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Attorneys for COUNTY OF ALAMEDA

RECORDED
FILED
ALAMEDA COUNTY
SEP 8 8 2007
CLERK OF THE SUPERIOR COURT
By Amy Young, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
JUVENILE COURT

In the Matter of:

PEOPLE OF THE STATE OF
CALIFORNIA, ET AL. V. ARCADIA
MACHINE & TOOL, ET AL.

Case No.

PETITION AND PROPOSED
SPECIAL ORDER BY COUNTY OF
ALAMEDA FOR DISCLOSURE OF
REDACTED JUVENILE RECORDS
UNDER WELFARE AND
INSTITUTIONS CODE SECTION
827.9 AND CALIFORNIA RULE OF
COURT SECTION 1423(g);
DECLARATION OF ROSEMARIE
KWIATKOWSKI IN SUPPORT
THEREOF

THE COUNTY OF ALAMEDA (hereinafter "County") hereby petitions the Juvenile Court under California Welfare and Institutions Code ("W&IC") § 827.9(c) and California Rule of Court ("CRC") § 1423(g) for a special order authorizing the County to release, in redacted form, twenty-six Alameda County Sheriff ("Sheriff") juvenile incident records that have been determined relevant in the matter of People of the State of California, et al. v. Arcadia Machine & Tool, et al., San Francisco Superior Court Case No. 303753, Judicial Council Coordination Proceeding No. 4095 (the "Litigation"). This lawsuit was brought by the County. The records are maintained and held by the Sheriff and have been specifically requested in

9/20/0002

PETITION AND PROPOSED SPECIAL ORDER FOR DISCLOSURE OF JUVENILE RECORDS

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1 discovery by the defendants in the Litigation. The County contends that the interests of the
2 Litigation and public weigh in favor of releasing these redacted records.

3 I.

4 BACKGROUND OF THE LITIGATION

5 In August 1999, the County of Los Angeles filed a lawsuit in the Los Angeles County
6 Superior Court against approximately forty firearms manufacturers, distributors and dealers (the
7 "Industry") for unfair and deceptive business practices under California Business and Professions
8 Code ("B&P") § 17200 and § 17500, and for creating a public nuisance. The lawsuit was
9 brought on behalf of the people of the State of California and addresses the harm to the public,
10 and juveniles in particular, that results from the Industry's design, marketing and distribution of
11 firearms. It seeks injunctive relief and civil penalties against the Industry.

12 On or about the same time, two separate but substantially similar lawsuits were filed
13 against the Industry, one by the City of Los Angeles in the Los Angeles County Superior Court
14 (BC 210894), the other by the City of San Francisco in the San Francisco Superior Court (No.
15 303753)¹. The County of Alameda joined as a plaintiff in the San Francisco Complaint.

16 In February, 2000, the Judicial Council of California coordinated the three cases
17 (Coordination Proceeding No. 4095) and transferred them to the San Diego Superior Court. The
18 cases are now assigned to the Honorable Vincent P. DiFiglia in Department 65 of the San Diego
19 Superior Court ("Trial Court"). The instant petition concerns only the County lawsuit.

20 The County alleges two broad areas of wrongdoing by the Industry and covers the years
21 1996 through 1999.

22 The first area relates to firearm design. The County asserts that the Industry fails to
23 incorporate reasonable and technologically available safety features into their firearms. These
24 features would make firearms safer, child-resistant, and inaccessible to unauthorized users.
25 Because of this design failure, firearms are frequently used by children and criminals, resulting in
26 thousands of firearm-related accidents, suicides and homicides in the County. Annually, the

27 _____
28 ¹ The Cities of Sacramento, Berkeley, Oakland, and East Palo Alto, and the Counties of Alameda and San Mateo were joined in the City of San Francisco's complaint.

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County expends millions of the taxpayer dollars investigating and responding to these social harms.

The second area of wrongdoing concerns the marketing and distribution of firearms. The County contends that the Industry engages in illicit marketing and distribution practices which promote an illegal secondary market for firearms. This illegal market provides juveniles and criminals ready access to firearms.

Supporting these contentions are at least fifteen allegations in the Complaint pertaining directly to juveniles.²

II.

DISCOVERY IN THE LITIGATION

In the course of discovery, the defendants propounded requests for all criminal incident records held by the Sheriff for the years 1996 through 1999 involving the use of a firearm. The County objected on the grounds of relevance and burden, but the Trial Court denied the County's objection.³

III.

THE JUVENILE RECORDS

Among the criminal incident records involving firearms, twenty-six records involved juveniles. Because of the confidential nature of these records, as set forth W&IC § 827, et seq., the County withheld the records and did not produce them to the defendants.⁴ As a result, the defendants filed a motion to compel, seeking a Trial Court order forcing the County to produce all juvenile records in unredacted form. The motion was denied, but the Trial Court ordered the

² See Exhibit "1", Complaint, ¶¶ 20, 21, 57, and 60-64..

³ The County argued that producing this number of documents was overly burdensome since the records were irrelevant to the County's case. The County did not intend to prove its case on an incident by incident basis. Rather, it would prove Industry wrongdoing using experts and Industry documents. Nonetheless, the Trial Court granted the motion stating the defendants had a right to see the firearm-related incident records.

⁴ See the list of withheld incident records, attached as Exhibit 2 to the Declaration.

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parties to "cooperate and facilitate appropriate Juvenile Court review and consideration of release of juvenile records in plaintiff's possession..."⁵

IV.

BASIS FOR THE INSTANT PETITION

W&IC § 827.9 governs the disclosure requirements for juvenile records gathered by law enforcement agencies in Alameda County. The purpose of the statute is to clarify who can receive complete and/or redacted juvenile police records, and what procedures must be followed to obtain the records. See W&IC § 827.9(a). In general, confidentiality of juvenile records is necessary to "protect those persons [juveniles] from being denied various opportunities, to further rehabilitative efforts of the juvenile justice system, and to prevent the lifelong stigma that results from having a juvenile police record." *Id.* However, the statute specifically recognizes that under certain circumstances, juvenile police records should be released. *Id.*

The W&IC grants the Juvenile Court discretion to permit release of these records to a petitioning party after balancing the interest of the subject juveniles, the petitioner, and the public. See W&IC § 827.9(e) and (f). The Juvenile Court may limit the release of information contained in a record by requiring redaction. W&IC § 827.9(f)(2). Typically, prior to the release of a record, notice and an opportunity to file an objection should be provided to the juvenile, his or her parents, and other interested individuals. See W&IC § 827.9(f)(3).

With respect to pending litigation, CRC § 1423(b) authorizes the Juvenile Court to allow discovery of juvenile records if it is likely that the records will disclose relevant information in the litigation.

These various provisions support the instant petition.

The Trial Court has made the determination that the juvenile records at issue are relevant to the Litigation. Because of the volume of the records, the County seeks a special order to allow it to produce fully redacted records without notice. As a practical matter, this type of order is the only viable alternative for the County to comply with the Trial Court's mandate. All identifying information in the records of juveniles and other individuals will be redacted, as described in the

⁵ See ¶ 2 of the Order, attached as Exhibit 3 to the Declaration.

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1 Declaration. Because of redaction, the concerns in § 827.9(a) of the stigma and rehabilitative
2 efforts of a juvenile are virtually eliminated.


3 If disclosure of these records is prohibited, the Trial Court has indicated that the County
4 may be precluded from proving the juvenile allegations in the Complaint. See ¶ 5 of the
5 Declaration. This would jeopardize the County's ability to prosecute the Litigation and seek
6 changes to the Industry's business practices that result in improper juvenile access and use of
7 firearms. Hence, in the interests of the Litigation and the public for whom the Litigation was
8 brought, the County contends that the balance described in § 827.9(f)(2) weighs in favor of
9 disclosure. Moreover, a special order for release of redacted records without notice is
10 appropriate under the circumstances.

V.

CONCLUSION

12 For the foregoing reasons, the County respectfully requests this Court to issue the
13 attached Order Re: Release of Juvenile Criminal Records.

14 DATED: September 18, 2002

RICHARD E. WINNIE
County CounselBy 
ROSEMARIE KWIA TKOWSKI
Deputy County Counsel

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OCT 15 2002

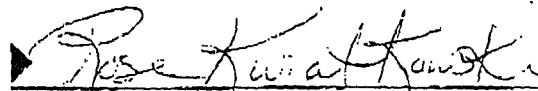
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Rose Kwiatkowski, Esq. Deputy County Counsel Office of the County Counsel 1221 Oak Street, Suite 450 Oakland, CA 94612 ATTORNEY FOR (Name): County of Alameda SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 400 Broadway MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Juvenile Court CHILD'S NAME: Unknown	TELEPHONE NO.: (510) 272-6700 FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY OCT 16 2002 CLERK OF THE SUPERIOR COURT By: <u>GERARDO E. GUERRERO</u> Deputy CASE NUMBER: Unknown-020074 RELATED CASES (if any):
PETITION TO OBTAIN REPORT OF LAW ENFORCEMENT AGENCY/JUVENILE Welfare and Institutions Code, § 828	
1. Petitioner's name and address (if representing another person, organization, or agency, provide names and addresses): County of Alameda, c/o the Office of the County Counsel, 1221 Oak Street, Suite 450, Oakland, CA 94612	
2. Petitioner's relationship to child (if any): None.	
3. Police department or law enforcement agency possessing records: Alameda County Sheriff's Office. Report number: See attached list.	
4. The reasons for this request are: (Describe in detail. Attach additional pages if necessary.) See attached Petition and Declaration of R. Kwiatkowski (with Exhibit "2" only - List of juvenile incident reports) the original of which was previously filed with this Court on 9/20/02.	
5. <input type="checkbox"/> The child has consented to the requested disclosure and the child's written consent is attached.	

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

Date: October 15, 2002

Rose Kwiatkowski

(TYPE OR PRINT NAME)


 (SIGNATURE OF PETITIONER)

8 Number of pages attached

☒ PETITION GRANTED ☐ PETITION DENIED
☐ ADDITIONAL ORDERS

Date:

JUDICIAL OFFICER

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Alameda County Juvenile Reports

96-12842
 96-10504
 96-20693
 96-012231
 97-4825
 97-8422-000
 97-18878-000
 97-14354-000
 97-018313
 97-20503-000
 98-259-000
 98-005860
 98-21340
 98-025218-000
 98-028066-000
 98-1427-000
 98-1463-000
 98-6155-000
 98-8730-000
 99-002107-000
 99-014479-000
 99-015599-000
 99-16765
 99-019252-000
 99-022038-000
 98-33168

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RICHARD E. WINNIE [68048]
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Attorneys for COUNTY OF ALAMEDA

EMDORE
FILED
ALAMEDA COUNTY

SEP 20 2002

CLERK OF THE COURT
By JERRY WONG, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
JUVENILE COURT

In the Matter of:

PEOPLE OF THE STATE OF
CALIFORNIA, ET AL. V. ARCADIA
MACHINE & TOOL, ET AL.

Case No.

DECLARATION OF ROSEMARIE
KWIAKOWSKI IN SUPPORT OF
PETITION AND PROPOSED
SPECIAL ORDER BY COUNTY OF
ALAMEDA FOR DISCLOSURE OF
REDACTED JUVENILE RECORDS
UNDER WELFARE AND
INSTITUTIONS CODE SECTION
827.9 AND CALIFORNIA RULE OF
COURT SECTION 1423(g)

I, Rosemarie Kwiatkowski, declare as follows:

1. I am Deputy County Counsel for the Office of the County Counsel, County of Alameda and I am licensed to practice law before all of the courts in the State of California. I represent the County of Alameda ("County") and am one of the attorneys of record in the matter of People of the State of California, et al. v. Arcadia Machine & Tool, Inc. et al. SFSC No. 303753, which is part of Judicial Council Coordination Proceeding NO. 4095 (the "Litigation"). Attached hereto as Exhibit "1" is a true and correct copy of the First Amended Complaint.

Decl. of R. Kwiatkowski in Support of Petition
For Disclosure of Juvenile Records

2. I make this declaration in support of the County's Petition for Disclosure of Redacted Juvenile Records Under Welfare and Institutions Code Section 827.9 and California Rule of Court Section 1423(b). The facts set forth herein are true of my own personal knowledge, and if called upon to testify thereto, I could and would competently do so under oath.

3. The Litigation was brought by the County in August 1999 against approximately forty firearms manufacturers, distributors and dealers (the "Industry") for unfair and deceptive business practices under California Business and Professions Code Sections 17200 and 17500, and for creating a public nuisance. The lawsuit addresses the harm to the public, and children in particular, that results from the Industry's design, marketing and distribution of firearms. These practices, the County contends, result in easy use of and access to firearms by criminals and juveniles. The Litigation seeks injunctive relief and civil penalties against the Industry.

4. Attached hereto as Exhibit "2" is a list of approximately twenty-six juvenile incident records held and maintained by the Alameda County Sheriff that have been requested through discovery by defendants in the Litigation. The County has not produced these records because of their confidential nature, as set forth in Welfare & Institutions Code Section 827 et seq.

5. The trial court has determined that the juvenile records are relevant to the Litigation and has ordered the parties to cooperate and facilitate appropriate Juvenile Court review and consideration of release of the records. See ¶2 of Order attached as Exhibit "3". The trial court has also indicated that the County may be precluded from proving the juvenile allegations in the Complaint if the records are not disclosed.

6. If the Juvenile Court issues the special blanket order requested in the County's petition, the County will redact all identifying information in the records of juveniles and any other individual.

7. The records will be designated as "Confidential Information" as defined in the Protective Order governing the Litigation and will be subject to all terms of the Protective Order

1 with respect to Confidential Information. This designation will ensure that the records are
2 disclosed and used only for the Litigation without further court order.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed on September 20, 2002, at Oakland, California.

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6 
7 ROSEMARIE KWIATKOWSKI
8 Deputy County Counsel
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precluded from proving its juvenile allegations in the complaint if the records are not provided.

GOOD CAUSE APPEARING, the Juvenile Court hereby issues the following order pursuant to Welfare and Institutions Code § 827.9 and California Rules of Court Section 1423(g).

1. The County is hereby authorized to release to defendants in the Litigation the juvenile incident records identified in Exhibit "2" to the County's petition. These records are held and maintained by the Sheriff and have been requested through discovery in the Litigation.

2. All identifying information in the juvenile records, including information identifying the juvenile and any other individual, will be redacted.

3. The records will be designated as "Confidential Information," as defined in the protective order governing the Litigation ("Protective Order"), and will be subject to all terms of the Protective Order with respect to Confidential Information. This designation will ensure that the records are disclosed and used only for the Litigation without further court order.

4. The parties to the Litigation shall employ all necessary safeguards, including implementation of in-house procedures and protocols regarding storage, sealing and access to the juvenile records, to ensure against breach of confidentiality and unauthorized dissemination of the records disclosed pursuant to this petition.

5. Notice pursuant to W&I § 827.9 is waived. Such a waiver is appropriate under the circumstances since all identifying information in the records will be redacted and the juvenile records will be treated as Confidential Information pursuant to the Protective Order. Moreover, the sheer number of records and the potential for evidence preclusion warrant issuance of the records without notice.

6. If, after obtaining the juvenile records, a party to the Litigation seeks the redacted information from a particular record, that party shall petition the Juvenile Court under W&IC § 827.9, and send all requisite notices, for an appropriate order.

IT IS SO ORDERED:

DATED:

Judge of the Juvenile Court

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ENDORSED
FILED
ALAMEDA COUNTY

OCT 16 2002

CLERK OF THE SUPERIOR COURT
By BERNARD G. BLUMENBERG
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
IN SESSION AS A JUVENILE COURT

In re the 827.9/828 Petition of

No. 020074

CITY OF BERKELEY,

COURT ORDER ON PETITION TO OBTAIN
REPORT OF LAW ENFORCEMENT
AGENCY/JUVENILE (Welfare and Institutions
Code sections 827.9 & 828)

Petitioner(s).

26 Unnamed Juveniles,

Real Parties in Interest.

The court, having reviewed the petition of COUNTY OF ALAMEDA for
disclosure of redacted copies of juvenile police records, hereby orders as follows:

1. The petition is summarily granted with respect to all 26 police reports listed on
Exhibit 2 to the Kwiatkowski Declaration. In granting the petition, the Court hereby
adopts and incorporates herein petitioner's [Proposed] Special Order Re: Disclosure of
Redacted Juvenile Incident Records Held By The County of Alameda (copy attached).

2. Petitioner shall serve all parties to the coordinated litigation with a copy of this
order as well as all forms and pleadings submitted in connection with this petition. Such
service shall occur via facsimile within twenty-four (24) hours of receipt of this order.

Dated: October 16, 2002

BRENDA F. HARBIN-FORTE
Honorable Brenda F. Harbin-Forte
Presiding Judge of the Juvenile Court

Attachment: [Proposed] Special Order Re: Disclosure of Redacted Juvenile Incident
Records Held By The County of Alameda

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1 RICHARD E. WINNIE [68048]
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2 DENISE EATON-MAY [116780]
ROSE KWIATKOWSKI [162977]
3 Deputy County Counsel
Office of the County Counsel, County of Alameda
4 1221 Oak Street, Suite 450
Oakland, California 94612-4296
5 Telephone: (510) 272-6700
Facsimile: (510) 272-5020

6 Attorneys for COUNTY OF ALAMEDA

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10 JUVENILE COURT

11 In the Matter of:

12 PEOPLE OF THE STATE OF
CALIFORNIA, ET. AL.

13 Plaintiffs,

14 v.

15 ARCADIA MACHINE & TOOL, ET. AL.

16 Defendants.
17

Case No. 020074

**[PROPOSED] SPECIAL ORDER RE:
DISCLOSURE OF REDACTED
JUVENILE INCIDENT RECORDS
HELD BY THE ALAMEDA COUNTY
SHERIFF'S OFFICE**

18
19 The COUNTY OF ALAMEDA (hereinafter "County") petitions the Juvenile Court to
20 issue a special order authorizing the County to release, in redacted form, twenty-six Alameda
21 County Sheriff ("Sheriff") juvenile incident records that have been determined relevant by the
22 Honorable Vincent DiFiglia in the matter of People of the State of California, et. al. v. Arcadia
23 Machine & Tool, et. al., San Francisco Superior Court Case No. 303753, Judicial Council
24 Coordination Proceeding No. 4095 (the "Litigation"). The County requests the release of the
25 redacted records without notice. The Litigation was brought against approximately forty firearms
26 manufacturers, distributors and dealers, and seeks to address the harm to the public, with
27 emphasis on juveniles, that results from the negligent design, marketing and distribution of
28 firearms. It seeks injunctive relief and civil penalties. The defendants in the litigation have
propounded the juvenile records and the trial court has indicated that the County may be

[PROPOSED] SPECIAL ORDER

precluded from proving its juvenile allegations in the complaint if the records are not provided.

GOOD CAUSE APPEARING, the Juvenile Court hereby issues the following order pursuant to Welfare and Institutions Code § 827.9 and California Rules of Court Section 1423(g).

1. The County is hereby authorized to release to defendants in the Litigation the juvenile incident records identified in Exhibit "2" to the County's petition. These records are held and maintained by the Sheriff and have been requested through discovery in the Litigation.

2. All identifying information in the juvenile records, including information identifying the juvenile and any other individual, will be redacted.

3. The records will be designated as "Confidential Information," as defined in the protective order governing the Litigation ("Protective Order"), and will be subject to all terms of the Protective Order with respect to Confidential Information. This designation will ensure that the records are disclosed and used only for the Litigation without further court order.

4. The parties to the Litigation shall employ all necessary safeguards, including implementation of in-house procedures and protocols regarding storage, sealing and access to the juvenile records, to ensure against breach of confidentiality and unauthorized dissemination of the records disclosed pursuant to this petition.

5. Notice pursuant to W&I § 827.9 is waived. Such a waiver is appropriate under the circumstances since all identifying information in the records will be redacted and the juvenile records will be treated as Confidential Information pursuant to the Protective Order. Moreover, the sheer number of records and the potential for evidence preclusion warrant issuance of the records without notice.

6. If, after obtaining the juvenile records, a party to the Litigation seeks the redacted information from a particular record, that party shall petition the Juvenile Court under W&IC § 827.9, and send all requisite notices, for an appropriate order.

IT IS SO ORDERED:

DATED:

Judge of the Juvenile Court

COPY

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 TEL.: (510) 981-6950
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SBN 67464
 SBN 124491

ENDORSED
 FILED
 ALAMEDA COUNTY

OCT 2 - 2002

CLERK OF THE SUPERIOR COURT
 By Robbie McIntosh, Deputy

Attorneys for Petitioner
 CITY OF BERKELEY

SUPERIOR COURTS OF ALAMEDA COUNTY, CALIFORNIA

RENE C. DAVIDSON COUNTY COURTHOUSE

JUVENILE COURT

In the Matter of:

NO.

**PEOPLE OF THE STATE OF
 CALIFORNIA, et al.**

**PETITION AND PROPOSED SPECIAL
 ORDER BY CITY OF BERKELEY FOR
 DISCLOSURE OF REDACTED
 JUVENILE RECORDS UNDER
 WELFARE AND INSTITUTIONS CODE
 SECTION 827.9 AND CALIFORNIA
 RULE OF COURT 1423(g);
 DECLARATION OF MATTHEW J.
 OREBIC IN SUPPORT THEREOF**

v.

ARCADIA MACHINE & TOOL, et al.

THE CITY OF BERKELEY (hereinafter "Berkeley") hereby petitions the Juvenile Court under California Welfare and Institutions Code ("W&IC") section 827.9(c) and California Rule of Court ("CRC") 1423(g) for a special order authorizing the Berkeley to release, in redacted form, 32 Berkeley Police Department juvenile incident records that have been determined relevant in the matter of People of the State of California, et al. v. Arcadia Machine & Tool, et al., San Francisco Superior Court Case No. 303753, Judicial Council Coordination Proceeding No. 4095 (the "Litigation"). The Litigation was brought by Berkeley and 12 other public entities in California. The records in question are maintained and held by the Berkeley Police Department and have been specifically requested in discovery by the defendants in the Litigation. Berkeley contends that the interests of the Litigation and public weigh in favor of releasing these records in redacted form.

/ / /

I.**BACKGROUND OF THE LITIGATION**

In August 1999, the County of Los Angeles filed a lawsuit in the Los Angeles County Superior Court against approximately 40 firearms manufacturers, distributors, and dealers (the "Industry") for unfair and deceptive business practices under California Business and Professions Code ("B&P") sections 17200 and 17500, and for creating a public nuisance. The lawsuit was brought on behalf of the people of the State of California and addresses the harm to the public in general, and juveniles in particular, that results from the Industry's design, marketing, and distribution of firearms. It seeks injunctive relief and civil penalties against the Industry.

On or about the same time, two separate but substantially similar lawsuits were filed against the Industry, one by the City of Los Angeles in the Los Angeles County Superior Court (BC 210894), the other by the City of San Francisco in the San Francisco Superior Court (No. 303753).¹ Berkeley joined as a plaintiff in the San Francisco Complaint.

In February 2000, the Judicial Council of California coordinated the three cases (Coordination Proceeding No. 4095) and transferred them to the San Diego Superior Court. The Litigation is now assigned to the Honorable Vincent P. DiFiglia in Department 65 of the San Diego Superior Court ("Trial Court").

Berkeley and the other plaintiff public entities allege two broad areas of wrongdoing by the Industry and cover the years 1996 through 1999. The first area of alleged wrongdoing is that the Industry fails to incorporate reasonable and technologically available safety features into their firearms. These features would make firearms safer, child-resistant, and inaccessible to unauthorized users. Because of this design failure, firearms are frequently used by children and criminals, resulting in thousands of firearm-related accidents, suicides, and homicides. The second area of alleged wrongdoing concerns the marketing and distribution of firearms. The plaintiff entities contend that the Industry engages in illicit marketing and distribution practices

¹ The Cities of Sacramento, Berkeley, Oakland, and East Palo Alto, and the Counties of Alameda and San Mateo were joined in the City of San Francisco's complaint.

1 which promote an illegal secondary market for firearms. This illegal market provides juveniles
2 and criminals ready access to firearms. Supporting these contentions are at least fifteen
3 allegations in the Complaint pertaining directly to juveniles.

4 **II.**

5 **DISCOVERY IN THE LITIGATION**

6 In the course of discovery, the defendants propounded requests for all criminal incident
7 records held by Berkeley for the years 1996 through 1999 involving the use of a firearm. Several
8 plaintiffs objected on the grounds of relevance and burden, but the Trial Court denied the
9 plaintiffs' objection and granted the Industry's motion to discover criminal incident records.

10 **III.**

11 **THE JUVENILE RECORDS**

12 Among the criminal incident records involving firearms, 32 Berkeley records involved
13 juveniles. Because of the confidential nature of these records, as set forth W&IC section 827, et
14 seq., Berkeley withheld the records and did not produce them to the defendants.² As a result, the
15 defendants filed a motion to compel, seeking a Trial Court order forcing Berkeley to produce all
16 juvenile records in unredacted form. The motion was denied, but the Trial Court ordered the
17 parties to "cooperate and facilitate appropriate Juvenile Court review and consideration of
18 release of juvenile records in plaintiff's possession"

19 **IV.**

20 **BASIS FOR THE INSTANT PETITION**

21 W&IC section 827.9 governs the disclosure requirements for juvenile records gathered by
22 law enforcement agencies in Alameda County. The purpose of the statute is to clarify who can
23 receive complete and/or redacted juvenile police records, and what procedures must be followed
24 to obtain the records. See W&IC section 827.9(a). In general, confidentiality of juvenile records
25 is necessary to "protect those persons [juveniles] from being denied various opportunities, to
26

27 ² See the list of withheld incident records, attached as Exhibit 1 to the Declaration.
28

1 further rehabilitative efforts of the juvenile justice system, and to prevent the lifelong stigma that
2 results from having a juvenile police record." Id. However, the statute specifically recognizes
3 that under certain circumstances, juvenile police records should be released. Id.

4 The W&IC grants the Juvenile Court discretion to permit release of these records to a
5 petitioning party after balancing the interest of the subject juveniles, the petitioner, and the
6 public. See W&IC section 827.9(c) and (f). The Juvenile Court may limit the release of
7 information contained in a record by requiring redaction. W&IC section 827.9(f)(2). Typically,
8 prior to the release of a record, notice and an opportunity to file an objection should be provided
9 to the juvenile, his or her parents, and other interested individuals. See W&IC section
10 827.9(f)(3).

11 With respect to pending litigation, CRC 1423(b) authorizes the Juvenile Court to allow
12 discovery of juvenile records, if it is likely that the records will disclose relevant information in
13 the litigation.

14 These various provisions support the instant petition. The Trial Court has made the
15 determination that the juvenile records at issue are relevant to the Litigation. Because of the
16 volume of the records, Berkeley seeks a special order to allow it to produce fully redacted
17 records without notice to the involved persons. As a practical matter, this type of order is the
18 only viable alternative for Berkeley to comply with the Trial Court's mandate. All identifying
19 information in the records of juveniles and other individuals will be redacted, as described in the
20 Orebic Declaration. Because of redaction, the concerns in section 827.9(a) of the stigma and
21 rehabilitative efforts of a juvenile are virtually eliminated.

22 If disclosure of these records is prohibited, the Trial Court has indicated that Berkeley
23 may be precluded from proving the juvenile allegations in the Complaint. See Orebic
24 Declaration. This would jeopardize Berkeley's ability to prosecute the Litigation and seek
25 changes to the Industry's business practices that result in improper juvenile access and use of
26 firearms. Hence, in the interests of the Litigation and the public for whom the Litigation was
27 brought, Berkeley contends that the balance described in section 827.9(f)(2) weighs in favor of
28

1 disclosure. Moreover, a special order for release of redacted records without notice is
2 appropriate under the circumstances.

3 V.

4 CONCLUSION

5 For the foregoing reasons, Berkeley respectfully requests this Court to issue the attached
6 Order Re: Release of Juvenile Criminal Records.

7 Dated: October 2, 2002

Respectfully submitted:

8 MANUELA ALBUQUERQUE, City Attorney
9 MATTHEW J. OREBIC, Deputy City Attorney

10 By:

11 
12 MATTHEW J. OREBIC
13 Attorneys for CITY OF BERKELEY
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COPY

MANUELA ALBUQUERQUE, City Attorney
 MATTHEW J. OREBIC, Deputy City Attorney
 2180 Milvia Street, Fourth Floor
 Berkeley, CA 94704
 TEL.: (510) 981-6950
 FAX.: (510) 981-6960

SBN 67464
 SBN 124491

ENDORSED
 FILED
 ALAMEDA COUNTY

OCT 2 - 2002

CLERK OF THE SUPERIOR COURT
 By Robbie McIntosh, Deputy

Attorneys for Petitioner
 CITY OF BERKELEY

SUPERIOR COURTS OF ALAMEDA COUNTY, CALIFORNIA

RENE C. DAVIDSON COUNTY COURTHOUSE

JUVENILE COURT

In the Matter of:

NO.

**PEOPLE OF THE STATE OF
 CALIFORNIA, et. al.**

**DECLARATION OF MATTHEW J.
 OREBIC IN SUPPORT OF PETITION
 AND PROPOSED SPECIAL ORDER BY
 CITY OF BERKELEY FOR
 DISCLOSURE OF REDACTED
 JUVENILE RECORDS UNDER
 WELFARE AND INSTITUTIONS CODE
 SECTION 827.9 AND CALIFORNIA
 RULE OF COURT 1423(g)**

v.

ARCADIA MACHINE & TOOL, et al.

I, Matthew J. Orebic, declare as follows:

1. I am a Deputy City Attorney for the Berkeley City Attorney's office and I am licensed to practice law before all of the courts in the State of California. I represent the City of Berkeley ("Berkeley") and am one of the attorneys of record in the matter of People of the State of California et al. v. Arcadia Machine & Tool, Inc. et al. SFSC No. 303753, which is part of Judicial Council Coordination Proceeding No. 4095 (the "Litigation").

2. I make this Declaration in support of the Berkeley's Petition for Disclosure of Redacted Juvenile Records Under Welfare and Institutions Code Section 827.9 and California Rule of Court 1423(b). The facts set forth herein are true of my own personal knowledge, and if called upon to testify thereto, I could and would competently do so under oath.

3. The Litigation was brought by Berkeley and several other public entities in 1999 against approximately 40 firearms manufacturers, distributors, and dealers (the "Industry") for

I

DECLARATION OF MATTHEW J. OREBIC IN SUPPORT OF PETITION FOR DISCLOSURE OF JUVENILE RECORDS

1 unfair and deceptive business practices under California Business and Professions Code Sections
2 17200 and 17500, and for creating a public nuisance. The lawsuit alleges that harm to the public
3 in general, and children in particular, result from the Industry's design, marketing, and
4 distribution of firearms. These practices, Berkeley contends, result in easy use of and access to
5 firearms by criminals and juveniles. The Litigation seeks injunctive relief and civil penalties
6 against the Industry.

7 4. Attached hereto as Exhibit "I" is a list of 32 juvenile incident records held and
8 maintained by the Berkeley Police Department that have been requested through discovery by
9 defendants in the Litigation. Berkeley has not produced these records because of their
10 confidential nature, as set forth in Welfare & Institutions Code Section 827, et seq.

11 5. The Trial Court has determined that the juvenile records are relevant to the
12 Litigation and has ordered the parties to cooperate and facilitate appropriate Juvenile Court
13 review and consideration of release of the records. The Trial Court has also indicated that
14 Berkeley may be precluded from proving the juvenile allegations in the Complaint if the records
15 are not disclosed.

16 6. If the Juvenile Court issues the special blanket order requested in Berkeley's
17 petition, Berkeley's counsel in the Litigation will redact all identifying information in the records
18 of juveniles and any other individual.

19 7. The records will be designated as "Confidential Information" as defined in the
20 Protective Order governing the Litigation and will be subject to all terms of the Protective Order
21 with respect to Confidential Information. This designation is designed to ensure that the records
22 are disclosed and used only for the Litigation without further court order.

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

25 Dated: October 2, 2002

26 
27 MATTHEW J. OREBIC
28

EXHIBIT 1 TO OREBIC DECLARATION

City of Berkeley Juvenile Incident Reports Involving Firearms 1996-99

96-32421
96-37394
96-44712
96-46694
96-46883
96-68026

97-04911
97-09460
97-15097
97-17030
97-25571
97-26110
97-28643
97-32372
97-40326
97-41804
97-49670

98-19531
98-24519
98-37169
98-40146
98-53743
99-65277

99-23392
99-27849
99-39272
99-41081
99-47449
99-50801
99-56378
99-62800
99-62801

EXHIBIT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): MANUELA ALBUQUERQUE, City Attorney #67464 MATTHEW J. OREBIC, Deputy City Attorney #124491 2180 Milvia Street, Fourth Floor Berkeley CA 94704		TELEPHONE NO.: (510)981-6950	FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY OCT 16 2002 CLERK OF THE SUPERIOR COURT By <u>GERARDO E. GUERRERO</u> Deputy
ATTORNEY FOR (Name): <u>Petitioner CITY OF BERKELEY</u>			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA			
STREET ADDRESS: 400 Broadway, Juvenile Division			
MAILING ADDRESS: Same			
CITY AND ZIP CODE: Oakland 94612			
BRANCH NAME: County Probation Center			
CHILD'S NAME: N/A		CASE NUMBER: None <u>020081</u>	
PETITION TO OBTAIN REPORT OF LAW ENFORCEMENT AGENCY/JUVENILE Welfare and Institutions Code, § 828		RELATED CASES (if any): Jud. Council Coord. No. 4095	
1. Petitioner's name and address (if representing another person, organization, or agency, provide names and addresses): City of Berkeley, c/o City Attorney's Office, 2180 Milvia Street, 4th Floor, Berkeley CA 94704			
2. Petitioner's relationship to child (if any): N/A			
3. Police department or law enforcement agency possessing records: Berkeley Police Department. Report Numbers are: 96-32421, 96-37394, 96-44712, 96-46694, 96-46883, 96-68026, 97-04911, 97-09460, 97-15097, 97-17030, 97-25571, 97-26110, 97-28643, 97-32372, 97-40326, 97-41804, 97-49670, 98-19531, 98-24519, 98-37169, 98-40146, 98-53743, Report number: 98-65277, 99-23392, 99-27849, 99-39272, 99-41081, 99-47449, 99-50801, 99-56378, 99-62800, 99-62801			
4. The reasons for this request are: (Describe in detail. Attach additional pages if necessary.) This petition is only to release records in a redacted format. Petition and Declaration attached.			
5. <input type="checkbox"/> The child has consented to the requested disclosure and the child's written consent is attached.			

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

Date: October 15, 2002

MATTHEW J. OREBIC, Deputy City Attorney

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

8 Number of pages attached

☐ PETITION GRANTED ☐ PETITION DENIED☐ ADDITIONAL ORDERS:

Date:

JUDICIAL OFFICER

Form Approved by the
Judicial Council of California
JV-575 (New January 1, 1984)
Optional FormPETITION TO OBTAIN REPORT OF
LAW ENFORCEMENT AGENCY/JUVENILE
Welfare and Institutions Code, § 828Legal
Solutions
& PlusCalif. Rules of Court
rules 1402, 1403
Welfare and Institutions Code,
§ 828

ENDORSED
FILED
AT ALAMEDA COUNTY

OCT 16 2002

CLERK OF THE SUPERIOR COURT

~~GENARDO E. GUERRERO~~

Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
IN SESSION AS A JUVENILE COURT

In re the 827.9/828 Petition of

No. 020081

CITY OF BERKELEY,

COURT ORDER ON PETITION TO OBTAIN
REPORT OF LAW ENFORCEMENT

Petitioner(s).

AGENCY/JUVENILE (Welfare and Institutions
Code sections 827.9 & 828)

32 Unnamed Juveniles,

Real Parties in Interest.

The court, having reviewed the petition of CITY OF BERKELEY for disclosure of
redacted copies of juvenile police records, hereby orders as follows:

1. The petition is summarily granted with respect to all 32 police reports listed on
Exhibit 1 to the Orebic Declaration. In granting the petition, the Court hereby adopts and
incorporates herein petitioner's [Proposed] Special Order Re: Disclosure of Redacted
Juvenile Incident Records Held By The City of Berkeley (copy attached).

2. Petitioner shall serve all parties to the coordinated litigation with a copy of this
order as well as all forms and pleadings submitted in connection with this petition. Such
service shall occur via facsimile within twenty-four (24) hours of receipt of this order.

Dated: October 16, 2002

BRENDA HARBIN-FORTE

Honorable Brenda F. Harbin-Forte
Presiding Judge of the Juvenile Court

Attachment: [Proposed] Special Order Re: Disclosure of Redacted Juvenile Incident
Records Held By The City of Berkeley

MANUELA ALBUQUERQUE, City Attorney SBN 67464
MATTHEW J. OREBIC, Deputy City Attorney SBN 124491
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TEL.: (510) 981-6950
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Attorneys for Petitioner
CITY OF BERKELEY

SUPERIOR COURTS OF ALAMEDA COUNTY, CALIFORNIA

RENE C. DAVIDSON COUNTY COURTHOUSE

JUVENILE COURT

In the Matter of:

PEOPLE OF THE STATE OF
CALIFORNIA, et, al.

v.

ARCADIA MACHINE & TOOL, et al.

NO. 020081

[PROPOSED] SPECIAL ORDER RE:
DISCLOSURE OF REDACTED
JUVENILE INCIDENT RECORDS HELD
BY THE CITY OF BERKELEY

The CITY OF BERKELEY ("Berkeley") petitions the Juvenile Court to issue a special order authorizing Berkeley to release, in redacted form, 32 Berkeley Police Department juvenile incident records that have been determined relevant by the Honorable Vincent Difiglia in the matter of People of the State of California, et al. v. Arcadia Machine & Tool, et al., San Francisco Superior Court Case No. 303753, Judicial Council Coordination Proceeding No. 4095 (the "Litigation"). Berkeley requests the release of the redacted records without notice to the involved persons in each report. The Litigation was brought against approximately 40 firearms manufacturers, distributors and dealers, and seeks to address the harm to the public in general, and juveniles in particular, that result from the negligent design, marketing, and distribution of firearms. The Litigation seeks injunctive relief and civil penalties. The defendants in the litigation have propounded discovery requests seeking the juvenile records and the Trial Court has indicated that Berkeley may be precluded from proving its juvenile allegations in the complaint if the records are not provided.

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
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275 BATTERY STREET, 30TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3339
TELEPHONE: (415) 956-1000
FACSIMILE: (415) 956-1008

COPY

FAX TRANSMITTAL

DATE: 10-17-02
TO: PLEASE SEE ATTACHED
Proof of Service FACSIMILE: _____
FIRM: _____
FROM: RICHARD M. FRANCO
RE: GUNS
COMMENTS:

Number of Pages Including This Sheet: 32

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- and -
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100 Pine Street, Suite 2600
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Telephone: (415) 288-4545

Attorneys for The People of The State of California
(Additional Counsel Appear on Signature Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

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

FIREARMS CASES,

Including actions:

*People, et al. v. Arcadia Machine & Tool, Inc.,
et al* (Superior Court of City & County of San
Francisco, No. 303753)

*People, et al. v. Arcadia Machine & Tool, Inc.,
et al.* (Superior Court of the County of Los
Angeles, No. BC210894)

*People, et al. v. Arcadia Machine & Tool, Inc.,
et al.* (Superior Court of the County of Los
Angeles, No. BC210894)

AND CONSOLIDATED CASES

JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4095

PROOF OF SERVICE VIA FACSIMILE

I am a citizen of the United States and employed in San Francisco County,
California. I am over the age of eighteen years and not a party to the within-entitled action. My

business address is Embarcadero Center West, 275 Battery Street, 30th Floor, San Francisco, California 94111-3339. On October 17, 2002, I served a copy of the within document(s):

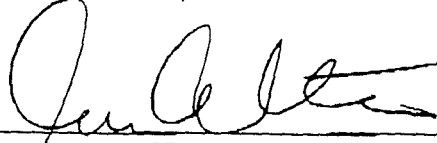
1. PETITION AND PROPOSED SPECIAL ORDER BY COUNTY OF ALAMEDA FOR DISCLOSURE OF REDACTED JUVENILE RECORDS UNDER WELFARE AND INSTITUTIONS CODE SECTION 827.9 AND CALIFORNIA RULE OF COURT SECTION 1423(G); DECLARATION OF ROSEMARIE KWIATKOWSKI IN SUPPORT THEREOF;
2. PETITION TO OBTAIN REPORT OF LAW ENFORCEMENT AGENCY/JUVENILE;
3. DECLARATION OF ROSEMARIE KWIATKOWSKI IN SUPPORT OF PETITION AND PROPOSED SPECIAL ORDER BY COUNTY OF ALAMEDA FOR DISCLOSURE OF REDACTED JUVENILE RECORDS UNDER WELFARE AND INSTITUTIONS CODE SECTION 827.9 AND CALIFORNIA RULE OF COURT SECTION 1423(g);
4. COURT ORDER ON PETITION TO OBTAIN REPORT OF LAW ENFORCEMENT AGENCY/JUVENILE;
5. PETITION AND PROPOSED SPECIAL ORDER BY CITY OF BERKELEY FOR DISCLOSURE OF REDACTED JUVENILE RECORDS UNDER WELFARE AND INSTITUTIONS CODE SECTION 827.9 AND CALIFORNIA RULE OF COURT 1423(g); DECLARATION OF MATTHEW J. OREBIC IN SUPPORT THEREOF;
6. DECLARATION OF MATTHEW J. OREBIC IN SUPPORT OF PETITION AND PROPOSED SPECIAL ORDER BY CITY OF BERKELEY FOR DISCLOSURE OF REDACTED JUVENILE RECORDS UNDER WELFARE AND INSTITUTIONS CODE SECTION 827.9 AND CALIFORNIA RULE OF COURT 1423(g);
7. PETITION TO OBTAIN REPORT OF LAW ENFORCEMENT AGENCY/JUVENILE; and
8. COURT ORDER ON PETITION TO OBTAIN REPORT OF LAW ENFORCEMENT AGENCY/JUVENILE.

by telefaxing a copy thereof to the following individual(s) at the following facsimile number(s):

(SEE ATTACHED)

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

3 Executed on October 17, 2002, at San Francisco, California.

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6 RIZALINO ALTARES
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LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

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FAX TRANSMITTAL

DATE: October 17, 2002

CLIENT-MATTER NO.: 0930

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DATE: October 17, 2002

CLIENT-MATTER NO.: 0930

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SAYRE WEAVER, EDUCATIONAL FUND TO STOP GUN VIOLENCE	(562) 266-1731
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WAYNE A. WOLFF, SEDGWICK, DETERT, MORAN & ARNOLD	(415) 781-2635
ROBERT WRIGHT, WRIGHT & L'ESTRANGE	(619) 231-6710

FROM: RICHARD M. FRANCO

RE: GUNS LITIGATION

COMMENTS:

Number of Pages Including This Sheet: _____

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