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Ghost Firearms, LLC, Thunder Guns, LLC,  
Ryan Beezley and Bob Beezley,  
and MFY Technical Solutions, LLC

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

FRANCISCO GUDINO CARDENAS, an  
individual,

Plaintiff,

v.

GHOST GUNNER INC., d/b/a  
GHOSTGUNNER.NET; et al.,

Defendants.

Case No. 30-2019-01111797-CU-PO-CJC

*Assigned for all purposes to the Honorable  
Gregory H. Lewis*

**NOTICE OF MOTION AND MOTION TO  
PERMIT FILING OF PETITION FOR  
COORDINATION OR, IN THE  
ALTERNATIVE, TO TRANSFER AND  
CONSOLIDATE ACTIONS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

[Filed concurrently with Declaration of Sean A.  
Brady in support of Defendants' Motion and  
[Proposed] Order]

Hearing Date: January 25, 2021  
Hearing Time: 10:30 AM  
Dept.: C26  
Reservation No.: 73400538

Action Filed: November 14, 2019

TO EACH PARTY AND THEIR COUNSEL OF RECORD:

YOU ARE HEREBY NOTIFIED THAT on January 25, 2021 at 10:30 AM, in  
Department C26 of this Court located at 700 Civic Center Drive West, Santa Ana, California  
92701, before Presiding Judge Gregory H. Lewis, Defendants Ghost Firearms, LLC, Thunder

1 Guns, LLC, Ryan Beezley and Bob Beezley, and MFY Technical Solutions, LLC will move the  
2 Court for an order granting permission to file a petition requesting the Chairperson of the Judicial  
3 Council to assign a judge to determine whether coordination of this action with another action  
4 now pending in another court of this state would be proper, or, in the alternative, for an order  
5 transferring the other matter to this Court and consolidating the two. The action sought to be  
6 coordinated, or alternatively transferred and consolidated with this one is *Troy McFadyen, et al v.*  
7 *Ghost Gunner, Inc., et al*, Case No. CIV DS 1935422, pending in the Superior Court of San  
8 Bernardino. Defendants Ghost Firearms, LLC, Thunder Guns, LLC, Ryan Beezley and Bob  
9 Beezley, and MFY Technical Solutions, LLC also will request a stay of proceedings in this action  
10 to allow time for submission of the petition.

11 This motion is made on the grounds that coordination of the *Cardenas* and *McFadyen*  
12 matters is proper here because it will promote the ends of justice under the relevant criteria  
13 presented in Code of Civil Procedure § 404.1, and on the grounds that trial courts have the  
14 inherent power to stay proceedings to promote efficiency and justice. (*Freiberg v. City of Mission*  
15 *Viejo* (1995) 33 Cal.App.4th 1484, 1489.) This motion will be based upon this notice, the attached  
16 memorandum of points and authorities, the accompanying declaration of Sean A. Brady, the  
17 pleadings already filed in this action and the *McFadyen* action to be coordinated, the order in the  
18 related *McFadyen* matter, and any further evidence and argument that the Court may receive at or  
19 before the hearing.

20  
21 Dated: October 28, 2020

MICHEL & ASSOCIATES, P.C.

22  
23 s/ Sean A. Brady

Sean A. Brady

Attorney for Defendants

Ghost Firearms, LLC, Thunder Guns, LLC,  
Ryan Beezley and Bob Beezley,  
and MFY Technical Solutions, LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants Ghost Firearms, LLC, Thunder Guns, LLC, Ryan Beezley and Bob Beezley,  
4 and MFY Technical Solutions, LLC (“Defendants”) bring this motion to ask this Court for an  
5 order granting them permission to file a petition for coordination with the Chairperson of the  
6 Judicial Council, or in the alternative, transferring a related matter to this Court and consolidating  
7 the two. The actions to be coordinated or consolidated are the instant matter and *Troy McFadyen*,  
8 *et al v. Ghost Gunner, Inc., et al*, Case No. CIV DS 1935422, which is pending in the Superior  
9 Court of San Bernardino. The complaint in that action is attached as Exhibit A to the Declaration  
10 of Sean A. Brady (“Brady Dec.”), hereinafter referred to as the “*McFadyen Complaint*”.

11 The actions should plainly be coordinated. Both arise out of the same incident, include the  
12 exact same defendants, and raise the exact same causes of action. In fact, the two complaints are  
13 effectively identical, almost verbatim; the only real difference being the details specific to the  
14 respective plaintiffs in each action. (*Cardenas Complaint*, passim., and *McFadyen Complaint*,  
15 *passim.*) The complaint in the instant matter describes the *McFadyen* matter as a “related case”  
16 that was filed the same day. (*Cardenas Complaint*, at 6:3-8.). The two matters are so linked that  
17 the complaint in the instant matter originally alleged that venue is proper in *Orange County*  
18 because several defendants have their place of business in *San Bernardino County* (*Cardenas*  
19 *Complaint*, at 5:20-25.)<sup>1</sup> As the two matters are essentially the same and likely complex,<sup>2</sup> they  
20 meet Code of Civil Procedure Section 404’s criteria and thus can and should be coordinated. If  
21 not coordinated, Defendants will be subjected to duplicative filings and potentially conflicting  
22 rulings and judgments should the two matters be allowed to proceed in two separate courts.

23  
24 <sup>1</sup> This was corrected with a notice of errata filed on November 22, 2019, which alleged that  
25 three of the Defendants have their principal place of business in Orange County. (Brady Decl.,  
26 ¶7.)

26 <sup>2</sup> Plaintiff in the instant matter, for some reason, did not label this case as complex on the  
27 Civil Case cover sheet, but the plaintiffs in the related *McFadyen* matter did label their nearly  
28 verbatim complaint as a complex matter. (Brady Decl., ¶5, Exhibit C, and ¶6, Exhibit D.) As this  
memorandum shows below, both matters are likely complex and thus can and should be  
coordinated under California Rule of Court 3.400.

## II. STATEMENT OF FACTS

On November 14, 2019, plaintiffs in the related *McFadyen* matter filed their complaint. Plaintiffs in that action assert the following causes of action: (1) Negligence; (2) Negligence Per Se; (3) Negligent Entrustment; (4) Public Nuisance; (5) Violation of Business and Professions Code Section 17200 (Unfair and Unlawful Sales Practices); and (6) Violation of Business and Professions Code Section 17200 (Unfair Marketing Tactics). (*McFadyen* Complaint, *passim*.). The *McFadyen* Complaint names as defendants: GHOST GUNNER INC., d/b/a GHOSTGUNNER.NET; DEFENSE DISTRIBUTED d/b/a GHOSTGUNNER.NET; CODY WILSON d/b/a GHOSTGUNNER.NET; BLACKHAWK MANUFACTURING GROUP INC., d/b/a 80PERCENTARMS.COM; RYAN BEEZLEY and BOB BEEZLEY, d/b/a RBTACTICALTOOLING.COM; GHOST AMERICA LLC, d/b/a GHOSTGUNS.COM; GHOST FIREARMS LLC, d/b/a GRID DEFENSE and GHOSTRIFLES.COM; JUGGERNAUT TACTICAL INC., d/b/a JTACTICAL.COM; MFY TECHNICAL SOLUTIONS LLC, d/b/a 5DTACTICAL.COM; TACTICAL GEAR HEADS LLC, d/b/a 80-LOWER.COM; AR-15LOWERRECEIVERS.COM; and 80LOWERJIG.COM; JAMES TROMBLEE, JR., d/b/a USPATRIOTARMORY.COM; INDUSTRY ARMAMENT INC., d/b/a AMERICANWEAPONSCOMPONENTS.COM; and THUNDER GUNS LLC, d/b/a THUNDERTACTICAL.COM. (*McFadyen* Complaint, 4:16-28.)

Plaintiff Cardenas in the instant matter simultaneously filed his complaint on the same date as the plaintiffs in *McFadyen*, November 14, 2019. Plaintiff Cardenas asserted the identical causes of action as those asserted in the *McFadyen* complaint against the identical defendants, even in the same order. (*Cardenas* Complaint, 2:20-3:3, and *McFadyen* Complaint, 4:16-28.) The *Cardenas* Complaint is mostly identical to the *McFadyen* Complaint, only really differing in its descriptions of the respective plaintiffs in each matter. A simple review of each shows that most of the numbered paragraphs and entire pages are verbatim copies of each other.

The *McFadyen* action has been stayed until December 4, 2020, which is the date of the initial case management conference in that matter. (Brady Decl., ¶4.) That stay was issued to “assist the court and the parties in managing [the] case through the development of an orderly

1 schedule for briefing and hearings on any procedural or substantive challenges to the complaint  
2 and other issues that may assist in the orderly management of [the] case.” (Brady Decl., ¶3-4.)  
3 While Defendants have all been served in the *McFadyen* action, (Brady Decl., ¶2.), they have not  
4 had to file a responsive pleading owing to the stay issued in that matter. Because the instant  
5 matter has not been stayed, however, responsive pleadings are quickly becoming due for  
6 Defendants in this matter. (Brady Decl., ¶8.).

7 Counsel for Defendants has confirmed with counsel for six of the remaining nine  
8 defendants to both of these matters that none of them objects to the coordination of these matters.  
9 (Brady Decl., ¶12.). The remaining defendants have been unreachable, despite attempts by  
10 Defendants’ counsel to contact them. (Brady Decl., ¶12.) But none has expressed opposition to  
11 this motion. (Brady Decl., ¶12.)

### 12 **III. ARGUMENT**

13 When civil actions that share a common question of fact or law are pending before  
14 different courts, a petition for coordination may be submitted to the Chairperson of the Judicial  
15 Council “...by any party to one of the actions after requesting permission from the presiding  
16 judge.” (Code Civ. Proc., §404.) Such permission should be granted here because coordination of  
17 these two identical matters is not only appropriate but would also further justice.

18 Coordination is proper where (1) the cases to be coordinated are all complex as defined by  
19 California Rules of Court 3.400; and (2) the requirements for coordination in California Code of  
20 Civil Procedure §404.1 are met. (Code Civ. Proc., §404.) As explained below, these identical  
21 cases meet both the definition of “complex” and the requirements of California Code of Civil  
22 Procedure §404.1.

23 If, in the alternative, this Court deems these matters to *not* be complex, then California  
24 Code of Civil Procedure §403 governs. In that instance, “A judge may, on motion, transfer an  
25 action or actions from another court to that judge's court for coordination with an action involving  
26 a common question of fact or law within the meaning of Section 404... The court to which a case  
27 is transferred may order the cases consolidated for trial pursuant to Section 1048 without any  
28 further motion or hearing.” (Code Civ. Proc., §403.)

1           Given that the complaints are effectively identical, either both matters are complex or both  
2 are not complex. So either complex case coordination is proper, or transfer and consolidation is.

3           **A.       *The McFadyen and Cardenas actions are both complex under California law.***

4           The plaintiffs in *McFadyen* designated that related matter as complex on their civil case  
5 cover sheet but the plaintiff in the instant matter did not. (Brady Decl., ¶5.) It is not clear why the  
6 plaintiffs designated their respective matters differently when their complaints are effectively  
7 identical and filed on the same day. Regardless, plaintiffs do not choose whether or not a matter is  
8 complex, the Court does. California Rule of Court 3.400(b) sets forth the criteria for that  
9 determination:

10                       In deciding whether an action is a complex case under (a), the court  
11 must consider, among other things, whether the action is likely to  
12 involve: (1) Numerous pretrial motions raising difficult or novel legal  
13 issues that will be time-consuming to resolve; (2) Management of a  
14 large number of witnesses or a substantial amount of documentary  
15 evidence; (3) Management of a large number of separately  
16 represented parties; (4) Coordination with related actions pending in  
17 one or more courts in other counties, states, or countries, or in a  
18 federal court; or (5) Substantial postjudgment judicial supervision.

19           This is a factor test with disjunctive factors, and a case may be considered complex even if  
20 it only satisfies one of the listed criteria. For example, a case may be found to be complex “only  
21 because of the large number of represented parties in related actions pending in different  
22 counties.” (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 835, fn. 8.) Here, Defendants  
23 can meet most of the factors. Both matters will involve time-consuming motions which raise  
24 difficult legal issues, given that multiple defendants intend to file demurrers and/or anti-SLAPP  
25 motions. (Brady Decl., ¶8.) If those filings are unsuccessful, there will certainly be a large  
26 number of witnesses and evidence to sort through, given the large number of plaintiffs (16) in the  
27 *McFadyen* matter and the large number of defendants (13) in both matters. Similarly, both matters  
28 will involve the management of a large number of separately represented parties. The plaintiffs in  
both matters have separate counsel and among all the defendants, there are at least four different  
counsel to date. (Brady Decl., ¶12). Finally, the actions are of course likely to involve  
coordination with related actions in other counties, which is the very reason Defendants bring this

1 motion.

2 **B. The requirements for Coordination are met.**

3 Regardless of whether the matters sought to be coordinated are complex, both §404 and  
4 §403 require that Code of Civil Procedure §404.1 be met prior to either coordination or transfer  
5 and consolidation. §404.1 provides that coordination of civil actions sharing a common question  
6 of fact or law is proper if coordination will “promote the ends of justice” based on the following  
7 factors: “whether the common question of fact or law is predominating and significant to the  
8 litigation; the convenience of parties, witnesses, and counsel; the relative development of the  
9 actions and the work product of counsel; the efficient utilization of judicial facilities and  
10 manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings,  
11 orders, or judgments; and, the likelihood of settlement of the actions without further litigation  
12 should coordination be denied.” (Code Civ. Proc., §404.1.) Here, consideration of these factors  
13 easily supports coordination or transfer and consolidation of these two matters.

14 **1. Significant common questions of law and fact predominate.**

15 There is no question that common questions of law and fact predominate in both the  
16 *McFadyen* and *Cardenas* actions, because the complaints are effectively identical, share the exact  
17 same causes of action, involve the same incident, and were filed on the same day. (Brady Decl.,  
18 ¶5 and ¶6.) In some places, counsel in the *Cardenas* action even forgot to change the plural tense  
19 of the original *McFadyen* complaint to the singular to reflect that there is only one Plaintiff in the  
20 *Cardenas* action. “PLAINTIFF are informed and believe and thereon allege...” (*Cardenas*  
21 Complaint, 34:4; *See also*: 10:14-16, 28:21, 31:11-12.)

22 **2. The convenience of parties, witnesses, and counsel.**

23 It is also clear that coordination is an efficient use of judicial resources and will advance  
24 the convenience of the parties, witnesses, counsel, and the court system. Given that identical  
25 allegations and claims against the same defendants are to be litigated, and given the number of  
26 plaintiffs and defendants cumulatively involved in the matters, the resources of multiple judicial  
27 chambers will be taxed needlessly by duplications of the same or similar motions, hearings, and  
28 trials. Further, as both actions arise from the same event, they will no doubt involve the same

witnesses, which witnesses should not have to present the same testimony in two different venues. The convenience of the parties will no doubt be served by the coordination of written discovery demands and depositions of both lay and expert witnesses, as well as the creation of a common depository of relevant documents, should this matter reach that stage.

**3. The relative development of the actions and the work product of counsel.**

While a petition for coordination may be made at any time after the filing of a complaint (Cal. Rule Ct. 3.521(a)), coordination is particularly appropriate at earlier stages, before costs have been sunk into each matter, or various motions filed, or differing rulings made. Here, complaints have been filed in both actions, but otherwise, there has been no significant progress in either case. Defendants Ghost Firearms, LLC, Thunder Guns, LLC, Ryan Beezley and Bob Beezley, and MFY Technical Solutions, LLC have all only recently been served in this matter, and, like all other defendants to their knowledge, have yet to file a responsive pleading in either action. Defendants are unaware if all other defendants have been properly served yet. (Brady Decl., ¶12). Further, the *McFadyen* action has been stayed, but the instant *Cardenas* matter has not been. (Brady Decl., ¶3-4). It is in the interest of all parties to have coordination determined now, before either case significantly progresses.

**4. The efficient utilization of judicial facilities and manpower, and the calendar of the courts.**

Judicial facilities and resources will be more efficiently utilized if the cases are coordinated because there will be a single judge in a single courtroom hearing the large volume of pretrial motions anticipated in this case, rather than multiple pretrial motions being heard in different courthouses utilizing countless judge and staff hours, with the attendant risk of inconsistent rulings. Multiple rulings will likely also generate multiple, different petitions for appellate review, which can be avoided by coordination.

Allowing both actions to proceed in two separate courts is an unnecessary burden on judicial resources, especially when the actions are largely identical except for the identity of the plaintiffs involved. Should the matters not be deemed by this Court to be complex, then Orange



County is the appropriate venue because that is where most of the California-based defendants are located. (Brady Decl., ¶11.) If the matters are complex, as Defendants believe they are, the Judicial Council will be well suited to determine the appropriate venue to which the coordinated matter should be assigned. In either circumstance, the total burden on the court system is reduced by up to half.

5. **The disadvantages of duplicative and inconsistent rulings, orders, or judgments.**

The *Cardenas* and *McFadyen* actions have identical causes of action, so there is no doubt a very real danger of duplicative or inconsistent rulings, orders, or judgments if the cases are not coordinated. Cases this complex are also likely to involve numerous motions. These motions should be resolved in the same trial court so that they are subject to review in the same Court of Appeal. That applies to any other rulings, orders, or judgments reached in either matter.

6. **The likelihood of settlement of the actions without further litigation should coordination be denied.**

If coordination is denied, and the two matters continue to proceed on separate tracks, settlement only becomes less attractive to Defendants, as it makes a single global settlement less likely because the potential liability they face in the other, separate action will remain unknown.

\* \* \* \*

As established above, all of the factors in §404.1 can be met in a formal Petition for Coordination, and so permission to file that petition should be granted by this Court.

C. **Alternatively, *McFadyen* Should Be Transferred to This Court and Consolidated with the Instant Matter.**

If this Court disagrees with Defendants and determines the matters are not complex, then, under California Code of Civil Procedure §403, this Court can and should order that the *McFadyen* matter be transferred to this Court and consolidated with this matter without further notice or hearing. Under §403, the same factors laid out in California Code of Civil Procedure §404.1 control in determining whether actions should be consolidated and, as explained above, Defendants meet these factors.

1 **IV. CONCLUSION**

2 For the above-stated reasons, Defendants Ghost Firearms, LLC, Thunder Guns, LLC,  
3 Ryan Beezley and Bob Beezley, and MFY Technical Solutions, LLC respectfully request that this  
4 Court grant them permission to file a Petition for Coordination with the Chairman of the Judicial  
5 Council, or in the alternative, issue an order transferring the *McFadyen* action to the Orange  
6 County Superior Court and consolidating it with the instant action. Under the authority of  
7 California Rule of Court 3.515(a), Defendants also request a stay of all proceedings in this action  
8 to allow time for submission of the coordination petition, or in the alternative, the effectuation of  
9 transfer and consolidation.

10  
11 Dated: October 28, 2020

MICHEL & ASSOCIATES, P.C.

12  
13 s/ Sean A. Brady

14 Sean A. Brady

15 Attorney for Defendants

16 Ghost Firearms, LLC, Thunder Guns, LLC,

17 Ryan Beezley and Bob Beezley,

18 and MFY Technical Solutions, LLC  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF ORANGE

4 I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County,  
5 California. I am over the age eighteen (18) years and am not a party to the within action. My  
business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

6 On October 28, 2020, I served the foregoing document(s) described as:

7 **NOTICE OF MOTION AND MOTION TO PERMIT FILING OF PETITION**  
8 **FOR COORDINATION OR, IN THE ALTERNATIVE, TO TRANSFER AND**  
9 **CONSOLIDATE ACTIONS; MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT THEREOF**

10 on the interested parties in this action by placing  
11 [ ] the original  
12 [X] a true and correct copy  
thereof by the following means, addressed as follows:

13 Gerald B. Singleton (served by electronic mail)  
14 Singleton Law Firm  
15 450 A Street, 5th Floor  
San Diego, CA 92101  
[gerald@SLFfirm.com](mailto:gerald@SLFfirm.com)

16 Ben Rosenfeld (served by electronic mail)  
17 115 ½ Bartlett Street  
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[ben.rosenfeld@comcast.net](mailto:ben.rosenfeld@comcast.net)

18 *Attorneys for Plaintiff Cardenas*  
19

20 Dugan Barr  
21 Douglas Mudford  
22 Estee Lewis  
23 Catie Barr  
24 Brandon Storment  
Barr & Mudford, LLP (served by mail & fax)  
25 P.O. Box 994390  
26 Redding, CA 96099-4390  
27 Fax: (530) 243-1648

28 *Attorneys for Plaintiffs McFadyen, et al.*

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6 error.

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8 numbers listed above. No error was reported by the fax machine that I used.

9 X (STATE) I declare under penalty of perjury under the laws of the State of California that  
10 the foregoing is true and correct.

11 Executed on October 28, 2020, at Long Beach, California.

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Laura Palmerin

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