
4 matter.

5 2. I have personal knowledge of the matters set forth herein and would testify there to
6 if called upon to do so.

7 3. As an attorney of record for Heckler & Koch, Inc. in the above captioned matter I
8 have received and reviewed the discovery that has been issued in this matter and the responses and
9 documents produced in response thereto. Those documents include the documents Plaintiffs have
10 produced in purported compliance with the Court's Order of March 26, 2001 titled "Order
11 Compelling Plaintiffs to Disclose Facts and Documents Relating to the Acquisitional Firearms
12 recovered by Plaintiffs," which required Plaintiffs to produce documents in their possession which
13 reflect:

14 a. How criminals and others acquired the firearms manufactured and/or sold
15 by defendants and previously identified by plaintiffs; and

16 b. Whether the manner of acquisition has a factual nexus to defendants'
17 "alleged conduct."

18 4. In Plaintiffs' Complaints they allege that criminals and others who are not legally
19 permitted to acquire firearms do so through straw purchases, illegal sales by federally licensed
20 retail dealers, gun show sales, kitchen-table dealers and theft.

21 5. Plaintiffs' Complaints further allege that such acquisitions of Heckler & Koch
22 firearms by criminals and others who are not legally permitted to acquire them have occurred as a
23 result of Heckler & Koch, Inc.'s business practices.

24 6. Plaintiffs have admitted that they are not aware of any instance in which a retail
25 seller or distributor of firearms has acted as Heckler & Koch, Inc.'s agent in making the sale of a
26 Heckler & Koch firearm.

27 7. As more specifically set forth herein, based upon my review of the discovery in this
28 case Plaintiffs have not produced any evidence that tends to prove a nexus between Heckler &

1 Koch, Inc.'s sales and distribution or other business practices on the one hand, and any illegal sale
2 of a firearm or illegal acquisition of a firearm on the other hand.

3 8. The documents and factual evidence produced by Plaintiffs in alleged compliance
4 with the Court's Order of March 26, 2001 that identify Heckler & Koch firearms is described
5 below:

6 9. **City of Berkeley:**

7 Of behalf of the City of Berkeley, Plaintiffs have not identified any recovered Heckler &
8 Koch firearms in their property room database or produced incident reports involving Heckler &
9 Koch firearms. Plaintiffs have not produced any evidence showing that criminals and others who
10 are not legally permitted to acquire firearms have acquired Heckler & Koch firearms recovered in
11 the City of Berkeley through straw purchases, illegal sales by federally licensed retail dealers, gun
12 show sales, kitchen-table dealers or thefts. Nor have they produced any evidence of a factual
13 nexus between the acts, omissions or business practices of Heckler & Koch, Inc. and the manner
14 in which any firearm recovered in the City of Berkeley has been acquired.

15 10. **City of East Palo Alto:**

16 On behalf of the City of East Palo Alto, Plaintiffs have not identified any recovered
17 Heckler & Koch firearms in their property room database or produced incident reports involving
18 Heckler & Koch firearms. Plaintiffs have not produced any evidence showing that criminals and
19 others who are not legally permitted to acquire firearms have acquired Heckler & Koch firearms
20 recovered in the City of East Palo Alto through straw purchases, illegal sales by federally licensed
21 retail dealers, gun show sales, kitchen-table dealers or thefts. Nor have they produced any
22 evidence of a factual nexus between the acts, omissions or business practices of Heckler & Koch,
23 Inc. and the manner in which any firearm recovered in East Palo Alto has been acquired.

24 11. **City of West Hollywood:**

25 On behalf of the City of West Hollywood, Plaintiffs have not identified any recovered
26 Heckler & Koch firearms in their property room database or produced incident reports involving
27 Heckler & Koch firearms. Plaintiffs have not produced any evidence showing that criminals and
28 others who are not legally permitted to acquire firearms have acquired Heckler & Koch firearms

1 recovered in the City of West Hollywood through straw purchases, illegal sales by federally
2 licensed retail dealers, gun show sales, kitchen-table dealers or thefts. Nor have they produced
3 any evidence of a factual nexus between the acts, omissions or business practices of Heckler &
4 Koch, Inc. and the manner in which any firearm recovered in West Hollywood has been acquired.

5 **12. Alameda County:**

6 On behalf of the County of Alameda, Plaintiffs have produced documents that appear to be
7 Alameda County Sheriffs' Department incident reports that reflect the recovery of two (2)
8 Heckler & Koch firearms by the County of Alameda from 1996 – 1999. Prior to this production,
9 Plaintiffs produced an Alameda County property room database that identified two (2) Heckler &
10 Koch firearms by serial number and report date only.

11 A comprehensive and detailed review of the documents Plaintiffs produced under the
12 Court's Order of March 26, 2002 reveals the following acquisitional evidence as to identified
13 Heckler & Koch firearms:

14 Straw purchases	None
15 Illegal sales by federally licensed dealers	None
16 Gun show sales	None
17 Licensed kitchen table dealer sales	None
18 Theft	None

19
20 Plaintiffs have not produced any evidence showing that criminals and others who are not
21 legally permitted to acquire firearms have acquired Heckler & Koch firearms recovered in the
22 County of Alameda through straw purchases, illegal sales by federally licensed retail dealers, gun
23 show sales, kitchen-table dealers or thefts. Nor have they produced any evidence of a factual
24 nexus between the acts, omissions or business practices of Heckler & Koch, Inc. and the manner
25 in which any firearm recovered in County of Alameda has been acquired.

26 **13. City of San Francisco:**

27 On behalf of the City of San Francisco, Plaintiffs have produced documents that appear to
28 be one (1) Medical Examiner's Report and one (1) San Francisco Police Department incident

1 report that collectively reflect the recovery of two (2) Heckler & Koch firearms by the City of
2 San Francisco from 1996 to 1999. Prior to this production, Plaintiffs produced a San Francisco
3 property room database that identified an additional of forty-two (42) Heckler & Koch firearm by
4 serial number only.

5 A comprehensive and detailed review of the documents Plaintiffs produced under the
6 Court's Order of March 26, 2002 reveals the following acquisitional evidence as to identified
7 Heckler & Koch firearms:

8 Straw purchases	None
9 Illegal sales by federally licensed dealers	None
10 Gun show sales	None
11 Licensed kitchen table dealer sales	None
12 Theft	One (1)

13
14 Theft: There is evidence in the documents produced that one (1) identified Heckler &
15 Koch firearm had been reported stolen to the Concord Police Department prior to recovery by the
16 San Francisco Police Department. (SFC 04217-4233) There is no information in the documents
17 produced by Plaintiffs that suggests any act, omission or business practice of Heckler & Koch,
18 Inc. had any causal relationship to the theft of that firearm.

19 With the exception of that one incident Plaintiffs have not produced any evidence showing
20 that criminals and others who are not legally permitted to acquire firearms have acquired
21 Heckler & Koch firearms recovered in the City of San Francisco through straw purchases, illegal
22 sales by federally licensed retail dealers, gun show sales, kitchen-table dealers or thefts. Nor have
23 they produced any evidence of a factual nexus between the acts, omissions or business practices of
24 Heckler & Koch, Inc. and the manner in which any firearm recovered in San Francisco has been
25 acquired.

26 **14. City of Sacramento:**

27 On behalf of the City of Sacramento. Plaintiffs have produced documents that appear to be
28 Sacramento Police Department incident reports that reflect the recovery of nineteen (19)

1 Heckler & Koch firearms (one of which was used by a law enforcement officer in a justifiable on-
2 duty homicide) and one (1) Benelli firearm by the City of Sacramento from 1996 to 1999. Prior to
3 this production, Plaintiffs produced a Sacramento property room database that identified fourteen
4 (14) additional Heckler & Koch firearms by serial number and date only.

5 A comprehensive and detailed review of the documents Plaintiffs produced under the
6 Court's Order of March 26, 2002 reveals the following acquisitional evidence as to identified
7 Heckler & Koch firearms:

8 Straw purchases	None
9 Illegal sales by federally licensed dealers	None
10 Gun show sales	None
11 Licensed kitchen table dealer sales	None
12 Theft	Five (5)

13
14 Theft: There is evidence in the documents produced that five (5) identified Heckler &
15 Koch firearm had been stolen prior to recovery by the Sacramento Police Department. Prior to its
16 recovery the first firearm had been reported to the Sutter County Sheriffs Department as having
17 been stolen from a residence. The same firearm had been previously been reported to the
18 Sacramento Police Department as stolen under similar circumstance, recovered and returned to the
19 owner. (SAC0008310-8333; the first theft was not reflected in the evidence room log produced by
20 Plaintiffs although it apparently occurred in 1995.) The second firearm had been report stolen to
21 the Roseville Police Department prior to its recovery. (SAC0019791-19807) The third firearm
22 had been report stolen to the Reno, Nevada Police Department prior to its recovery.
23 (SAC0024715-24724) There is no indication as to how the fourth firearm was stolen.
24 (SAC0026111-26116) The fifth firearm had been reported stolen to the Woodland Police
25 Department, prior to its recovery. (SAC0005311-5329) There is no information in the documents
26 produced by Plaintiffs that suggests any act, omission or business practice of Heckler & Koch,
27 Inc. had any causal relationship to the theft of those firearms.

28 ///

1 With the exception of those five (5) incidents, Plaintiffs have not produced any evidence
2 showing that criminals and others who are not legally permitted to acquire firearms have acquired
3 Heckler & Koch firearms recovered in the City of Sacramento through straw purchases, illegal
4 sales by federally licensed retail dealers, gun show sales, kitchen-table dealers or thefts. Nor have
5 they produced any evidence of a factual nexus between the acts, omissions or business practices of
6 Heckler & Koch, Inc. and the manner in which any firearm recovered in Sacramento has been
7 acquired.

8 **15. City of Oakland:**

9 On behalf of the City of Oakland, Plaintiffs have produced documents that appear to be
10 Oakland Police Department crime reports that reflect the recovery of ten (10) Heckler & Koch
11 firearms by the City of Oakland from 1996 to 1999. Prior to this production, Plaintiffs produced
12 an Oakland property room database that identified an additional seventeen (17) Heckler & Koch
13 firearms by serial number and date only.

14 A comprehensive and detailed review of the documents Plaintiffs produced under the
15 Court's Order of March 26, 2002 reveals the following acquisitional evidence as to identified
16 Heckler & Koch firearms:

17 Straw purchases	None
18 Illegal sales by federally licensed dealers	None
19 Gun show sales	None
20 Licensed kitchen table dealer sales	None
21 Theft	Two (2)

22
23 Theft: There is evidence in the documents produced that two (2) identified Heckler &
24 Koch firearm had been stolen prior to recovery by the Oakland Police Department. No details
25 were provided regarding the theft of the first firearm. (OAK030424-030438) The second firearm
26 was reported by suspect #1 as having been stolen from drug dealers by neighborhood kids who in
27 turn sold the firearm to suspect #2. (OAK035241-035258) There is no information in the
28 documents produced by Plaintiffs that suggests any act, omission or business practice of

1 Heckler & Koch, Inc. had any causal relationship to the theft of those firearms.

2 With the exception of those two (2) incidents, Plaintiffs have not produced any evidence
3 showing that criminals and others who are not legally permitted to acquire firearms have acquired
4 Heckler & Koch firearms recovered in the City of Oakland through straw purchases, illegal sales
5 by federally licensed retail dealers, gun show sales, kitchen-table dealers or thefts. Nor have they
6 produced any evidence of a factual nexus between the acts, omissions or business practices of
7 Heckler & Koch, Inc. and the manner in which any firearm recovered in Oakland has been
8 acquired.

9 16. **City of Inglewood:**

10 On behalf of the City of Inglewood, Plaintiffs have produced documents that appear to be
11 Inglewood Police Department crime reports that reflect the recovery of one (1) Heckler & Koch
12 firearm by the City of Inglewood from 1996 to 1999. Prior to this production, Plaintiffs produced
13 an Inglewood property room database that identified an additional two (2) Heckler & Koch
14 firearms by serial number and date only.

15 A comprehensive and detailed review of the documents Plaintiffs produced under the
16 Court's Order of March 26, 2002 reveals the following acquisitional evidence as to identified
17 Heckler & Koch firearms:

18 Straw purchases	None
19 Illegal sales by federally licensed dealers	None
20 Gun show sales	None
21 Licensed kitchen table dealer sales	None
22 Theft	None

23
24 Plaintiffs have not produced any evidence showing that criminals and others who are not
25 legally permitted to acquire firearms have acquired Heckler & Koch firearms recovered in the City
26 of Inglewood through straw purchases, illegal sales by federally licensed retail dealers, gun show
27 sales, kitchen-table dealers or thefts. Nor have they produced any evidence of a factual nexus
28 between the acts, omissions or business practices of Heckler & Koch, Inc. and the manner in

1 which any firearm recovered in Inglewood has been acquired.

2 17. **City of Compton:**

3 On behalf of the City of Compton, Plaintiffs have produced documents that appear to be
4 Compton Police Department crime reports that reflect the recovery of three (3) Heckler & Koch
5 by the City of Compton from 1996 to 1999. Prior to this production, Plaintiffs produced an
6 Compton property room database that identified an additional four (4) Heckler & Koch firearms
7 by serial number and date only.

8 A comprehensive and detailed review of the documents Plaintiffs produced under the
9 Court's Order of March 26, 2002 reveals the following acquisitional evidence as to identified
10 Heckler & Koch firearms:

11 Straw purchases	None
12 Illegal sales by federally licensed dealers	None
13 Gun show sales	None
14 Licensed kitchen table dealer sales	None
15 Theft	One (1)

16
17 **Theft:** There is evidence in the documents produced that one (1) identified Heckler &
18 Koch firearm had been stolen prior to recovery by the Compton Police Department. It was
19 returned to its owner by the Compton Police Department. (COMP000040-42) There is no
20 information in the documents produced by Plaintiffs that suggests any act, omission or business
21 practice of Heckler & Koch, Inc. had any causal relationship to the theft of that firearm.

22 With the exception of that one (1) incident, Plaintiffs have not produced any evidence
23 showing that criminals and others who are not legally permitted to acquire, firearms have acquired
24 Heckler & Koch firearms recovered in the City of Compton through straw purchases, illegal sales
25 by federally licensed retail dealers, gun show sales, kitchen-table dealers or thefts. Nor have they
26 produced any evidence of a factual nexus between the acts, omissions or business practices of
27 Heckler & Koch Inc. and the manner in which any firearm recovered in Compton has been
28 acquired.

1 18. **County of Los Angeles:**

2 On behalf of the County of Los Angeles, Plaintiffs have produced documents that appear
3 to be Los Angeles County Sheriffs Department crime reports that reflect the recovery of six (6)
4 Heckler & Koch firearms by the County of Los Angeles from 1996 to 1999, and records
5 concerning case number SA98-320M in the United States District Court of the Central District of
6 California which reflect the recovery of one used and modified Heckler & Koch firearm.
7 (SFC0024640-24994) Prior to this production, Plaintiffs produced a County of Los Angeles
8 property room database that identified an additional eighty (80) Heckler & Koch firearms by serial
9 number and date only.

10 A comprehensive and detailed review of the documents Plaintiffs produced under the
11 Court's Order of March 26, 2002 reveals the following acquisitional evidence as to identified
12 Heckler & Koch firearms:

13

Straw purchases	None
Illegal sales by federally licensed dealers	One (1)
Gun show sales	
Licensed kitchen table dealer sales	None
Theft	None

18

19 Illegal sale by a federally licensed dealer. initiated at a gun show: There is evidence in the
20 documents produced that one (1) identified Heckler & Koch firearm was illegally sold by a dealer
21 with a Federal firearms license. In that instance, as part of an ongoing undercover investigation,
22 an undercover agent approached representatives of firearms dealer Verde Firearms at a gun show
23 in Pomona, California. A representative of Verde Firearms of Covina, California showed the
24 agent a modified (from semi-automatic to fully automatic), used Heckler & Koch firearm. At the
25 request of the undercover agent the sale was consummated several days later at the Verde
26 Firearms store. (SFC0024640-24994) No evidence has been produced which indicates Heckler &
27 Koch, Inc. was made aware of the investigation by law enforcement at any time. Heckler & Koch,
28 Inc. has produced documents that show it stopped doing business with the dealer three months

1 before the illegal sale of the used, modified firearm. Plaintiffs have produced no evidence
2 showing a nexus between the acts, omissions or business practices of Heckler & Koch, Inc. and
3 the unlawful sale of the firearm by the former dealer.

4 With that one (1) exception, which involved a used and modified firearm, Plaintiffs have
5 not produced any evidence showing that criminals and others who are not legally permitted to
6 acquire firearms have acquired Heckler & Koch firearms recovered in the County of Los Angeles
7 through straw purchases, illegal sales by federally licensed retail dealers, gun show sales, kitchen-
8 table dealers or thefts. Nor have they produced any evidence of a factual nexus between the acts,
9 omissions or business practices of Heckler & Koch, Inc. and the manner in which any firearm
10 recovered in the County of Los Angeles has been acquired.

11 **19. City of Los Angeles:**

12 On behalf of the City of Los Angeles, Plaintiffs have produced documents that appear to
13 be Los Angeles Police Department crime reports that reflect the recovery of one (1) Heckler &
14 Koch firearm by the City of Los Angeles from 1996 to 1999. Prior to this production, Plaintiffs
15 produced a City of Los Angeles property room database that identified an additional one hundred
16 and twenty-eight (128) Heckler & Koch firearms by serial number and date only.

17 A comprehensive and detailed review of the documents Plaintiffs produced under the
18 Court's Order of March 26, 2002 reveals the following acquisitional evidence as to identified
19 Heckler & Koch firearms:

20 Straw purchases	None
21 Illegal sales by federally licensed dealers	None
22 Gun show sales	None
23 Licensed kitchen table dealer sales	None
24 Theft	None

25
26 Plaintiffs have not produced any evidence showing that criminals and others who are not
27 legally permitted to acquire firearms have acquired Heckler & Koch firearms recovered in the City
28 of Los Angeles through straw purchases, illegal sales by federally licensed retail dealers, gun

1 show sales, kitchen-table dealers or thefts. Nor have they produced any evidence of a factual
2 nexus between the acts, omissions or business practices of Heckler & Koch, Inc. and the manner
3 in which any firearm recovered in the City of Los Angeles has been acquired.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed June 23, 2002 at San Francisco, California.

6 Lauren M. Terk
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