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6 ADDITIONAL COUNSEL AND PARTIES JOINING IN THIS
7 PLEADING ARE LISTED IN EXHIBIT 1 TO THE REPLY BRIEF

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

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

12 FIREARMS CASE

13 Including actions:

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

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

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

) **DEFENDANTS' OBJECTIONS TO
) AND MOTION TO STRIKE
) IMPROPER DOCUMENT LODGED
) BY PLAINTIFFS**

) [Filed Concurrently with Reply to
) Plaintiffs' Opposition to Defendants'
) Demurrers and Motion to Strike]

) Date: September 15, 2000
) Time: 1:30 p.m.
) Dept. 65

) Judge: Hon. Vincent P. DiFiglia

22
23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 Pursuant to Code of Civil Procedure Section 430.30 and Evidence Code Section 1152,
25 defendants (including all defendants joining in the demurrers and motion to strike), request that the
26 Court strike a document lodged by the plaintiffs and discussed in their opposition brief.

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9/8/2000

1 In support of their opposition, plaintiffs filed a declaration by Jennie Lee Anderson.
2 Exhibit D to that declaration is a copy of a document that plaintiffs refer to as the "Smith &
3 Wesson Corp. Agreement (March 17, 2000)." Defendants object to the admission or consideration
4 of Exhibit D.^{1/}

5 **I. EXHIBIT D SHOULD BE STRICKEN AND NOT CONSIDERED**

6 **A. It Is Improper Extrinsic Evidence**

7 Exhibit D is improper under CCP § 430.30(a) because it is extrinsic evidence, not set forth
8 on the face of plaintiffs' complaints, and is therefore barred as a matter of law. A demurrer, and
9 any opposition thereto, may only raise arguments based upon the facts set forth on the face of the
10 complaint or matters that are judicially noticeable. (See Blank v. Kirwan (1985) 39 Cal.3d 311,
11 318 [superseded by statute on other grounds].) No other extrinsic evidence may be considered by
12 the court. Weil and Brown, Civil Procedure Before Trial, The Rutter Group, Section 7:8. As the
13 court in James v. Superior Court (1968) 261 Cal.App.2d 415, 416-417, held:

14 It is elementary that the function of a demurrer is to present to the
15 court an issue of law regarding the sufficiency of the allegations set
16 out in the pleading under attack. (Citations omitted) From this it
17 follows that the court's ruling is directed to the face of the pleading
(supplemented by such matters as may come within judicial
notice). . . .

18 Here, plaintiffs violate this basic rule. Exhibit D is clearly extrinsic to the complaints, and
19 is not a proper candidate for judicial notice.

20 **B. It Is Barred By Evidence Code Section 1152**

21 Exhibit D is also barred by Evidence Code Section 1152 which precludes the use of
22 settlement offers, conduct or statements in order to establish liability. Even a previous settlement
23 by a defendant with a person injured in the same accident as plaintiff, cannot be used by plaintiff
24 against that defendant. Brown v. Pacific Electric Ry. Co. (1947) 79 Cal.App.2d 613, 615.
25 Attempts by a defendant in a malicious prosecution action to obtain discovery concerning a
26

27 ^{1/} The version of Exhibit D that was filed on August 25, 2000 was not signed. Plaintiffs later
28 filed an Amended Declaration of Ms. Anderson that attempts to admit a signed version.
Signed or not, the document is not admissible.

1 settlement offer made in the underlying case by the now plaintiff so that the defendant could assert
2 the validity of the underlying claim are improper. Covell v. Superior Court (1984) 159 Cal.App.3d
3 39, 43. Prior settlements and related statements are simply not probative. "A defendant will often
4 attempt to buy peace for economic reasons, even in a frivolous lawsuit." Covell, 159 Cal.App.3d
5 at 43. Thus, the statements and terms set forth in Exhibit D cannot be used to prove liability, even
6 against Smith & Wesson. They certainly cannot be used to prove the liability of other, nonsettling
7 defendants.

8 For all of these reasons, defendants request that Exhibit D be stricken and not considered by
9 the Court.

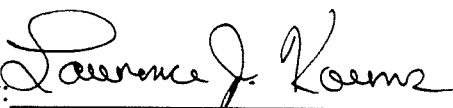
10 **II. PLAINTIFFS' ARGUMENT BASED ON EXHIBIT D SHOULD NOT BE**
11 **CONSIDERED**

12 Defendants also request that the Court not consider any discussion or argument based upon
13 Exhibit D. Specifically, defendants ask the Court to strike and not consider the following portion
14 of plaintiffs' opposition brief: page 11, lines 13-20.

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17 DATED: September 8, 2000

Respectfully submitted,

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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19 By: 

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21 Christopher J. Healey, State Bar No. 105798

22 Attorneys for Defendant
23 Sturm, Ruger & Company, Inc. and Co-Liaison
24 Counsel for Defendant Manufacturers

25 ADDITIONAL COUNSEL AND PARTIES
26 JOINING IN THIS PLEADING ARE LISTED
27 IN EXHIBIT 1 TO THE REPLY BRIEF
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