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ORIGINAL FILED

SEP 17 1999

**LOS ANGELES
SUPERIOR COURT**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. the County of Los
Angeles, COUNTY OF LOS ANGELES, on
behalf of itself and the general public, and
GLORIA MOLINA, ZEV YAROSLAVSKY
and YVONNE BRATHWAITE BURKE,
SUPERVISORS OF LOS ANGELES
COUNTY, on behalf of the general public,

Plaintiffs,

v.

ARCADIA MACHINE & TOOL, BRYCO
ARMS, DAVIS INDUSTRIES, LORCIN
ENGINEERING CO., INC., PHOENIX
ARMS, SUNDANCE INDUSTRIES, INC.,
EXCEL INDUSTRIES, INC., ACCU-TEK
FIREARMS, BERETTA U.S.A., CORP.,
PIETRO BERETTA S.p.A., BROWNING
ARMS CO., CARL WALTHER GmbH,
CHARTER ARMS, INC., COLTS
MANUFACTURING CO., INC., FORJAS
TAURUS, S.A., GLOCK, INC., GLOCK
GmbH, H&R 1871, INC., HECKLER &
KOCH, INC., MKS SUPPLY, INC., HI-
POINT FIREARMS, KEL-TEC CNC
INDUSTRIES A/K/A/ NORINCO,
NAVEGAR, INC. D/B/A/ INTRATEC
U.S.A., INC., NORTH AMERICAN ARMS,
INC., SIGARMS, INC., SMITH & WESSON
CORP., STURM, RUGER & COMPANY,
INC., S.W. DANIEL, INC., A/K/A/
COBRAY FIREARMS, INC., TAURUS
INTERNATIONAL MANUFACTURING,
INC., AMERICAN SHOOTING SPORTS
COUNCIL, INC., NATIONAL SHOOTING

CASE NO. BC 214794

**DECLARATION OF DAVID R.
ONGARO IN SUPPORT OF
MOTION FOR PERMISSION TO
FILE PETITION FOR COORDINATION**

(Cal. Civil Proc. §404 and
Cal. Rules Of Ct. 1520(b))

CASE FILED AUGUST 6, 1999

Date October 4, 1999

Time 8:30 a.m.

Dept: 1

Trial Date: None Set

SPORTS FOUNDATION, INC., SPORTING)
ARMS AND AMMUNITION)
MANUFACTURERS' INSTITUTE, INC.,)
B.L. JENNINGS, INC., ELLETT)
BROTHERS, INTERNATIONAL)
ARMAMENT CORP., D/B/A INTERARMS)
INDUSTRIES, INC., RSR WHOLESALE)
GUNS INC., SOUTHERN OHIO GUNS)
DISTRIBUTORS, B&B GROUP, INC., B&)
B & B GUNS, ANDREWS SPORTING)
GOODS, INC., NATIONAL GUN SALES,)
INC., S.G. DISTRIBUTING, INC.,)
HAWTHORNE DISTRIBUTORS, INC., and)
DOES 1-300,)

Defendants.)

I, David R. Ongaro, do declare and say as follows:

1. I am an associate in the firm of Schnader Harrison Segal & Lewis LLP, attorneys of record for defendant Beretta U.S.A. Corp. I have personal knowledge of the facts stated herein and would competently testify to such facts if called upon to do so. As to those matters stated on information and belief, I am informed and believe them to be true.

2. Beretta requests that the above-captioned action be coordinated with *The People of the State of California, by and through San Francisco City Attorney Louise H. Renne, et al. v. Arcadia Machine & Tool, et al.*, San Francisco Superior Court Case No. 303753. True and correct copies of the San Francisco first amended complaint and the instant complaint are attached as Exhibits A and B, respectively. Forty-four defendants named in the San Francisco action have also been named in the Los Angeles action. I am further informed and believe that not all defendants have been served in either this case or the San Francisco case.

3. I know of one other case filed in a court of this State, which has since been removed to federal court, sharing common questions of fact or law with the included actions. This case was filed as *The People of the State of California, et al. v. Arcadia Machine & Tool, et al.*, Los Angeles County Superior Court Case No. BC210894. A true and correct of this complaint is attached hereto as Exhibit C. This case is now pending in the Central District of California, (Case No. 99 08411-RSWL (AIJ)). There is currently a motion to remand to state court pending before that court.

4. The following facts demonstrate that the actions are “complex” as defined by Section 19 of the Standards of Judicial Administration. Both actions are certain to require specialized management to avoid placing unnecessary burdens on the court and the litigants. I am informed and believe both cases are certain to entail extensive pretrial activity and expect numerous demurrers and summary judgment motions. Further, defendants will test plaintiff’s theory that the lawful sale of firearms constitutes an unlawful business practice under California’s Business and Professions Code. I expect the trial of a single case to entail at least three (3) months or more of trial time. The plaintiffs seek injunctive relief, which, if thus succeed would require continuing court supervision over defendant’s sale of firearms to the public. Plaintiffs’ suit involves special categories of defendants that I expect will be segregated into manufacturers, distributors and retailers. I expect that each category of defendants will, in turn, break down into sub-categories and each will have specific legal and factual issues. Finally, these cases are both brought under private attorney general statutes on behalf of the People of the State of California and “general public” which raise unique procedural issues.

5. The following allegations show that each action meets the coordination standards specified in California Code of Civil Procedure Section 404.1.

a. Common Questions Of Fact And Law

The allegations in each complaint are virtually identical. Both cases are brought by the People of the State of California and by the “general public” through various city attorneys and mayors. Both cases are brought against firearm manufacturers, firearm distributors, and firearm industry trade associations. The same forty-four defendants are named in each action. Both lawsuits allege that the defendants have violated California Business & Professions Code §§ 17200 et seq. and §§ 17500, for unlawful, unfair or fraudulent business practices. Both lawsuits allege that the defendants have created a public nuisance.

Both complaints include the following identical allegations of fact:

- (1) defendants market, distribute, promote and design handguns in a manner that facilities use in crime;
- (2) that defendants failed to incorporate reasonable safety features;

- 1 (3) that defendants unjustly enriched themselves and shifted the true cost of their
2 products to victims of gun violence and the taxpayers;
- 3 (4) that these actions have been brought to “reduce the endless succession of hand gun-
4 related tragedies,” abate a public nuisance, enjoin unlawful and unfair business
5 practices, obtain disgorgement of “wrongfully-obtained” monies and impose civil
6 penalties;
- 7 (5) that defendants created and promoted an illegitimate secondary market for guns and
8 incorporate an identical quote from a former Smith & Wesson vice president;
- 9 (6) that defendants have not taken reasonable steps to keep firearms out of the hands of
10 minors;
- 11 (7) that defendants market their products to appeal to minors;
- 12 (8) that defendants’ marketing and distribution policies and practices facilitate,
13 promote, and yield high volume sales, wide-spread availability and easy access to
14 firearms without concern for the foreseeable consequences;
- 15 (9) that defendants knew or should have known that their conduct would encourage
16 their products to fall into an illegal market and be used by unauthorized persons;
- 17 (10) that defendants’ “unlawful, unfair or fraudulent business practices” include over-
18 saturation of the legitimate gun market;
- 19 (11) that defendants’ “unlawful, unfair or fraudulent business practices” include over-
20 saturation in weak gun control jurisdictions;
- 21 (12) that defendants’ “unlawful, unfair or fraudulent business practices” include
22 distributing handguns without exercising adequate control or by facilitating “straw
23 purchases” and multiple sales of handguns;
- 24 (13) that defendants’ “unlawful, unfair or fraudulent business practices” include allowing
25 sales to “kitchen table” dealers;
- 26 (14) that defendants’ “unlawful, unfair or fraudulent business practices” include
27 designing weapons without features to discourage unauthorized use;
- 28 (15) that defendants designed guns to appeal to criminals and have increased production

of guns that are popular with criminals (e.g., 9 millimeter handguns);

(16) that defendants have undermined or avoided local, state and federal gun control laws;

(17) that defendants' guns are defective because they "lack basic safety features" and contain "inadequate warnings" that results in unintentional shootings;

(18) that defendants failed to put "personalized safety technology" on guns to prevent access by unauthorized users and failed to "compete to develop firearms with personalized safety technology";

(19) that the trade association defendants discouraged development of such safety features;

(20) that defendants misled, deceived, and confused the general public in California regarding safety of handguns and the need for them in the home;

(21) that "to increase sales and profits, defendants have falsely and deceptively claimed through advertising and promotion of their handguns that the ownership and possession of handguns in the home increases one's security";

(22) both complaints contain identical examples of slogans that plaintiffs claim evidence defendants' "over-promotional efforts [that] have negated and undercut any warnings they have provided...";

(23) both complaints quote identical statistics regarding the risk of having a gun in the home;

(24) that defendants' advertisements and promotions "fail to correct immaterial misrepresentation in the minds of many consumers" by failing to disclose the risks of owning a hand gun;

(25) that defendants have profited from their "unfair, unlawful or fraudulent business practices at the expenses of California and its residents";

(26) that defendants have distributed, promoted, advertised, sold, and marketed firearms using practices that encourage sales to unauthorized users, including minors and convicted criminals;

- 1 (27) that defendant manufacturers and distributors sell their firearms without adequately
2 screening, supervising, monitoring or regulating their employees, distributors and
3 dealers;
- 4 (28) that defendant manufacturers and distributors sell their firearms without adequately
5 training, instructing, advising, or setting standards for distributors and/or dealers of
6 firearms regarding how to legally and responsibly sell firearms;
- 7 (29) that defendant manufacturers and distributors continue to make sales to distributors
8 and/or dealers even though they should have known that such distributors and/or
9 dealers have distributed firearms to illegal purchasers, and/or the illegitimate
10 secondary market;
- 11 (30) that all defendants knew or should have known that their distribution practices were
12 unreasonably unsafe, but failed to change their practices to curb the flow of firearms
13 to the illegitimate secondary market;
- 14 (31) that defendants knew or should have known that by distributing firearms without
15 adequate self-supervision and regulation, they were creating, maintaining, or
16 supplying the illegitimate secondary market in firearms;
- 17 (32) that defendants failed to conduct research, or review existing research, which would
18 allow them to monitor and control distribution of firearms and help to prevent the
19 creation of an illegitimate secondary market;
- 20 (33) that defendants caused, permitted and allowed their hazardous firearms to be
21 promoted, marketed, distributed and disseminated to unauthorized persons,
22 including convicted criminals and minors, and failed or refused to take reasonable
23 steps to ensure that their firearms were not acquired by unauthorized persons;
- 24 (34) that defendant manufacturers and distributors adopted distribution policies that
25 allow and encourage distributors and dealers to make sales to likely "straw
26 purchasers," including sales in large numbers of firearms in single transactions;
- 27 (35) that certain defendants adopted distribution policies that allow sales to dealers who
28 do not maintain a retail place of business;

- 1 (36) that defendant manufacturers and distributors distributed firearms to dealers
2 without requiring them to ensure that purchasers' identification, documentation,
3 and/or addresses are accurate;
- 4 (37) that defendants do not monitor tracing data from the Bureau of Alcohol & Firearms
5 to discover and prevent trafficking;
- 6 (38) that defendant manufacturers have designed and sold firearms without incorporating
7 feasible safety features and personalized gun technology to prevent unintentional
8 shootings and have discouraged the development of such features;
- 9 (39) that defendant manufacturers have designed and sold firearms without incorporating
10 feasible technology to prevent persons from unlawfully obliterating serial numbers;
- 11 (40) that all defendants sell their firearms without adequate warnings and/or instructions
12 regarding the storage or use of their firearms;
- 13 (41) that all defendants have over-promoted the purported self-defense and home
14 protection benefits of their guns in a manner that negates or undercuts any warnings
15 or instructions regarding the safe storage and use of guns;

16 As can be seen by a quick review of the complaints, these actions not only contain common
17 questions of fact in law, they are virtually identical.

18 6. I am informed and believe that one judge hearing both actions will promote the ends
19 of justice because the factors listed in Code of Civil Procedure § 404.1 weigh heavily in favor of
20 coordination. I further believe that (1) it will prevent duplicative discovery and multiple hearings
21 on the same issues; (2) that the relative development of the actions and the work product of
22 counsel are the same in both cases; (3) that coordination will increase the efficient utilization of
23 judicial facilities and manpower; (4) that one court will be able to hear both cases; (5) that this will
24 also benefit the calendar of both courts; (6) that coordination will also prevent duplicative and
25 inconsistent rulings, orders and judgments; and (7) that because of the allegations and relief sought
26 by plaintiffs there is absolutely no likelihood that coordination would hinder settlement of these
27 actions.

28 I declare under penalty of perjury under the laws of the State of California that the

1 foregoing is true and correct.

2 Executed this 16 day of September, 1999 at San Francisco, California.

3
4 By: 

DAVID R. ONGARO

Attorneys for Defendant

BERETTA U.S.A. CORP.